Irons and David Weatherhead, defenders, against the interlocutor of Lord Dundas dated 17th July 1908, and heard counsel for the parties, Recal the said interlocutor: Assoilzie the said defenders from the conclusions of the summons: Of new dismiss the action so far as directed against the defenders the Standard Property Investment Company, Limited, and decern."

"The Lords having considered the appeal, record, and whole process, and heard counsel for the parties, Vary the interlocutor of the Sheriff-Substitute dated 18th December 1908, by deleting the word 'fourth' and inserting the word 'third': With this variation affirm the said interlocutor: Of new dismiss the action and decern."

Counsel for James Campbell Irons and David Weatherhead—Clyde, K.C.—Maitland. Agent—James Campbell Irons, S.S.C.

Counsel for Charles Johnston—Dean of Faculty (Dickson, K.C.)—J. R. Christie. Agent—Edward Webster, Solicitor.

Counsel for the Standard Property Investment Company, Limited—Crole, K.C.—W. T. Watson. Agents—Duncan Smith & M'Laren, S.S.C.

Friday, December 4.

FIRST DIVISION.

[Lord Dundas, Ordinary.

SCOTTISH UNION AND NATIONAL INSURANCE COMPANY *v.* SCOTTISH NATIONAL INSURANCE COMPANY, LIMITED.

Trade Name — Similarity — Deception — Company.

The Scottish Union and National Insurance Company, which was formed in 1878 by the amalgamation of the Scottish Union Insurance Company and the Scottish National Insurance Company, craved interdict against another company, formed in 1907, from carrying on insurance business under the name of the Scottish National Insurance Company, Limited. At the date of the application the business actually being carried on by the respondents was that of marine insurance, while that of the complainers was fire and life assurance. In their articles of association, however, the respondents had power to carry on, *inter alia*, fire insurance.

Held that as the complainers had failed to show that the name chosen by the respondents had occasioned or was likely to occasion any deception, they were not entitled to interdict, and note *refused*.

On 27th June 1907 the Scottish Union and National Insurance Company, 35 St Andrew Square, Edinburgh, brought a note of suspension and interdict against the Scottish National Insurance Company, Limited, 134 St Vincent Street, Glasgow, in which they sought to interdict the respondents from carrying on the business of an insurance company under the name or style of the Scottish National Insurance Company, Limited, and in particular from carrying on under that name the business of marine insurance, fire insurance, accident insurance, and generally all or any kind of insurance business.

The *facts* are given in the opinion (*infra*) of the Lord Ordinary (DUNDAS), who on 3rd June 1908 refused the note.

Opinion.—"The complainers' Insurance Company was formed in 1878 by the amalgamation and incorporation, under their Act of Parliament 41 and 42 Vict. c. 53, of two insurance companies previously incorporated by Acts of Parliament and carrying on business under the names respectively of the Scottish Union Insurance Company and the Scottish National Insurance Company. These two companies were dissolved by the Amalgamating Act, and their respective property and undertakings vested in the complainers' company. By section 18 of the said Act it was provided that a separate account should be kept in the complainers' books of the life policies of the Scottish National Company and their annuity transactions as existing at 15th May 1876; and this account has been regularly kept. There are now in existence 1993 life policies of the Scottish National Insurance Company (under which, of course, the complainers are liable) and three bonds of annuity, as well as 1169 fire policies. By their amending Act of 1906 the complainers have power, when their net liability on the said separate account shall be reduced to a specified amount (which event has not yet arrived), to close the account and to merge the life funds and liabilities of the Scottish National Company in the general life funds and liabilities of the Scottish Union and National Company. The complainers carry on an extensive business. Their powers are summarised in Stat. 3 upon the record. They include 'making and effecting insurance against loss or damage to ships, goods, and property of every description on the high seas, or elsewhere,' and 'generally carrying on all business usually known as . . . marine insurance, and of underwriters, ...' The evidence, however, discloses that the complainers do not in fact engage in marine insurance in the sense of insuring the hulls or the cargoes of vessels, though they have within the last two years undertaken (to the extent shown in the statement) the insurance of specie and securities, passengers' effects and baggage, &c., crossing the ocean.

"On 28th May 1907 the respondents were incorporated under the Companies Acts, 1862 to 1900, by the name of the Scottish National Insurance Company, Limited, with a capital of £100,000. Their powers, as contained in their memorandum of association, extend to and include all those of the complainers except life insurance and insurance against fatal accidents; but the evidence shows that their business is in fact confined solely to marine insurance.

"On 7th June 1907 the complainers' law agents wrote to the respondents' agents a letter complaining of the name adopted by the new company, on the grounds that the words 'Scottish' and 'National' were inherent parts of the complainers' name, and that the name adopted by the respondents was an infringement of their rights, and would prejudicially affect their interests; and expressing the hope that the respondents would have no hesitation in at once adopting another name for their company, failing which legal proceedings would be immediately commenced against them. After some correspondence the respondents' agents, on 12th June 1907, replied that their directors could not agree that there was any such similarity between the names 'Scottish National' and 'Scottish Union and National' as might lead to a confusion, even were the two companies carrying on similar businesses, but that the two businesses were in fact perfectly distinct, the respondents' sole business being that of ordinary marine underwriters. The letter concluded that, should the complainers desire it, the respondents 'would be quite willing, without prejudice, to undertake that in the event of their at any time extending their business beyond what they contemplate, as above mentioned, so as to compete with that carried on by your clients, that they will forthwith communicate this to your clients and agree that their opportunity of raising any objection (should they resolve to do so) to the name should not be prejudiced by lapse of time.' The present proceedings were raised on or about 27th June. The prayer of the note craves interdict against the respondents from carrying on the business of an insurance company under their present name or style; and in particular from carrying on under that name or style a detailed list of various departments of insurance business, including that of marine insurance in all or any of its branches; and generally from carrying on under the said name or style all or any kind of insurance and reinsurance business, whether of the like or of a different kind to any of the before-mentioned businesses.

"The statements made in correspondence by the respondents are fully borne out by their witnesses Mr Walker and Mr Glen, both of whom gave their evidence with great clearness and with perfect candour and frankness. These gentlemen explained the facts as to the inception of the respondents' syndicate or company, the reasons for the selection of its present name, the restricted field of its actual and intended business, and the history of the wider powers contained in their memorandum of association being sought and obtained. The principal case made by the complainers on record is that 'their said name was selected by the respondents with a view to taking advantage of the complainers' business connection and reputation, and appropriating or diverting part of their business through a colourable imitation of their name.' This charge entirely fails in view of the evidence given by Mr Walker and Mr Glen, the truth of which I accept implicitly; and indeed I did not understand that the complainers' counsel ultimately insisted in it. But he argued, and I agree, that assuming *bona fides* of the respondents, it is not their intention only, but the nature and effect of their actings, that must be looked at in a matter of this kind. Accordingly, a vigorous argument was submitted in support of the alternative case set out by the complainers on record to the effect that 'the name thus selected by the respondents is a colourable imitation of the complainers' name, and is calculated to lead members of the public to believe that the respondents' company is the same as the complainers' and thus to appropriate business belonging to the complainers and to divert and secure other business which would have come to them.' A considerable number of cases were cited at the discussion, all of which I have had an opportunity of considering. I shall note them for the sake of convenience; but I do not think I need refer to them in any detail, because the law of the matter seems to me to be reasonably clear. In a case of this kind I apprehend that the new company is not entitled to adopt and use a name so closely resembling that of the old company as to be likely to deceive the public into dealing with the new company in the belief that they are dealing with the old one, so as to divert the old company's business (or some of it) to the new; and the Court will interfere if that is done or if there is reasonable apprehension that it is threatened or intended to be done; but the old company must, of course, establish appreciable injury, or apprehension of such injury, in order to justify an interdict. In the view which I take of this case it is not necessary to decide whether or not the name adopted by the new company is so similar to that of the complainers as to cause risk of confusion, if the businesses of the two companies were conducted on competing lines; or whether the words 'Scottish' and 'National' are 'inherent parts' of the complainers' name, so as to entitle them to a monopoly in their use. A sufficient and satisfactory ground of decision is, in my judgment, afforded by the fact that, as matters stand, there is and can be no risk whatever of injurious competition by the new company with the complainers. The class of business done by the two companies respectively is entirely distinct. The respondents' company was formed for the sole purpose of carrying on marine insurance, and it does nothing else; the complainers do not at present undertake marine insurance proper. The absence of any practical risk of injurious competition, so long as matters remain as at present, is, I think, admitted by some of the complainers' own witnesses, *e.g.*, Mr Gunn. In these circumstances I think it would be out of the question to grant interdict. The complainers' counsel pressed upon me the view that, in a question of this sort it is dangerous for the existing company to delay its resort to the Court after the first appearance of possible aggression by a

newcomer, and referred particularly to the observations of the learned Judges in the well-known case *Hendricks*, 1881, 17 Ch. Div. 638, which may be read along with the opinion of Sir G. M. Giffard, L.J., in *Lee* v. *Haley*, 1869, 5 Ch. App. 155, 160. I think that the complainers might have been satisfied by the letter of the respondents' agents of 12th June 1907; but, apart altogether from that, it seems to me that the circumstances existing disclose no warrant for the interference of the Court at this time. I need hardly point out that my decision will not prejudice the result of any application which the complainers may hereafter think fit to make, if circumstances should materially alter.

"Note of Authorities—*Hendricks*, 1881, 17 Ch. Div. 638; *Turton*, 1889, 42 Ch. Div. 128; *Dunlop Motor Company, Limited*, 1906, 8 F. 1146, *affd.* 1907, S.C. (H.L.) 15; *Saunders*, 1894, 1 Ch. 537; *Borthwick*, 1889, 37 Ch. Div. 449; *Merchant Banking Company of London*, 1878, 9 Ch. Div. 560; *London and Provincial Law Assurance Society*, 1847, 17 L.J. Ch. 37; *Colonial Life Assurance Company*, 1864, 33 Beav. 548; *The London Assurance*, 1863, 32 L.J. Ch. 664; *North Cheshire and Manchester Brewery Company, Limited*, 1899, A.C. 83; *London General Omnibus Company*, 1901, 1 Ch. 135; *Bourne*, 1903, 1 Ch. 211; *Electromobile Company, Limited*, 1907, 23 T.L.R. 631."

The complainers reclaimed, and argued—The question was one of fact, viz., were the respondents passing off their goods *i.e.*, their policies, as those of the complainers—*Turton* v. *Turton* (1889), L.R., 42 C.D. 128, *per* Cotton, L.J., at p. 145. The evidence showed that injury was being done to the complainers, and if the complainers had not taken action now they would have been barred by acquiescence from doing so afterwards. The law did not permit persons to carry on business under the name of another person or company carrying on a similar business. The name chosen by the respondents was "calculated to produce confusion," and that was enough to entitle the complainers to interdict—*Hendricks* v. *Montagu* (1881), L.R., 17 C.D. 638, *per* James, L.J., at p. 646; *Lee* v. *Haley* (1869), L.R., 5 Ch. App. 153. In any event, the name chosen so nearly resembled that of the complainers "as to be likely to deceive," and that was sufficient—*North Cheshire and Manchester Brewery Co.* v. *Manchester Brewery Co.*, [1898] 1 Ch. 539, *per* Lindley, M.R., at 544, *affd.* [1899], A.C. 83, *per* Halsbury, L.C., at p. 84. Fraud was not necessary to entitle the complainers to interdict—*Cellular Clothing Co., Limited* v. *Maxton and Murray*, April 27, 1899, 1 F. (H.L.) 29, 36 S.L.R. 605. The case of the *Dunlop Pneumatic Tyre Co., Limited* v. *Dunlop Motor Co., Limited*, July 20, 1906, 8 F. 1146, 43 S.L.R. 784, *affd.* (1907) S.C. (H.L.) 15, 44 S.L.R. 977, relied on by the respondents, was inapplicable, for that was the case of a person using his own name, whereas the name taken by the respondents here was a fancy name. The actings of the respondents were clearly to the "possible if not probable detriment" of the complainers, and that entitled the latter to interdict — *per* Lord Watson in *North Cheshire and Manchester Brewery Co.* (*cit. supra*), at p. 87.

Argued for respondents—This was essentially a "*quia timet*" action based on apprehension of injury, and to justify such an action imminent or substantial damage must be proved — *per* Collins, M.R., in *Royal Insurance Co., Limited* v. *Midland Counties Insurance Co.* (not yet reported), see the *Times* for November 18th 1907. No such damage had been proved here. The respondents' business was confined to a different class of insurance work. The old Scottish National Insurance Company was defunct, so that there was no longer any risk of confusion. The resemblance in the names was no greater than had been passed in many cases, *e.g.*, *The Colonial Life Assurance Co.* v. *The Home and Colonial Insurance Co.* (1864), 33 Beav. 548 (33 L.J. Ch. 741); *Merchant Banking Co. of London* v. *Merchants' Joint-Stock Bank* (1878), L.R., 9 Ch. D. 560; *The London and Provincial Law Assurance Society* v. *The London and Provincial Joint-Stock Life Assurance Co.* (1847), 17 L.J. Ch. 37; *The London Assurance Co.* v. *The London and Westminster Assurance Corporation Limited* (1863), 32 L.J. Ch. 664; *Australian Mortgage Land and Finance Co.* v. *Australian and New Zealand Mortgage Co.*, 1880, W.N. 6. The case of *Hendricks* (*cit. sup.*), founded on by the reclaimers, was not in point, for the names there were so similar that deception was obvious. The complainers had no interest to sue, for they were not a marine insurance company, nor advertised as such. It was no injury to the complainers to take, as the complainers had done, wide powers in the articles of association — see Lord Kyllachy's opinion in *Dunlop* (*cit. supra*). It would be time for the complainers to complain when they were injured. There could be no monopoly in such a word as "national." The true criterion was, would ordinary business people be misled? *Esto* that the unwary might be misled, that was not the true test, for the law did not protect the unwary. To entitle the complainers to interdict very distinct and clear evidence of damage was necessary, and that was altogether absent here.

At advising—

LORD KINNEAR—This is an application for interdict at the instance of the Scottish Union and National Insurance Company against a company incorporated under the Companies Acts, and carrying on business under the name of the Scottish National Insurance Company, Limited, by which the complainers desire to have the respondents interdicted from carrying on the business of an insurance company under their present name or style of the Scottish National Insurance Company, and in particular from carrying on under that name various departments of insurance business which are detailed at length. The facts are very clearly stated by the Lord Ordinary, and all that I think it necessary to recall to your Lordships as matter of fact is that

the complainers' company was formed in 1878 by the amalgamation and incorporation under their Act of Parliament of two insurance companies previously incorporated by Acts of Parliament and carrying on business under the names of the Scottish Union Insurance Company and the Scottish National Insurance Company. The amalgamated company called itself the Scottish Union and National Insurance Company, and has carried on business of fire and life insurance under that style. The respondent company was formed in 1907, and the purpose for which it was formed and the circumstances under which it was registered as a limited company are very clearly and, as the Lord Ordinary says, very candidly stated in the evidence of the defender Mr Walker, who is really the founder of the society.

He says that he had carried on the business of a marine insurance broker in Glasgow, and that his attention was called to the fact that there was no Scottish marine insurance company doing business either in Glasgow or in Scotland. He thought it desirable that such a company should be formed for the purpose of carrying on the business of marine insurance only. Accordingly he issued to certain persons whom he expected to join with him in the design of forming such a company, a memorandum suggesting that they should form a private company for the transaction of marine insurance. This design was ultimately carried into effect by the preparation, in the first place, of a memorandum and articles of association. It appears that the law agent who was appointed for the purpose of drawing up the memorandum thought it advisable to insert powers to carry on other kinds of business than marine insurance only, although the evidence shows that that was not in the contemplation of the persons who actually formed the company, and was not done in pursuance of instructions, but was supposed to be matter of ordinary drafting. The result is that the memorandum of association enables this Marine Insurance Company to carry on not only that particular business but also fire insurance and insurance against accidents, but not life insurance.

On the other hand, the business of the complainers is that of a fire and life insurance company, and their position therefore is that, as an old-established company which has carried on a well-established business since 1878, it is exposed to undue prejudice by the appearance of a new company which has chosen to adopt a name so similar to that of the complainers as to cause confusion between the two companies in the minds of persons who desire to do business with the one or the other. The complainers' case as laid is that the respondents selected their name with a view to take advantage of the complainers' business connection and reputation, and of appropriating or diverting part of their business through a colourable imitation of their name. The Lord Ordinary is of opinion, and I entirely agree with him, that there is no shadow of foundation for this imputation of fraud. I think it perfectly certain upon the evidence that there was no fraudulent intention on the part of the respondents, and indeed I do not think, according to my recollection, that that view of the case was at all pressed upon us by the counsel for the complainers.

But then they maintain that it is not necessary, and I rather think this is conceded to them by the other side—at all events I am myself very clearly of opinion that it is not necessary—for the complainers to show any fraudulent intent if they can show that the respondents are in fact carrying on business in such a way as to injure them by deceiving persons who meant to do business with them and do business with the respondents instead. People are responsible for the natural and probable consequences of their actions, however little they may in their own minds consciously intend those consequences; and I take the law to be well settled that if a new company has adopted for the purpose of carrying on a business of the same kind as that of an already established company a name so like theirs as to be calculated to mislead persons dealing with them into supposing that they are dealing with the other company, and in this way appropriates, although without any dishonest purpose, a part of the other company's business, that is a wrong which may be restrained by interdict. Therefore it seems to me that the only question we really have to consider is the question of fact—whether it is shown that that will or will not be in fact the effect of the respondents' use of the name to which the complainers object. It is a question of fact upon which I think we ought not to come to a conclusion for ourselves upon a mere comparison of the two names. I do not think it depends entirely upon a comparison between the similarity of the particular names in dispute, or upon the further comparison between these two and a variety of other couples of names which may be brought under the notice of the Court.

As a question of fact it depends upon evidence. In the first place, the most material evidence would be the evidence of any actual conflict which had been shown to occur between the two businesses. In the second place, the complainers rely, and I think they are entitled to rely, upon the evidence of persons of experience in this particular business, who are called as experts for the purpose of showing that, according to their experience, the similarity of the names of the two companies is such that persons intending to insure with the complainers' company will very likely be misled into insuring with the respondents' company instead.

So far as the first point of evidence goes, I mean the evidence of what has actually happened in fact in the carrying on of the complainers' business, I think there is really none that is worthy of attention. The only incidents that are brought forward to show that as matter of fact there has been confusion between the two com

panies consequent upon the similarity of their names, appear to me to indicate only the extremely unsubstantial character of the apprehension which the complainers found upon the similarity. It appears that letters intended for the complainers' company have been wrongly addressed by the omission of the words "Union and," and have been addressed to them as the Scottish National Insurance Company. But then, notwithstanding the misdirection, all these letters have been duly delivered. There is nothing in the evidence to suggest that these misdirections were in any way due to the existence of the respondents' company, or that the writers of the letters ever heard of that company. Therefore, even if the letters instead of being duly delivered had gone astray, I should have had no hesitation in saying that that was simply one of the petty inconveniences which people must submit to in the ordinary affairs of life, and which give no right to so stringent a remedy as that of interdict.

The evidence of confusion I think requires more consideration in so far as it is rested upon the experience of gentlemen whose position in their profession and great experience in the conduct of their business entitle their evidence to weight. Now I think that the result of that evidence is that the similarity of the two names in question would, if this were borne by two companies carrying on the same business of insurance in the same ordinary way, inevitably lead to the kind of confusion which the complainers apprehend, and that the natural, if not the inevitable, consequence of such confusion would be, according to the opinion of these experts, the appropriation by the respondents of a portion of the complainers' business. But then the condition which is presupposed throughout the testimony of the experts is that the two companies are not only using similar names but are carrying on the same kind of business in the same way, and the evidence is conclusive that the respondents are carrying on a totally different kind of business and in a totally different way.

The complainers are a fire and life insurance company, and the respondents are a marine insurance company only. The difference between their methods of conducting business is brought out very clearly by a comparison between what is said by Mr Hewat, who is one of the expert witnesses for the complainers and president of the Faculty of Actuaries, and what is said upon the same point by the respondent Mr Walker. Mr Hewat says that he is familiar with the business of canvassing for insurance business, and that he had to superintend agents and had often to endeavour to get insurance proposals himself. He says—"Assuming that two insurance companies have similar names it is apt to lead to confusion and very often to the prejudice of the one or the other. I have found that in my own experience." But then when Mr Walker is asked to explain the nature of his business he says—"In connection with our marine insurance business we do not employ any canvassers. We never do any advertising. That has been always the custom with marine insurance companies and firms of underwriters doing marine business; they get their business from the brokers and they never send out canvassers in the ordinary way." Therefore, so far as the method of carrying on business is concerned, according to the evidence the two companies practise totally different methods.

But then, apart from the difference of method, what I think more material is that there is no such similarity in the businesses themselves that people can be misled by the mere similarity of the names into resorting to one company when they intend to deal with the other. I think this is a matter upon which we might form our own conclusions for ourselves apart from evidence, because the man who intends to effect a policy on his life can hardly be misled by mere confusion between the names of two companies into effecting a marine insurance upon a ship instead. There is no competition between the two companies. I think this is the vital point in the case and all the evidence goes in that direction. I have read the evidence for the complainers for the purpose of finding whether there was anything to show that there is a real risk of confusion between a fire and life insurance business and a marine insurance business. On the contrary, I think their leading witness excludes the idea of such confusion. Mr Hewat, to whom I have already referred, speaks throughout his evidence of the competition between life insurance companies only, and when he is asked in cross-examination about marine insurance he says that he does not know anything about marine insurance, and that he has no knowledge of what business the respondents are doing. Therefore he is not in a position to speak of any probable competition between these two businesses. The evidence of Mr Gunn, the manager of the Scottish Widows' Fund, is still more direct. When speaking of the liability to confusion that arises from a similarity of names he is asked whether there is not another insurance company which bears a name as similar to his own as that of the respondents to the complainers', namely, the British Widows' Fund, and he says, Yes, but that the British Widows' Fund does a business of a totally different kind, and therefore he does not complain of it. But when he is asked further as to the condition upon which he has given his evidence he says that as regards the prospect of confusion he gave his evidence upon the footing that the respondents were going to do a similar kind of business to that of the complainers. Then he is asked—"But if you were informed that the respondents were going to confine themselves entirely to marine insurance business do you think there would be much chance of confusion," and he says—"No, I should think not."

Now that is the opinion of the complainers' own expert. They cannot be allowed to contradict their own expert opinion, and so far as the evidence goes they do not attempt to do so. This statement of Mr Gunn is really, so far as the proof goes, the last word upon the question whether there is likely to be any real conflict between the particular business that the respondents are carrying on and that of the complainers. But then it is said that although the respondents are at present confining themselves to marine insurance only, they may some day take up a different kind of insurance which will compete with the complainers, because they are empowered by articles of association to carry on the business of fire insurance if they like. I think the explanation given by the respondents of the power taken in their memorandum of association to carry on such business if they chose is entirely satisfactory. The material thing is that they do not in fact carry on any other business than that of marine insurance, and according to the evidence, which the Lord Ordinary who heard the witnesses entirely believes, they have no intention of doing so. Mr Walker is as clear and conclusive upon that subject as can be. He says he wants marine insurance only and has no knowledge whatever of any other branch of insurance. Then he repeats that neither he nor anybody else at present connected with the business have the slightest intention of carrying on any other business except that of marine insurance. I think we are bound to accept that statement. The complainers may have a right to interdict something to their prejudice which the respondents threaten or intend to do. But before they can obtain interdict they must show that the respondents really do threaten or that there is reasonable ground for believing that they intend to do what is complained of. The mere circumstance that although they are not doing it they might do it if they like has not so far as I know ever been considered as a ground for granting interdict.

I can quite understand that when the complainers' attention was drawn to the terms of this new company's memorandum they might very well inquire whether this was or was not to be a rival in their own particular kind of business, and they did inquire; but I think they received an answer which ought to have been satisfactory to them, and which the Lord Ordinary considers to have been completely satisfactory. I agree with all that the Lord Ordinary has said in his opinion, and, upon the ground to which he has given effect, to wit, that there is no competition between the businesses of the two parties before us, I am of opinion that we ought to adhere to his Lordship's interlocutor.

LORD M'LAREN—I concur in all that Lord Kinnear has said. I think there is no proof of any actual injury or inconvenience caused to the complainers by the use of the name which the respondents have chosen. I think it results from the evidence that there is no reasonable apprehension of any sensible injury in the future. If the respondents were engaged in the business of life and fire insurance a different question would arise, as to which it is not necessary to offer an opinion. But it is perfectly clear on the evidence that it is not practicable for a marine insurance company to pick up casual or stray cases of life insurance from another company. To enter upon such business they must have an actuarial manager, a staff of clerks accustomed to that class of work, different sets of books, and a sufficient amount of business to enable them to average good cases with bad. In short, it would be the establishment of a new branch of business under the same management as the old. The evidence of any competition therefore entirely fails, and with that the ground for interdict also fails.

LORD PEARSON—The parties to this litigation are two companies, the complainers' company being incorporated by private Act of Parliament and having its principal office in Edinburgh, and the other being incorporated as a limited company under the Companies Acts and having its registered office in Glasgow. The complainers' company was formed about thirty years ago by the amalgamation of two insurance companies, while the respondent company was registered under the Acts in May 1907. The complainers seek to have the respondent company interdicted from carrying on the business of an insurance company under its present name or style. They also ask for interdict against its carrying on certain particular branches of insurance business, specifying particularly the business of marine insurance, and various other kinds of insurance which they also specify. Their contention is, that a new company is not entitled to assume a name so like that of an existing company carrying on a similar business as to lead the public to believe that it is the existing company, and to do business with it in that belief. The law to that effect is well settled; and it may further be regarded as settled that the similarity of the names must be such as is fitted to deceive, not merely the unthinking or the stupid person, but also persons exercising ordinary care and intelligence.

It is not objected, at least it is not now objected, against the respondents that they chose their name with the intention of capturing the complainers' business or any part of it, and, if I am not mistaken, no fraud is now alleged against them in the matter.

A point was made by the complainers against the respondent company, in respect they had chosen the very name of one of the two companies out of which the complainers' company was formed, namely, the "Scottish National Insurance Company," albeit with the addition of the word "Limited." But the complainers' amalgamation was carried through in 1878; and I understand that no new business is trans-

acted under the name "Scottish National," although no doubt that name had to be kept alive to some extent and effect in the office, owing to the continued currency of policies and annuities issued by that company. I think that the complainers have no practical interest to object to the assumption by the respondents even of the actual style and title of one of the old amalgamating companies, unless it is so used as to be likely to deceive the public in the matter of new business.

The next objection stated by the complainers is, that the style and title assumed by the respondent company is so similar to the complainers' present title as to be calculated to mislead the public into thinking that they are one and the same. As the question was argued before us, it is not out of place to say that, as at present advised, and speaking only for myself, I think this would probably be a good objection if the business of the complainers and the respondents were to any material extent on the same lines. But in my view it is not necessary to decide that point, because, even assuming it against the respondents, I hold that they have a good answer to the application for interdict on another ground. It turns out that the respondents do not, in fact, carry on any branch of business which competes with the complainers. It is said that both carry on the business of insurers. But the respondents confine themselves to marine insurance, which the complainers really do not undertake at all, according to the ordinary use of the term. There is no confusion in fact between the two businesses. They are in no sense competitive; and there is no prospect, and certainly no imminent risk of their becoming so. It is said that the extent of the possible business of the respective companies, as set forth in their constitutive documents, is to be the test; and that while the scope of the two sets of documents is not identical, each company has powers which, if exercised, would cover a large part of the business of the other. This, however, is not a satisfactory or safe ground for decision, when it is a question of interdicting one of them at the instance of the other. Indeed it would be contrary to our practice to do so in such circumstances. The law in such a matter must have regard to existing facts, either as shown by the actual scope of the business done or by distinct intimation of an intention to enlarge it. The large and extended powers which such companies assume in their articles of association do no more than express (within limits) what every individual trader has by implication, namely, the power to extend his business in any direction he pleases; and it would be absurd to attribute to either of them, merely because they have the powers, a present or imminent intention to use them. In a matter of interdict, especially, the test must be whether the respondents are extending, or threatening to extend, their business into departments which will or may be likely to interfere with the existing business of the complainers at the time. But as things stand at present, I agree with the Lord Ordinary in thinking that there is no risk of injurious competition with the complainers. And I also agree with him in holding that this decision must be without prejudice to any application which the complainers may hereafter make if circumstances should materially alter.

LORD PRESIDENT—I agree with the result at which your Lordships have arrived. When a firm name is a descriptive name, using ordinary English words, the question seems to me to be one of fact, and fact alone, whether the name that is taken is one that is calculated to deceive the public, and in order to answer that question of fact you must take the whole circumstances of the case into consideration. There is, first, the question of the collocation of the words themselves. That is very material but not absolutely conclusive. Secondly, there is the question of the class of business in which the two firms are engaged. Taking the whole circumstances of this case into consideration I do not think that it has been made out that in the present state of the circumstances there is any likelihood of actual deception.

The Court adhered.

Counsel for the Complainers (Reclaimers)—Dean of Faculty (Scott Dickson, K.C.)—M'Clure, K.C.—Chree. Agents—Cowan & Dalmahoy, W.S.

Counsel for the Respondents—Hunter, K.C.—Macmillan. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Tuesday, December 15.

SECOND DIVISION.

[Sheriff Court at Glasgow.

MORRISON *v.* R. W. FORSYTH, LIMITED.

Lease—Urban Subjects—Shop—Reasonable Use of Premises—Erection on Walls of Advertisements of Special Sales.

Certain premises were let for the purpose of "carrying on therein the business of a youths and gentlemen's clothing and outfitting and haberdashery establishment and workshop connected therewith."

Held that the landlord was not entitled to object to the erection, from time to time, by the tenant on the outside walls of the premises of canvas "banners" advertising special sales, of which there were about five in the year.

Observed that each case of this kind must be judged according to its own circumstances.

British Linen Company v. *Purdie*, July 7, 1905, 7 F. 923, 42 S.L.R. 709, *distinguished.*

By contract of lease dated 17th and 18th April 1906 Hugh Morrison let certain premises situated at the corner of Jamaica