

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

Street and Howard Street, Glasgow, to R. W. Forsyth, Limited, under the declaration that the tenants should not "use the premises hereby let for any other purpose than that of carrying on therein the business of a youths and gentlemen's clothing and outfitting and haberdashery establishment and workshop connected therewith."

In 1908 Morrison raised an action against R. W. Forsyth, Limited, in the Sheriff Court at Glasgow, craving the Court to ordain the defenders to remove a hoarding which they had fixed on the front walls of the premises, and to interdict them from erecting any hoardings of any description on the front walls of the premises.

The pursuer averred—“(Cond. 3) Shortly after the beginning of the said lease the defenders, notwithstanding the complaint of the pursuer, erected from time to time on the outside of the walls of the premises hoardings containing advertisements of special sales, and notwithstanding repeated protests continued to do so at intervals, and particularly during the year 1908. . . . (Cond. 4) During the current year they have erected various hoardings announcing different sales from time to time, and on 30th June last they erected a huge hoarding nearly 4 feet in depth round the whole of the property referred to. The said hoarding extended in length to over 70 feet. (Cond. 5) On the 30th of June 1908 the pursuer's agent wrote protesting against this disfigurement of the property, and a correspondence ensued. (Cond. 7) Notwithstanding the said protest of the pursuer, the defenders, on the 30th September 1908, erected a double hoarding round the outside of the walls of the premises advertising a sale of Thomas Hodge & Company's new winter stock. This hoarding consists of a double row of canvas spread upon wood, each row being nearly 4 feet in height, and extending to a length of 73 feet in Jamaica Street and Howard Street, and at the corner of the street there is another hoarding erected on the outside wall of the premises 12 feet high by 5 feet broad. . . .”

The defenders averred—“(Ans. 3) Explained that the defenders, within the period specified, on several occasions, for the purpose of efficiently carrying on their business, had clearance sales, which they advertised on the outside of the premises occupied by them, and that the advertisement consisted of a temporary sign printed on linen stretched on a light wooden frame, known in the trade as a banner, attached to the building higher than the usual signboard, and is in no sense a hoarding. Explained further that such an advertisement of special sales is customary in Glasgow and other large cities, and that said custom is well known to the pursuer.”

On 26th November 1908 the Sheriff-Substitute (BOYD) sustained the pursuer's second plea, that the defences were irrelevant, repelled the defences, and granted interdict as craved.

Note.—“By lease dated 17th and 18th April 1906 the pursuer let to the defenders certain subjects at the corner of Jamaica

Street and Howard Street, Glasgow, for the purpose of a men's and youths' clothing establishment and workshop. In September 1908 the defenders erected a large double advertisement round the outside of the walls of the premises advertising a sale of a bankrupt's stock. It consisted of a double row of canvas attached to a frame, each being nearly 4 feet in height and 37 feet along each front, and a corner erection of 12 feet high by 5 feet broad, as shown in the photograph, which was admitted to be correct. It is explained by the pursuer that shortly after these proceedings were taken the defenders removed the erection, and all that the pursuer now asks is interdict for the future. I think this is reasonable. The pursuer let the defenders the inside and not the outside of the building, and although there is a recognised custom which permits a tenant to fix a signboard on the outside of his premises, I think the erection complained of goes far beyond this, and accordingly I do not think that the averments of the defenders, in which they seek for a proof of custom permitting such erections, are relevantly stated.”

The defenders appealed, and after their counsel had opened the case the Court stopped him, and intimated that they desired to hear counsel for the pursuer. [The authorities relied on by the defenders, but not cited, were—*Carlisle Cafe Company v. Muse Brothers & Company*, 1897, 67 L.J., Ch. 53; *Our Boys' Clothing Company, Limited v. Holburn Viaduct Land Company, Limited*, 1896, 12 T.L.R. 344; *Riddle v. Littlefield*, 1873, 16 Amer. Rep. 388; *Bickmore v. Dimmer*, [1903] 1 Ch. 158; *cf. Pocock v. Gilham*, 1883, 1 C. and E. 104; *Evans v. Davis*, 1878, 10 Ch. Div. 747.]

Argued for the respondent—A tenant under a lease for the purpose of carrying on a business was entitled to put up on the outside wall a sign but nothing else—*British Linen Company v. Purdie*, July 7, 1905, 7 F. 923, 42 S.L.R. 709. The erection complained of here was not a sign but an advertisement of a sale by the defenders of a third party's stock. The use of the premises for such a purpose was not within the defenders' right under the lease—*British Linen Company v. Purdie*, *cit.*

LORD JUSTICE-CLERK—I think that it would be very desirable that people should abstain from using disfiguring placards or signs on their shops or premises; but when we are asked to interdict anybody from so using their premises by temporarily exhibiting what are here called banners, linen strips upon frames with the name of the stock to be specially sold printed upon them, the first thing to be considered is whether in ordinary practice such things are done for temporary purposes. I think this is a totally different case from the case of the *British Linen Company v. Purdie* to which we were referred, in which a person having taken a lease of certain premises made arrangements for permanently exhibiting a showcase outside the building and projecting from the build-

ing. Now what has been done in this case is that certain tradesmen—Forsyth, Limited—having a stock which they had acquired from some other tradesmen, desired to sell it as quickly as possible at a reasonable profit and to draw people to the place to buy it. Sales like these occur in all large towns from time to time, and when they are going on one is accustomed to see such things as these banners put up in order to excite the interest of the public and to draw their attention to the goods which are being sold at what is called "a sacrifice."

The question is, Have we before us such a use of the premises as ought to be interfered with by interdict? The Sheriff had nothing before him except two photographs of the premises. They are a little extreme, I admit, but they show a very large frontage to two streets, and I cannot say that I see anything in these photographs which is different from what one ordinarily sees in connection with such sales. I do not think the Sheriff was justified in granting the interdict he did. He granted a permanent interdict, which practically prohibited the defenders from ever doing anything of the kind again. I do not think that anyone taking a lease of premises of this kind, in which it is to be expected that such sales would take place, ought to be subjected to a permanent interdict against putting up such an advertisement. To call it an interference with the structure is absurd. There is no interference with the structure, and it is not suggested in the pleadings that anything was done to the structure which left it altered in any way after the signs were taken down. On the whole matter I am satisfied that this was not a case in which this interdict should have been granted, and that the interlocutor of the Sheriff should be recalled.

LORD LOW—I agree with an observation which fell from my brother Lord Dundas during the course of the discussion, that each case of this kind must be judged according to its own circumstances, and so regarding this case I concur in the conclusion at which your Lordship has arrived. If it had been averred that special sales were of constant occurrence, and that the appellants, instead of carrying on the proper business of shopkeepers, were really carrying on a business which was rather of the nature of an auction business, and were constantly acquiring and selling off bankrupt stocks or the like, the case would have been very different. But I do not think that there is any averment here of a case of that kind. It is, no doubt, said that the sales were frequent, but the specific averment is that there were five of them in eighteen months. That is not excessive. The special sale of Thomas Hodge's goods would be one, I suppose that there would be two Christmas sales, and perhaps two sales at the end of the summer season, which would amount only to the special sales to which one is accustomed in a quite good class of

shops. I do not think it is going beyond what a tradesman is entitled to do upon the occasion of a special sale to put up a reasonable advertisement on the outside of his shop, and that is all that was done here. The natural distinction between this case and the *British Linen Company v. Purdie*, is that there the erection was permanent, whereas here it is merely temporary and for a temporary purpose. I am therefore of opinion that on the material before us we are justified in recalling the interlocutor of the Sheriff-Substitute and refusing the interdict craved.

LORD ARDWALL—I also am of the same opinion. These premises were let for the purpose of carrying on a youths and gentlemen's clothing and outfitting and haberdashery establishment and workshop connected therewith. Now I think it is quite a proper incident of a business of that kind that shopkeepers, when they have an opportunity, should buy in stock from other traders and sell it at a profit, and when the defenders here got a stock which was all new, and which they could sell in the course of their business, I do not think that they did anything beyond the limits of their proper business. I take it that this purchase having been made, the defenders were entitled to do anything which was reasonably necessary in the way of advertising its sale, and the question is whether they did anything contrary to the terms of the lease, and whether they were entitled to take the mode of advertising their goods by the erection of banners on the outside wall of their shop. Now these banners are just sheets of linen with an advertisement printed upon them, and stretched upon light wooden spars, and fastened, we are not told how, to the front of the shop apparently in such a way as to do no harm to the structure of the shop, and without altering the structure of the walls in any way. That being so, I do not think this is a case for interdict at all. I entirely agree with the observation that every case of this sort must be judged of by its own circumstances, and that one case cannot really be treated as an authority for another, and, in particular, I think that the case of the *British Linen Company v. Purdie* cannot be regarded as an authority for this case. There are important differences between that case and the present. In that case the outward structure of the shop was interfered with to a considerable extent, because the width of the show case was added to the outside wall apparently on a buttress. It might very well be that that was inconvenient to the proprietors, but at all events it is quite clear that it was an interference, more or less important, with the outer structure of the shop, with the cement on which the pillars were founded, and with the ashlar front of the shop. Further, it was a permanent interference with the structure of the building, whereas if there was any interference at all in the present case it was only temporary. It is enough to say that, taking the

circumstances of this case, I think they are very different from those I have just mentioned, and that there is no relevant ground stated for granting an interdict.

LORD DUNDAS—I agree. I do not think this case involves anything like a question of principle. I consider that each case of this kind must be decided upon its own merits. It would not be easy, and in my opinion it would be very inadvisable, to attempt to lay down a general rule as to what may or may not be done in this direction by a tenant. I am content to say that I think the act which is complained of in this case was not unreasonable or unlawful, and should not be interfered with.

The Court sustained the appeal and refused the interdict craved.

Counsel for the Pursuer (Respondent)—Dean of Faculty (Dickson, K.C.)—W. Watson. Agents—Dove, Lockhart, & Smart, S.S.C.

Counsel for the Defenders (Appellants)—Chisholm, K.C.—Paton. Agent—J. Gordon Mason, S.S.C.

Wednesday, December 16.

FIRST DIVISION.

(EXCHEQUER CAUSE.)

TURNBULL'S TRUSTEES v. INLAND REVENUE.

Revenue—Stamp Duty—“Settlement”—Alteration of Security by Deed but No New Provision—Stamp Act 1891 (54 and 55 Vict. c. 39), sec. 62, and First Schedule.

A, by antenuptial marriage-contract, bound himself to pay his wife should she survive him an annuity of £400, and in security of this provision he bound himself, his heirs, &c., to infest her in certain lands. The deed was adjudicated as duly stamped. Thereafter A, with consent of his wife, sold part of the security subjects, and as new security for the annuity conveyed other subjects to trustees.

Held that this trust deed was not a “settlement” within the meaning of First Schedule to the Stamp Act 1891, and accordingly was not chargeable with settlement duty.

The Stamp Act 1891 (54 and 55 Vict. cap. 39), First Schedule, imposes, *inter alia*, the following stamp duties;—

“Conveyance or Transfer of any kind not hereinbefore described . . . £0 10 0
And see section 62.

“Deed of any kind whatsoever not described in this schedule . . . £0 10 0

“Settlement.—Any instrument, whether voluntary or upon any good or valuable consideration, other than a *bona fide* pecuniary consideration, whereby any definite and certain principal sum of money whether charged or chargeable on lands

or other hereditaments or heritable subjects, or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not), or any definite and certain amount of stock, or any security, is settled or agreed to be settled in any manner whatsoever:—

For every £100, and also for any fractional part of £100, of the amount or value of the property settled or agreed to be settled £0 5 0

“And see sections 104, 105, and 106.”

Section 62 enacts—“Every instrument, and every decree or order of any court or of any commissioners, whereby any property on any occasion, except a sale or mortgage, is transferred to or vested in any person, is to be charged with duty as a conveyance or transfer of property: Provided that a conveyance or transfer made for effectuating the appointment of a new trustee is not to be charged with any higher duty than ten shillings.”

James John Oliver, solicitor, Hawick, and Thomas Henry Armstrong, solicitor, Hawick, assumed trustees acting under a deed of trust, dated 30th May and 1st and 2nd June 1908, granted by the deceased David Turnbull, sometime of Fenwick and Rodono, being dissatisfied with a determination of the Commissioners of the Inland Revenue finding the said trust deed chargeable with stamp as a settlement took an appeal by way of stated case.

The material facts stated in the case were:—By contract of marriage, dated 15th June, and registered 4th August, both in the year 1875, between David Turnbull and his father William Turnbull on the one part, and Christian Oliver on the other part, David Turnbull and his father, in contemplation of the marriage of the said David Turnbull and Christian Oliver, bound themselves, conjunctly and severally, and their heirs, executors, and representatives, *inter alia*, to content and pay to the said Christian Oliver, in case she should survive the said David Turnbull, a free yearly life-rent annuity of £400, and in security of the same they bound themselves and their respective heirs and successors to infest and seize the said Christian Oliver in certain lands. It was also provided that if any of the lands which formed the security of the annuity and other obligations should be sold in order to pay off a bond of £75,000 with which they were already burdened, or other charges postponed to the said annuity and obligations, the annuity and obligations should be restricted to the remainder of the said lands. This deed was adjudicated as duly stamped. By deed, dated 26th May 1897, and registered in the Divisions of the General Register of Sasines for Roxburgh and Selkirk for publication, and also in the Books of Council and Session for preservation, on 5th June 1897, the said David Turnbull assigned and disposed the lands which formed the security of the annuity and other obligations provided for by the above marriage-contract, and also certain policies of assurance, to trustees for the purpose,