

that in the meantime Mr Hamilton Lawson died, without having executed any deed of consent, and that a nearer heir had also been born. So that if the statute is to be read as requiring that the heirs who consent must be those who are the nearest in existence at the date both of the application and of the consents, it will be impossible for the petitioner to carry through the excambion under the present petition.

The only case to which the Lord Ordinary was referred, as bearing upon the question, is that of Burton, noted in Mr Duncan's "Manual," p. 347, and reported in 13 D. p. 40, but not upon the point now raised. In that case a nearer heir was born between the date of the remit to the reporters and the date when the tutor *ad litem* to one of the nearest heirs in existence at the date of the application executed a deed of consent as tutor of that heir. In that state of matters, the Court, before disposing of the case, granted warrant for serving the petition on the second son of the petitioner; and a tutor *ad litem* having been appointed to him, who executed a deed of consent on his behalf, the prayer of the petition was granted.

Had the circumstances of this case been substantially the same as those in that of Burton, the Lord Ordinary would not have taken it to report. But it is to be observed, that although in that case a nearer heir was born, after the petition was presented, for whom a consent was given, the heirs who were the nearest at the date of the application were all of them still in life, and had all executed consents to the excambion. So that the Court had, in that case, the consents of the heirs who were the nearest heirs at both of the dates mentioned in the 5th section of the statute, as well as of the heir subsequently born; whereas, in the present case, the consent of one of the three nearest heirs at the date of the application cannot now be obtained.

There is a subsidiary point raised as to the form of the deeds of consent—viz., whether it is necessary, under the provisions of the Act of Sederunt, to set forth the terms of the destination *ad longum* in the consents. The Lord Ordinary is disposed to think that this is not imperative, and that it is sufficient if enough of the destination is inserted distinctly to identify the entail, and this, he understands, has been done in the present case."

After hearing counsel for the petitioner, the Court held that they could not get over the difficulty, and remitted to the Lord Ordinary to give effect to the objection under section 5 of the Act.

It was mentioned that the subsidiary difficulty referred to at the close of the Lord Ordinary's note might have been overcome, but it was recommended that, in the event of a new petition being presented, it should be avoided.

Counsel for Petitioner.—The Lord Advocate and Mr Pyper. Agents—Hamilton & Kinnear, W.S.

STEVENSON AND OTHERS v. BIGGART.

Property—Servitude—Road—Boundary Wall—Hedge. Held (1) that a person had a right of servitude over a road; (2) that he was entitled to perform operations on the road for the purpose of repairing it, but not so as substantially to alter its nature or level to the prejudice of his neighbour; (3) that he was not entitled at his own hand to dig trenches in the road for gaspipes, but that this having been done, he could not be ordained at the instance of an adjoining proprietor to remove the pipes; (4) that he was entitled to make openings in a wall running along the side of the

road for the purposes of access to his own property, with or without gates, but that he was not entitled to make such openings in a part of the wall separating his property from that of his neighbour, so as to give access to his neighbour's property; (5) that he was entitled to take down any portion of the said wall for the purpose of enabling him to erect offices on his own ground; (6) that he was entitled to insist that a hedge on the side of the road should not be allowed to protrude so as to interfere with his full use of the road, but was not entitled at his own hand to cut down the hedge to any greater extent; and (7) that a party having a servitude over a road was not entitled without consent to erect a gate on the road at its junction with a parish road.

This is an action of declarator and interdict at the instance of Mr Stevenson, the minister of Dalry, and Captain Blair of Blair, with consent of Mr M'Cosh of Merksworth, writer in Dalry, against Mr Thomas Biggart, woollen manufacturer, Dalry. The questions betwixt the parties were of a very trifling nature, although they had given rise to considerable litigation. They had reference to an alleged interference on the part of the defender with a road, a wall, a hedge, and a ditch in the neighbourhood of the glebe of Dalry parish, and of the property of the defender. The Lord Ordinary (Kinloch) pronounced, after a long proof, an interlocutor in which he "Finds and declares that the defender, Thomas Biggart, has a right of servitude over the road labelled for its whole extent, from the parish road from Dalry to Blair westward to the point A on the plan referred to in the summons, to the effect of obtaining access thereby to his property, lying to the southward of the same: Finds and declares that the said defender was and is entitled to make openings in the wall running along the said road on the northward of his said property, for the purpose of obtaining access to his said property, with or without gates: Further, finds and declares that the said defender was and is entitled to take down the said wall to such an extent as to enable him to erect offices or other buildings on his own property, on the line of the said wall: Finds and declares that the wall to the southward of the defender's property, so far as it does not run along the said road, being that part of it running from the point A westward to the point B on the foresaid plan, is a march fence between the defender's property and the manse ground to the northward, and that the defender is not entitled, at his own hand, to make an opening in or otherwise affect this portion of the said wall: Finds and declares that the defender was not and is not entitled, without consent of the road trustees, to open any part of the parish road from Dalry to Blair, for the purpose of laying pipes or otherwise; but finds no sufficient ground on which to ordain him, at the instance of the present pursuers, to take up and remove any gaspipe laid by him: Finds and declares that the defender was not and is not entitled to lay slag or other materials on the said servitude road, to the effect of substantially altering the nature or level of the road; but finds no sufficient ground for ordaining him, at the instance of the present pursuers, to take up and remove the materials laid by him on the road: Finds and declares that the defender was not and is not entitled, at his own hand, and without the consent of the pursuer, the Reverend Robert Stevenson, to cut the hedge lying on the northward of the said servitude road: Finds and

declares that the pursuers are not entitled, without the consent of the defender, to erect a gate across the said servitude road: Reserves to all concerned their right to apply to the Judge Ordinary of the bounds, to obtain his authority for mending the said road, or cutting the said hedge, or performing any necessary operations thereon, as to which they may not be agreed: And to any further effect than may be comprehended in the before-written findings, dismisses the action, and decerns: Finds the defender entitled to expenses, subject to modification; allows an account thereof to be lodged; and remits to the auditor to tax the same, and to report." In reference to the reservation, the Lord Ordinary said in his note that "he trusts that, after the sedative administered by the present process, this reservation may be practically inoperative."

The pursuers reclaimed.

FRASER and WATSON were heard for them.

YOUNG and MARSHALL for the defender.

At advising,

LORD PRESIDENT—This is an action at the instance of Mr Stevenson, as minister, and Captain Blair, as superior, and owner of the *solum* of a certain road, and Mr M'Cosh, as having an interest in the matter, against Mr Biggart, in respect of certain operations in regard to a wall, and a road, and a hedge, and as to right to a gate. It is unfortunate that there should have been so much litigation about such little matters, for it is calculated to make sores which it is difficult afterwards to heal. It appears that Mr Biggart acquired a feu of the lands which now belong to him, an extract from which we have in Art. 3 of the Revised Condescendence, and it gives him a certain piece of property, bounded in certain directions; but the boundary that we have mainly to do with at present is the northern boundary of his feu, and the northern boundary of his feu is "the road after-mentioned, leading to the manse offices, on the north parts, together with the use and privilege of the said road leading from the foresaid parish road to the manse offices; and with power to the said Thomas Biggart, at his own expense, to make the fence on the northmost side of the ground disposed to him in a straight line from the parish road till it terminates at the manse offices, the servitude road being to be left at least twelve feet in width at the termination, which is to be—yards or thereby from the west end of the manse barn." This road, which is referred to, appears to have been used as a road to the manse offices. It was originally apparently a part of a field which had been let; it was no part of the original glebe or manse grounds designed to the minister; but when it was part of the field it seems to have been used as a road to the minister's manse offices, and as such it is described in this deed, which gives Mr Biggart a servitude over that road, and it would appear that the minister had also a tolerance or servitude over it to his manse offices. There appears to have been a fence along the north side of the ground acquired by Mr Biggart; and it appears also that there was a hedge on the south side of the manse, but the fence to the north of Mr Biggart's property is not said to be the boundary of that property. His property is bounded by a road, and as the road was to the north of that fence, I apprehend that that fence was on Mr Biggart's feu. Then Mr Biggart had permission to make a straightened line, and that straightened line came in place of the former one, and made the road to the edge of the field straight;

but I apprehend that after the making of that straightening the road was still the boundary of Mr Biggart's feu. It appears that some time after Mr Biggart acquired this feu a transaction was entered into whereby he sold or gave up a small part of it towards the west end to the heritors, with a view to be added to the manse grounds, and for that the heritors paid a sum of £24, I think, and undertook to build a wall from a certain point to a certain other point. It is so described, and was ninety-four yards in length. That wall was built by the heritors, and there is another wall built by Mr Biggart himself, which straightened his line, and which was a continuation of what was built by the heritors in the same line. There seems to be a difference among the witnesses as to which was built first; but I don't think it signifies which was built first, because it is quite plain that whichever was built first it was intended at the time of the building that there should be a continuation in that particular line, and it must have been lined out previously. Mr Biggart having built that wall with a continuation from the point at which the heritors stopped, matters appeared to be so far completed, but Mr Biggart afterwards built a house upon his property, and made an entrance to that house at the corner where this servitude road joined the parish road, and certain alterations were made upon the wall he had built so as to suit it for the house he had erected. It appears that he also had a mill on the other side of the parish road, and that he brought gaspipes from the mill to his house under the parish road, and apparently under a portion of the servitude road, though that is a matter which some of the witnesses seemed to doubt, but I think it is so. If it is under any part of the servitude road, it must be a very infinitesimal portion of it. Mr Biggart also erected offices entering from the servitude road, and built the wall of the offices upon the site of the wall he had made as a straightening wall, and these offices were in the form of the two gables coming up to the road, there being a recess between these off the road. It appears that, some time ago, Mr Biggart thought that the hedge on the south side of the manse grounds, and the trees that were apparently in the hedge—for there appears to have been a hedge-row, as I understand it—were encroaching upon the road, and interfering with his passage along that road, which was not a broad one—10 or 12 feet broad or thereabouts—and he cut branches from these trees, and he also cut that side of the hedge. This appears to have attracted notice and given offence to the heritors, and they had a meeting, which the minister attended, at which they stated they had objections to this, and they thought it necessary to remonstrate and to take some steps about it. It appears that Mr Biggart also performed some operations on the road. He led to the road slag and stuff which was intended to be metal for the road, and it is said that in doing so he filled up in certain places a ditch which was on the side of the road next the manse ground, which prevented the water from running as usual, and interfered with its passage into the drain, the result being that some portions of the manse grounds were flooded. It does appear that Mr Biggart's ground was on a higher level than the manse ground. I think that is the fair import of the evidence, and that the road, before it was made a road, was a continuation of the same ground, sloping towards the manse ground. It has always done so, more or less, so that the

water which fell on the surface of the road flowed towards the manse ground, or the ditch that was at the foot of the hedge. Parties, I think, mainly quarrelled about the cutting of the hedge, and it was thought proper to resort to law about this matter. Some proceedings seem to have taken place in the Sheriff Court, which I don't think have much bearing here, but this action is brought before us at the instance of Mr Stevenson, the minister, and Mr Blair, the party to whom the *solum* of the ground belongs, and who, I suppose, is the principal heritor in the parish, and Mr M'Cosh, who also has an interest as superior. They complain of all these things done by Mr Biggart, and they complain of some things which I do not think they have followed out in argument, to us at least. It was explained that in making his approach gate he made, as one witness said, the servitude road look as if it belonged to him. I don't think that a very great ground of complaint in law. There is also a complaint about his offices, not merely that they were built upon the site of the road, but that, in the dressing of the stones, in some of the mouldings or otherwise, there is a projection of an inch beyond the front of the wall. And in regard to his gate, too, I think I see an objection—though I could not follow the import of it exactly—that the wall to which he attached his gate was a wall with a “batter,” and that there was a cope-stone on the top of it which projected a certain distance. Now, a wall with a batter slopes back, and the top of the cope might project a considerable distance and yet not project so far as the base of the wall, and I don't see in the proof that it does project so far as the base of the wall. I think these operations were substantially within Mr Biggart's own grounds.

But the first matter of contention is in regard to this wall, and two things are put before us to be dealt with in regard to it—First, to have it declared that it is a mutual wall or common wall between the parties; and secondly, that it is a wall which Mr Biggart has interfered with improperly by making openings into his own fields. The conclusion is, that it is either a mutual wall between Mr Biggart and the minister, or between Mr Biggart and Captain Blair, as owner of the *solum* of the road. Now, I think it is quite clear that the road is no part of the benefice. There may be a tolerance of going over the road, but certainly it is no part of the benefice. But in regard to the mutuality of the wall, I don't think there are grounds for the declarator claimed by the pursuer. I think this wall is built within what is the boundary of Mr Biggart's property as described in his title; the boundary of his property was the road, as I have stated, not the hedge; and there was a permission to straighten the wall, whereby the road still continued to be the boundary of his property. It is said that this wall was built on the line of the old hedge—that is, subject to the straightening; but the old hedge, I think, was within the description in the feu, and therefore I think there is no ground for regarding it as a mutual wall. I don't see any reason for complaining of Mr Biggart making accesses from that road to his ground; indeed, if he had no access from that road to his ground, I don't see what was the use of acquiring the servitude over the road. It was for the very purpose of the convenience of access to him and for the benefit of his feu. And as to saying that it increases the servitude, I cannot understand that, because he goes in at one gate or the other gate; and I should think that,

if there are more gates than one, it would do less damage to the land at one particular point than if there was only one gate. I don't think there is any ground of complaint there, and I think the Lord Ordinary has arrived at a right conclusion in regard to that part of it. There is a particular portion of the wall which stands in a different predicament from the rest. Part of it was built by the heritors, and part of what was built by the heritors is not along the road. It is at a place where the ground was given off by Mr Biggart by the transaction of 1845, and it is built upon that ground which was part of Mr Biggart's feu originally, and where he gave off a portion to the heritors by that transaction. Part of what the heritors built is between Mr Biggart and the road straightening his line, and there is a stipulation to continue it up that length. Now, I think there is great difference in the evidence as to whether that wall was upon the part given off or was truly within the ground reserved by Mr Biggart. It is certainly on ground that belonged to him, but I don't think that it is very necessary to dispose of that matter here. I think it is very clear that, whether it be upon the one or the other, Mr Biggart is not entitled to make the openings through that part of the wall, so as to lay open accesses to ground which he has given off for the use of the benefice, and to that extent I think the Lord Ordinary is right; but we have not the heritors here, and we have not materials, I think, very well for determining as to this being a mutual wall. I am not prepared to say that it is a mutual wall between the parties, and I don't think it necessary to say anything to that effect in this judgment. But I think we should find that there is no right to make openings there, just as we find that there is a right to make openings in the other part of the wall.

The next matter of complaint is in reference to the cutting trenches for laying gaspipes. Now, it does not appear that Mr Biggart is correct in stating that he obtained the authority of the Road Trustees to make these trenches. I think Mr Patrick, the gentleman from whom he seems to have thought he got such authority, did not give it, for he says expressly that he did not, and would not in the circumstances give such authority. But he was aware that the operation was going to be made, and it was not made secretly, and there was no remonstrance at the time, though I suppose it was a very short proceeding, and the pipes were laid. But other things made that an item in the bill of complaint against Mr Biggart, and the question comes to be whether we should order these pipes to be taken up. Now, it is one thing to prevent operations to be made on a parish road, or other servitude road, and it is another thing whether, after these operations have been performed, which plainly do no harm to the road, and which were not challenged as soon as they were known, we are to order them to be removed. I think that that distinction was pointed out in the House of Lords in the case of *Galbraith v. Armour*, and I think it is applicable to this case, so that I think we ought not to desire these pipes to be removed. The only other matter connected with the road is the gate. It is said that in consequence of operations made by Mr Biggart upon the manse fence, on the south side of the manse ground, the ground is more open to stray cattle than it was before, and that this gate should be erected on the servitude road on the south side of the manse grounds. Now, the demand in this summons is not that there shall be a temporary

erection until the fence recovers from the operations which have been made upon it. It has been recovering from these operations; it never was a very good fence; and I see that a proposal was made among the heritors at one time that Mr Biggart should be required to build a stone wall along there. But this is a demand of absolute right to put a gate across that road, which was purchased as a servitude, and to maintain it. Now, I don't think there is ground for that, and therefore, as regards the wall, and the pipes, and the gate, I have very little difficulty. There is another matter about this road that is of importance. Mr Biggart has performed operations upon the surface, and he has done so without authority of the heritors or of the minister, and these are complained of very absolutely and broadly, and a declarator is asked in regard to them. It was said that the character of the road had been altered, and something was said about its being turned into a head-rig. Now, I think that is a misapprehension altogether. In the first place, it could not be turned into a head-rig, as far as I can see. I don't see that any other access could be given to Mr Biggart in place of it; that that could not have been taken either off his own ground, or off the glebe ground—that is quite clear. In the next place, it is a servitude on a road. If it had been said that he had altered the character of it, by converting it into a ridge, I could understand it, but to alter the character of it as a road by improving it as a road does not appear to me to be objectionable. I think the question would rather be whether the other party, who had the interest here, was not bound to concur in making the road useful, if it was becoming useless from want of repair. I think that would be a more difficult question; but I think the other party interested in the road, so far as Mr Biggart's operations were calculated to improve the road, were much indebted to Mr Biggart for having made them. It would be another thing if they were calculated to prejudice the interests of the benefice, and I don't think Mr Biggart would be entitled to do that. The laying metal on it with a view to make it a better road is the very thing which I think he was entitled to do, to put it in repair, so long as he did nothing prejudicial to the benefice. It is said the slope throws the water on the manse grounds. I think it has been the case always, according to the evidence, that the slope was in that direction; but it is said that the ditch on the north side of the road at the manse hedge has been to a certain extent filled up, and at some points nearly obliterated. It does not seem to have been a very regularly made ditch, but we know that ditches of that kind on the hanging side of a road are in course of time silled up, unless something is done to keep them in order, and to clean them, and if in the course of improving the road additional injury is done by letting any of the material fall into the ditch, and so obstructing it, it might be a ground for calling on Mr Biggart to clean out the ditch and to put it right. But that is not the demand which is made here. What we have here is a complaint against interfering at all with the surface of the road. I rather think that the Lord Ordinary's words upon that subject are not quite guarded enough. He finds—"That the defender was not and is not entitled to lay slag or other materials on the said servitude road to the effect of substantially altering the nature or level of the road." These words have been commented on, and I think they admit of being construed in a sense

which the Lord Ordinary did not mean, because the nature of the road may be altered from a bad road to a good road, and as to the level of the road, if there is additional material laid on, it may make a little alteration in the height of the road; or if a hollow is worn in the road, and if it is filled up, that would be an alteration of the level, and that is not what the Lord Ordinary meant; but I think that any alteration on the nature or general level of the road to the prejudice of the manse ground would be a very proper subject of complaint; but I think he is entitled, at his own hands, to make repairs on the road, if he does not do any prejudice to the other party.

And then as to the hedge, I think Mr Biggart appears to have proceeded rather too far in the exercise of any power that belonged to him in dealing with this hedge, and these trees. In the first place, I think that a party having an interest in a servitude road, such as Mr Biggart has, and obviously the main interest, is entitled to require that the hedge on the south side of the manse grounds shall not encroach upon the road, and that the trees there shall not encroach upon the road so as to interfere with the free and beneficial use of it. I think he is entitled to require that. I think he was entitled to call, as he did call, on the minister, or the parties interested, either to dress that side of the hedge, or to assist him in dressing it, for I think it was more of a mutual operation; and if that was not done, I could not say that there was any fault in the mere trimming of the hedge, in the ordinary mode of trimming hedges, so as to remove the obstruction, or having given notice as to the trees protruding, the mere taking away the branches, so as to allow the use of the road; but I think there has been more done here than that. I think there has been a cutting of these branches apparently, or at all events a cutting of the hedge, to an extent that made it practically very little of a hedge on that side for a considerable time to come, till it grew up. I think that was going too far. I don't think Mr Biggart was right there, and I think the heritors and the minister had a cause of complaint there, and that it is a thing that could not be allowed to be repeated. The Lord Ordinary seems to think he had no right to meddle with the hedge at all without the consent of the heritors. I am not prepared to say so, if he merely trimmed the hedge in a business-like way, not doing it any harm, for the purpose of preventing it from encroaching on the road. I don't think he could be at all found fault with if he did that, but they might differ materially as to what extent it might go to. I think the reservation of the Lord Ordinary as to going to the Sheriff in regard to matters on which they differed about the hedge should apply also to the road. Now, I think these are all the points which have arisen in this case, and I think that with some verbal alterations, and with the qualifications I have alluded to, the Lord Ordinary's interlocutor is substantially very near the judgment that ought to be given. We shall therefore pronounce an interlocutor in the same sense, but with the qualifications to which I have alluded.

The following interlocutor was pronounced:—

"*Edinburgh, 26th January 1867.*—The Lords having advised the reclaiming note for the pursuers, No. 120 of process, and the reclaiming note for the defender, No. 124 of process, and heard counsel for the parties, recal the interlocutor of the Lord Ordinary submitted to review, and in place thereof find and declare that the defender,

Thomas Biggart, has a right of servitude over the road libelled for its whole extent from the parish road from Dairy to Blair westward to the point A on the plan referred to in the summons, for the use of his property lying to the southward of the said servitude road: Find and declare that the said defender was not and is not entitled to perform any operations on the said servitude road to the effect of substantially altering the nature or level of the said road or otherwise to the prejudice or injury of the pursuers, but that he is entitled to perform such operations thereon as may from time to time be necessary for keeping the same in an efficient state of repair, and find no sufficient ground for ordaining him to take up and remove the slag or other materials already laid by him on the said road: Find and declare that the said defender was not and is not entitled at his own hand to open up or cut trenches in the said servitude road or the said parish road for the purpose of laying pipes, but find in the circumstances no sufficient ground on which to ordain him at the instance of the present pursuers to take up and remove any gaspipe already laid by him: Find and declare that the said defender was and is entitled to make openings in the wall running along the south side of the said servitude road for the purpose of giving access to his said property with or without gates, and that he was and is entitled to take down the said wall to such an extent as to enable him to erect offices or other buildings on his own property on the line of the said wall, but in regard to the continuation of the said wall westward from the point A to the point B on the said plan, and which does not run along the said road, Find and declare that the defender is not entitled at his own hand to make openings therein so as to give access from his own ground to the ground on the north side of said wall, sold by him to the heritors for the purpose of being added to the manse grounds: Find and declare that the defender is entitled to require and insist that the hedge and trees on the north side of said servitude road shall not be allowed to protrude on or over the said road so as to interfere with the full use thereof, but that the defender was not entitled, at his own hand, to cut the said trees and hedge in the manner in which he is proved to have done: Find and declare, that the pursuers are not entitled, without consent of the defender, to erect a gate on the said servitude road at or near to its junction with the parish road: Reserve to all parties concerned their right to apply to the Judge Ordinary of the bounds to obtain authority for performing any operations on the said road or hedge as to which they may not be agreed, and to any other or further effect than may be comprehended in the before written findings, dismiss the action, and decern: Of new, find the defender entitled to expenses in the Outer House, subject to modification: Further, find the defender entitled to expenses since the date of the Lord Ordinary's interlocutor: Allow an account to be given in, and remit to the auditor to tax the same when lodged, and remit to the Lord Ordinary to modify the expenses incurred in the Outer House, and to decern for the expenses of both Courts. "DUN. M'NEILL, J.P.D."

Agent for Pursuers—John Henry, S.S.C.

Agents for Defender—Duncan & Dewar, W.S.

Tuesday, Jan. 29.

SECOND DIVISION.

DIXON v. JACKSON.

Trade Mark—Interim Interdict. Circumstances in

which, in a question of infringement of a trade mark, interim interdict granted.

This is a note of suspension and interdict presented by William Dixon of Govan Colliery, against Thomas Jackson, iron-master, Coats Iron Works, Coatbridge. The object of the action is to have the respondent interdicted from the manufacture at his works of bar iron stamped or branded "Coats" with a star immediately following—thus, Coats*—on the ground that the trade of the complainer in "star iron" is injured by the respondent assuming the said mark. The Lord Ordinary passed the note to try the question between the parties; "but having regard to the terms of the complainer's price-list, in which complainer's iron is entered as stamped—not simply with a star, but as 'Govan*'—the Lord Ordinary did not think that the use on the part of the respondent of the mark 'Coats*' was *ex facie* so clear an adoption of a trade mark belonging to the complainer as to entitle him to an interim interdict."

The complainer reclaimed.

YOUNG and THOMSON appeared for him.

CLARK and GLOAG for the respondent.

At advising,

LORD JUSTICE-CLERK said that the question to be tried under the note was whether the mark of a star used by Dixon was such a trade mark as could obtain the protection of law. That was a question of some delicacy, on which he gave no opinion at present. But, then, the complainer asked interim interdict, and that involved other considerations than those necessary to determine the main question. In disposing of such a question, it was necessary to look at both sides. Now, Dixon said that he had been in use to put the star mark on his iron for many years; that the mark was well known in the foreign trade; and that it was of importance to him that the mark should not be used by others so as to cause confusion in the market. This was not admitted by the respondent, but it was evidently true to some extent; for, if the star was not significant of something, it was not easy to see why it should be used by the respondent. It might therefore be assumed that it had some signification. Then the complainer averred that no other master had ever used this mark, and that there was no other star iron in the trade. This was not admitted either, but the respondent did not specify any other bar iron similarly marked, as he should have done if it were the case. All he said was that for some time he had contemplated the use of some mark, and that it was common in the trade to use a crown, a star, a horse-shoe, or some such mark. It was clear, therefore (1), that Dixon had used the mark for some time; (2), that it had some signification in the market; (3), that no one else had used it; and (4), that the use of it by the respondent was recent, sudden, and unexplained. The reason he gave for using it was that he recently got an order from an iron merchant for a small quantity of bar iron, with a request that the iron should be marked with a star in addition to his usual trade mark. Now, this was obviously the first time when he used the star mark at the request of the iron merchant, and no explanation was given by either party of the object of using it. In these circumstances the respondent was in an unfavourable position in the present question. This was very like a device of an unfair kind to make use of a trade mark used by a rival, to the injury of that rival; and as no injury could arise to the respondent by granting interim inter-