

had gone to Australia, went to reside with a man called Henderson Carrick, a married man, but who had separated from his wife, and that she and that individual have until recently lived together, chiefly in Glasgow, as man and wife. It is proved that three children have been born of the intercourse between the defender and Carrick.

"On the other hand, the Lord Ordinary thinks that the proof sufficiently shows that the pursuer came to the knowledge of his wife's (the defender's,) misconduct, about ten years before the institution of this action. But then the proof also sufficiently shows, in the Lord Ordinary's opinion, that the pursuer was, during the time which intervened between his becoming aware of the misconduct of his wife and his instituting this action, engaged in the prosecution of his calling, in the command of vessels trading between various ports in Australia, Tasmania, and New Zealand. The Lord Ordinary thinks he may also assume from the whole evidence that it would have been very difficult, if not impossible, for the pursuer to have returned to this country sooner than he did, without serious injury to his business and pecuniary prospects. He returned in the spring of this year, and the present action was raised in July thereafter.

"The Lord Ordinary may further add, as a circumstance which appears to him to be clearly enough established by the proof, that the defender had it always in her power to ascertain, if she had desired, from the relations of the pursuer, all necessary information in regard to his whereabouts. There is no foundation whatever, so far as the Lord Ordinary can discover, for the statement in the defences, that the defender had made enquiries about the pursuers, and that the result of her enquiries had satisfied her that he was dead. No attempt indeed was made by the defender to support this statement by evidence of any kind, and she did not adduce any proof at all.

"In these circumstances, the defender's adultery is beyond all question, and it has not been disputed. The only plea in defence which was attempted to be supported in argument by the defender's counsel was that of *mora*, and the relevancy of this plea, in the sense in which it is explained by Professor Bell (Prin., sect. 1533), as meaning such long delay as may be held to import acquiescence on the part of the injured husband, or in other words *remissio injuriarum*, was not contested. But it was maintained by the pursuer's counsel that there was no room for the plea in the circumstances of the present case, and the Lord Ordinary being of opinion that the pursuer is right, has pronounced judgment accordingly. He is of opinion that the absence of the pursuer in Australia in the prosecution of his ordinary and lawful calling, when he first received intelligence of his wife's misconduct, is sufficient fairly to account for the delay which occurred in instituting the present action, without imputing to the pursuer that he acquiesced in such misconduct, or holding that he is now barred from obtaining the ordinary and appropriate redress against the misconduct, on the principle *remissio injuriarum*. The cases of *A. v. B.*, 20th July 1853, 15 D. 976, and *Duncan v. Maitland*, 9th March 1809, F.C., relied on by the defender, were essentially different in their circumstances from the present, and cannot therefore be held to be precedents in point. In these cases the injured parties stated no reasonable admissible excuse for the great delay they had allowed to occur after they had come to the full know-

ledge of all the circumstances and the bringing of their action; and, besides, in the case of *Duncan*, the injured husband, after coming to the knowledge of his wife's misconduct, continued for some time thereafter to cohabit with her."

The defender reclaimed.

Authorities cited—Bell's Principles, 1533; Tunning Haggard Eccles. Rep. 53; *Wemyss*, 4 Macph. 660; *A. v. B.* 15 D. 976; *Duncan v. Maitland*, March 9, 1809, F. C.

At advising—

LORD JUSTICE-CLERK—I am clear the authorities quoted as to acquiescence do not apply here, where the party was living in Australia and prosecuting his occupation. The plea of *mora* can only apply since the date of the husband's return, and this action was raised almost immediately. I am clear for adhering.

LORDS COWAN and BENHOLME concurred.

LORD NEAVES—I agree. I think that delay in the sense in which Bell uses it in the passage quoted from his Principles, must be such delay as to infer acquiescence: mere delay will not infer it.

Counsel for Pursuer—Scott. Agent—A. K. Morison, S.S.C.

Counsel for Defender—Rhind and Mair. Agents—Menzies & Cameron, S.S.C.

Tuesday, January 14.

FIRST DIVISION.

[Sheriff-court of Lanarkshire.

SINGER MANUFACTURING COMPANY v.
KIMBALL & MORTON.

Interdict—Trade Mark—Name of Maker used as Name of Machine.

Interdict at the instance of the Singer Manufacturing Company, who for a long time had used the name "Singer" to designate and identify these sewing machines manufactured by them, granted against another sewing machine company, who had sold and offered for sale machines made by themselves under the name of "Singers," "Singer Machines," and "Singer Sewing Machines."

Where articles manufactured by a particular company have become known in commerce under the name of that company, that name is in reality a trade mark, and no one who manufactures such articles has right to sell them under that name.

This was a petition for interdict, presented in the Sheriff-court of Lanarkshire by the Singer Manufacturing Company and others against Kimball & Morton, sewing machine makers in Glasgow. The following is the petition for interdict:—

"That the said Singer Company have carried on business as sewing machine makers for many years, at least since the year 1863, and have sold their machines as Singer Sewing Machines, and the said machines are universally and exclusively known in the market as Singer Sewing Machines, and under that name are extensively sold and of great repute.

"That the respondents have recently commenced to manufacture and sell, and are advertising and

offering for sale, machines not manufactured by the said Singer Manufacturing Company, as 'Singers,' 'Singer Machines,' or 'Singer Sewing Machines,' with the object and effect of leading, and inducing the public to believe that the said machines are manufactured by the said company, all to the loss, injury, and damage of the petitioners.

"May it therefore please your Lordship to grant interdict against the respondents Kimball & Morton selling, offering, or exposing or advertising for sale, the said sewing machines not manufactured by the Singer Manufacturing Company, as Singers, Singer Machines, or Singer Sewing Machines, or by any other name similar or only colourably different from the name of the petitioners' machines; and to find the respondents liable in expenses of process, and decern for the same; and further, and pending any discussion or proceedings to follow hereon, to grant interdict in the terms above craved *ad interim*; or to do otherwise in the premises as to your Lordships shall seem fit."

In defence, Kimball & Morton pleaded (1) want of title; and (2) that the statements in the petition were irrelevant, and not sufficiently specific to warrant the conclusions or prayer of the petition. On the merits, the defenders stated in defence—"That, for twenty years or thereby, prior to this date, various parties in Great Britain and elsewhere had manufactured and sold sewing machines on various principles, and among others on what was known or described as the 'Singer principle,' and for that or its application no patent existed applicable to Great Britain. That for four or thereby years the defenders had done so in Glasgow and Dundee. That they never advertised or represented their machines as the pursuers' machines, or as made or sold by the pursuers. That the only advertisement which the defenders recollect of issuing was one of which a copy appeared in the *Dundee Advertiser* of 22d April 1870, a copy of which paper was produced; but many people advertised machines made by the defenders, and sold to these people by the defenders, in various ways. With these advertisers or their proceedings the defenders had nothing to do. They had no control over them, and these advertisers were not agents or representatives of or for the defenders. The defenders did not pay these parties salaries or commissions or outlays. The pursuers used a trade mark, but the defenders never did, and never used the pursuers' trade mark, or any colourable representation thereof. On all the machines made by the defenders their name appeared."

The Sheriff-Substitute repelled the first preliminary plea; reserved the second; and before answer allowed both parties a proof. This proof was accordingly led, and the result will sufficiently appear from the findings of the Sheriff's and the opinions of the Judges.

Upon the proof the Sheriff-Substitute pronounced the following interlocutor:—

"*Glasgow, 20th February 1872.*—Having heard parties, repels the plea as to the relevancy; finds that this action is raised by the Singer Manufacturing Company of New York against Kimball & Morton, sewing machine makers in Glasgow, and that the pursuers conclude, upon the statement of facts hereinafter referred to, to have the defenders restrained by interdict from offering, exposing, or

advertising for sale sewing machines not manufactured by the Singer Manufacturing Company as Singer Machines, or by any other name or colourable imitation thereof; finds, in fact, first, that the pursuers' statement is this, that they, for at least since the year 1863, have made and sold the machines exclusively known in the market as Singer Sewing Machines, and that under that name they were extensively sold; second, that the respondents have recently commenced to manufacture and sell machines to which they attach the name Singer, with the purpose, or at least with the effect, of inducing the public to believe that these machines are of the pursuers' make; finds that the defence is to some extent contradictory, but that it amounts in substance to this, first, that the pursuers have no title to the exclusive right of the word 'Singer;' and second, that if they have, the defenders have not interfered with any such right; finds in law that, on the facts proved and to be referred to in the subsequent Note, the petitioners have an exclusive right to the name Singer in connection with sewing machines; finds that, in the pleadings and in the proof, and also with reference to the arguments in debate, the defenders, while in form denying their use of the word Singer in connection with their machines, justify such use, and that the issue truly before the Court is whether the defenders are so entitled to use the pursuers' name; therefore interdicts, prohibits, and discharges the defenders from offering, or exposing, or advertising for sale any sewing machine as Singers, Singers Machine, or Singers Sewing Machine, or by any other similar name, or any colourably different name from the name of the petitioners' machines; finds the defenders liable in expenses, of which allows an account to be given in, and remits the same, when lodged, to the Auditor of Court to tax and report."

The defender appealed to the Sheriff, who pronounced this interlocutor:—

"*Glasgow, 4th June 1872.*—Having heard counsel for both parties on the defenders' appeal, and made avizandum with the proof, productions, and whole process, finds that the question at issue substantially is, whether the pursuers are entitled to be protected in the exclusive use of the word 'Singer' as a trade mark, designating a particular description of sewing machine made and sold by them, or whether the defenders, being admittedly entitled to make and sell sewing machines of the same description as the 'Singer,' are at liberty to offer such machines to the public as 'Singer' sewing machine, manufactured by the defenders themselves; finds that the individual pursuer Isaac Mement Singer, who is a partner of the pursuers' company, seems to have been the inventor about twenty years ago of the machine called the 'Singer,' and to have sent it into the market from the first as the 'Singer'; finds that the pursuers, the Singer Manufacturing Company of New York, have been in existence since 1863, and no other makers of sewing machines gave out to the public that they made 'Singer' sewing machines till the defenders did so in March 1870, soon after which the present action of interdict was raised against them; finds that the machine sold by the pursuers as the 'Singer' was never patented either in this country or America, but certain principles or processes which were applied in the construction of the machine were patented in America, and these patents have all expired; finds that the pursuers' 'Singer'

machine has not been always the same in construction, but has been improved from time to time, and has obtained such reputation that they now dispose of about 180,000 annually; finds that the defenders, prior to March 1870, introduced a sewing machine of similar construction to the 'Singer,' which they sold as the 'Lion,' but finding that it did not succeed under that name, they then announced that they made and sold the 'Singer'; finds that it is in evidence that various parties believed that no 'Singer' machine was made except by the pursuers, and that when they bought a 'Singer,' they took it for granted that it was the pursuers' manufacture, understanding, in the words of one of the witnesses, that 'the name "Singer" was used to signify the manufacturer and not the machine;' finds that there is no averment in the record that the pursuers had made any unfair or fraudulent representation regarding the sewing machines sold by them calculated to mislead the public, and so to bar the pursuers' title to complain of any infringement of their right; but finds that, even if the objection were open, which at the debate before the Sheriff it was contended to be, there is no evidence of any such unfair dealing by the pursuers; finds, in point of law, that the name of the manufacturer of a particular article, if the name be *ab initio* attached to the article with the view of distinguishing it from all others, and if for a succession of years it be sold exclusively by the manufacturer, or parties in his right, under that name, may become property as a trade mark, and though third parties may be entitled to manufacture and sell the same article, they are not entitled to do so under the said name, seeing that they may thereby mislead the public, and this is *a fortiori* the case when the person using the name of the original manufacturer is himself of a different name; finds that in the whole circumstances of the present case the pursuers have such property in the name 'Singer,' and are entitled to the interdict craved; therefore, and under reference to the annexed Note, dismisses the appeal, and adheres to the interlocutor appealed against, with this addition, that the preliminary plea formerly reserved as running into the merits, and which by implication has been repelled by the Sheriff-Substitute, is hereby expressly repelled; and decerns."

The defender appealed to the Court of Session.

For him the following authorities were cited—*Ford*, 8 L. R. Chancery Appeals, 611; *Sykes v. Sykes*, 3 Bar. and Cress. 541; *Wheeler & Wilson*, 39 L. J. (Chancery) 36.

For the pursuers was cited—*Iddlestone v. Iddlestone*, 1 Jones and Smith, 185

At advising—

LORD PRESIDENT—The application for interdict in the Sheriff-court here, presented by the Singer Manufacturing Company of New York, was based upon two averments in point of fact. The first was that that company since the year 1863 have sold their machines as Singer Sewing Machines, and the said machines are universally and exclusively known in the market as Singer Sewing Machines, and under that name are extensively sold and of great repute. The second averment is that the respondents Messrs Kimball & Morton have recently commenced to manufacture and sell, and are advertising and offering for sale, machines not manufactured by the Singer Manufacturing Company as "Singers," "Singer Machines," or "Singer

Sewing Machines," with the object and effect of leading and inducing the public to believe that the said machines are manufactured by the said company. Now, if these averments are well founded in point of fact, I do not entertain any doubt at all that the petitioners are entitled to the remedy they seek. The term "Singer," like any other word in the English language, may in a particular trade have a certain definite meaning attached to it, in such a way that it becomes in a certain sense the property of a particular individual or company in that trade, or, in other words, becomes the trade mark of that individual or company; and if the evidence of that appropriation of the name to designate the manufacture of a particular manufacturer is clearly made out, it is just as good a trade mark, and one as exclusively and effectually appropriated by him, as if it were a trade mark not consisting of a word at all, but of some particular device in drawing. We had not very long ago in this Court a case which illustrated very well the general rule as applicable to trade marks—the case of *Dixon v. Jackson*, in which Mr Dixon of Govan, or rather his trustees, complained that whereas a certain quality of their iron was always marked "Govan" with a star, another trader had recently marked his iron with the name of the place where it was manufactured and a star added, and they complained of his use of the star as an innovation of their trade mark. That case did not come to ultimate judgment, but it was very seriously considered upon the question of interim interdict, and in that case, the Court granted an interim interdict, upon the ground that there was a *prima facie* case of innovation of a trade mark, leaving it to be established upon the passing of the note that the star had been so appropriated by Mr Dixon of Govan as to exclusively represent his peculiar make of iron as distinct in the trade mark from any other. But whether it be a star or any other device, or a name, as in the present case, the result is the same. If it be exclusively appropriated for a series of years, and has obtained a certain exclusive meaning in the trade, signifying the goods as the production of a particular manufacturer, then it is his property as a trade mark, and no one else is entitled to use it. Now, it appears to me that for a series of years, and certainly I think back to the year 1863, as averred in the petition, everybody in the trade has understood that a Singer Machine or a Singer Sewing Machine is a machine manufactured by the Singer Manufacturing Company. It has hardly been denied that for that period the fact has been so. But then reference is made to an earlier period in the history of this word, as showing that the meaning thus acquired by the word Singer arose from false representations made by Mr Singer, and afterwards by the Singer Manufacturing Company, or some other company that preceded them, as to the right of Mr Singer as having a patent or patents which enabled him for a time at least exclusively to manufacture what was called the Singer Machine. Now, no doubt at one time Mr Isaac Singer, who appears to be sole partner of this company, so far back as 1852 was under the impression that he had made an original invention, and he expected to obtain a patent for it, but in that he was disappointed. It turned out that the straight needle with vertical action, which he conceived to be a novelty invented by himself, had been anticipated in other sewing machines,

and the consequence was that he did not obtain a patent for that. It appears, however, that he went on to manufacture the article which he thought originally was an invention of his own, and that in the course of that manufacture he had effected various improvements on it, for some of the details of which he did succeed in obtaining patents. But I am not prepared to say that there is any evidence in this case to show that either Mr Singer or any person associated with him in business committed any fraud in the way of holding out to the public that they held patents which they did not hold. I don't think there is sufficient evidence of that, or that the use of the word Singer, as applicable to machines made by him and his company, was caused by their false representations of patent rights belonging to him. On the contrary, it rather appears to me that the use of the name grew up and matured just in consequence of Mr Singer and those connected with him in business having constantly gone on making this kind of machine, which he thought originally was a novelty, and improving in every kind of way that occurred to them in the progress of their business. It was in that way, I apprehend, that the name "Singer" came to have what is now its established meaning, and I cannot say that there is anything in the history of the appropriation of the name to prevent the Singer Manufacturing Company now from asserting right to it as their trade mark. It is said, no doubt, on the part of the defender, that to interdict him and all other manufacturers of sewing machines from the use of this name involves a great hardship, because they cannot otherwise describe what they are entitled to make in their business, viz., machines upon the Singer principle. Now, that statement at first sight is plausible, but it seems to me to rest upon a fallacy. It assumes that there is what is called a Singer principle—that is to say, that there are some peculiarities in the machines made by the Singer Manufacturing Company that are not to be found in any other machines, or some combination of these peculiarities that is not to be found in other machines, and it would be very desirable to ascertain precisely what that is before disposing of the argument founded upon these assumptions. But I confess I have looked in vain in the proof for anything like a definite or intelligible explanation of what is meant by the Singer principle. Indeed, every fresh witness seems to give a different account, and at last it all winds upon this, I think, that one of the defenders' witnesses, a Mr Thoms, says when he is asked what is the Singer principle—"A machine made on the Singer principle is one made in imitation of the pursuers"; so that the only principle involved in the making of the Singer machines by persons other than the pursuers is, that they simply imitate as far as they can the machines made by the pursuers. Now, this is plainly no principle at all in the only sense in which the statement can be available to the defenders. If the pursuers' machines are called the Singer's Machines, and if they imitate both the thing and the name, then they are doing the very thing complained of, and the very thing the pursuers are entitled to complain of. But the supposed hardship in not being allowed to use the name of "Singer," because no other word, or at least no other short form of expression, will sufficiently convey the idea that they make and sell machines upon this principle, is not very credible,

when one comes to look at the fact that for a long series of years prior to 1870 nobody felt such inconvenience from the want of the use of the name "Singer" as to try to make use of it. It was left entirely to the use of the pursuers. Other people were making sewing-machines of all kinds, and, I have no doubt, were making sewing-machines like the Singer, or as like them as any machines could be made, but nobody called them Singers, because it was just as easy to describe the machines in some other way. Nay, the defenders themselves, during the first three years that they carried on business after they left the pursuers' employment, never used this name of Singer, and yet they were manufacturing and offering to sell every kind of sewing-machines, and were unquestionably manufacturing machines very like the Singers at all events, if they were not identical with those that were at the same time being manufactured by the pursuers; so that down to 1870 nobody, not even the defenders themselves, experienced any evil from not using the word "Singer" as descriptive of one portion of their manufacture? This is so very clear in point of fact that it is quite needless to refer to the evidence further than to say that the defender Mr Morton himself confesses very candidly that prior to 1870 nobody in United Kingdom used the name of Singer except the pursuers' company. It appears to me, therefore, that the first averment upon which the petition for interdict is founded is quite satisfactorily established. But, then, the pursuers have also averred—and it is quite necessary for their case that they should do so—that the defenders have sold or offered for sale machines not manufactured by the pursuers, but called "Singers," or "Singer Machines," or "Singer Sewing Machines," with the object and effect of passing them off as the manufacture of the pursuers, or of misleading the public who deal with them into the belief that they were manufactured by the Singer Company. Now, this part of the case requires serious attention, and if we were in an action of damages here for the purpose of recovering loss suffered by the pursuers in their trade through the use of their trade mark by the defenders, it might have been necessary to require a different kind of evidence from that which is before us, but in an application for interdict, it is not only not necessary to prove any pecuniary damage, but it is not necessary to prove that any injury has been actually inflicted. A threat of injury is a sufficient ground for an application for interdict, and, in like manner, a reasonable apprehension of injury from the proceedings of the parties complained against is also in many instances a very good ground for such an application. Now, how does the matter stand here? There can be no doubt that Messrs Kimball & Morton are very desirous, as they call it, to break down the American monopoly enjoyed by the pursuers, and to make and sell Singer machines, the name being a great favourite with the public. They want to make and sell Singer machines, because the name is a very taking one, and because the name "Singer" carries off machines, and produces a greater sale than any other name going; and, accordingly, while they do not in direct terms profess that they are selling machines made by the pursuers, they do say they are selling Singer machines. No doubt they also state that they are making them—that is quite true—but if they did not state that, and did not prove that they could make them and make them well, of course they

would not succeed in extending their business. Their great object is to be known in this trade as people who make as well as sell Singer machines; and if they did not succeed in that they would not succeed in their object. But the question comes to be, whether they are entitled to use this word "Singer" merely because they say that they are themselves the makers of the machines which they have so christened. Now, in one point of view that is certainly not representing to the public that the machines which they sell are made by the pursuers. It is not so direct a misrepresentation as that, but that is just the thing that is complained of in this action, namely, the use of the term "Singer," which with the public carries a certain guarantee of excellence in the machine that is sold, and the appropriation of which, therefore, by the defenders, is an invasion of the pursuers' trade mark. We have not any very direct evidence before us of persons who have been actually deceived or misled by what is done. There was one example referred to in a person of the name of Cole, but the pursuers have not taken much trouble to lead evidence of that kind, and I think they were justified in refraining from doing so. It is difficult evidence to procure, and would unquestionably have extended the bulk of this proof, bulky enough as it is, to a much greater extent; but they rest upon this, that what these defenders are doing in christening the machines of their own manufacture with the name of "Singer" is calculated to injure the business of the pursuers by the use of the trade mark which is exclusively appropriated to them, and that, I confess, to my mind is quite sufficient. I don't think it is necessary that they should go the full length of their averment when they say that this has been done with the object and effect of leading and inducing the public to believe that the machines are manufactured by the said company. It is sufficient to my mind if it is calculated to have that effect; and that it is calculated to have that effect is certainly a most reasonable conclusion from the evidence that is before us. Upon the whole matter, then, I am of opinion that the interlocutors of the Sheriff and Sheriff-Substitute are well founded, and ought to be adhered to.

LORD DEAS—It is not disputed by the defenders that since 1863 the pursuers have been and still are selling sewing machines under the name of Singer Machines or Singer Sewing Machines. The only defence that is pleaded is that the name "Singer," or "Singer Machines," or "Singer Sewing Machines," does not mean and is not understood or intended to mean, machines made by Singer & Co., but that it is used to designate and is understood to mean machines made by Singer & Co. of a particular construction; and the main question upon the proof, and the main thing properly dwelt upon both by Mr Macdonald and the Lord Advocate, was to maintain that the import of the proof, taken in connection with the statements and representations of the pursuers, is that the name "Singer" designates not the maker but the construction. Now, even although it was held to be established that there is a peculiarity or some peculiarities in the construction of these machines made by the Singer Company, I do not think that that would be conclusive against the pursuers. There do seem to be peculiarities of construction. The pursuers have represented that, and represented it very strongly themselves; but supposing

there be peculiarities of construction, the question, I think, still remains—Is it these peculiarities of construction which the name of the "Singer" machine is used as descriptive of, or is it that the machines are made by the Singer Company? Now, that is a question upon the proof, and it appears to me that the burden of the proof is to instruct that although there are peculiarities, or are represented to be peculiarities, in the construction of these machines, the substantial thing which the name describes, and the weight that that name carries with it, does not lie in these peculiarities, but the fact which the name is understood to import, that these machines are made by the Singer Company. It is very difficult to suppose a case of this kind in which there may not be differences in the construction of the machine or article in dispute from others or against all others, and if some difference of that kind were enough to prevent the monopoly of the name, I think there could seldom or scarcely ever be a monopoly of a name at all. The question always is—Is that the substantial thing implied in the name? Is the making the thing that is understood by the public and by the purchasers to give the value to the thing that is intended to be covered by the names, and if that be so, as I think it is here, I do not think it would prevent the pursuers from getting their interdict, although it could be shown that there were differences in the construction of these machines from other machines, or even some peculiarities. If the law were held to be that that prevented the protection, in nineteen cases out of twenty there could not possibly be any protection at all. Then the next question is—Whether, in using that name the defenders have used it for the purpose of increasing their own sale and diminishing the sale of the pursuers, and to the probable loss and injury of the pursuers? It may not be necessary to prove that that was their object, if it be the effect of the thing; but it is scarcely conceivable that it cannot have been their object, because Mr Morton, the defender, says—"We thought we were entitled to use the word 'Singer,' as we followed the same principles, and we used it to increase our trade." And how could it increase their trade, except by representing that these machines had the qualities or the excellencies of the Singer machines? No doubt that might be in either of the two ways I have alluded to—either because the machines made by the defenders were of the same construction, or because they were made by the same makers. It might be in either way, but then if the result of the proof is, as I think it is, to show that thing which enabled the defenders to increase their trade by using the name was the belief in the public mind that these machines were made by the Singer Company, that fact is entirely conclusive upon that point. I don't think it is necessary in this case to go much into the question of whether a reasonable apprehension of injury will entitle a party to an interdict. There are many cases in which that is so very clear—cases of apprehension of personal safety or danger to life, or of immense and irreparable loss if a thing is allowed to go on—there are cases of that kind in which there can be no doubt that a reasonable apprehension is enough, and I don't say that in a case of this kind a reasonable apprehension that the pursuers might suffer great loss if what they complain of was allowed to go on might not be sufficient, but what I say is, that it is not necessary

to go upon that doctrine here, because I think the import of the proof beyond all question is to show that there is, and has been, loss and injury to the pursuers in their trade by this assumption of their trade mark or trade name. If we were in an action of damages, it might be necessary to have specific instances. It might have been necessary to have brought the parties who bought the machines to say that they were imposed upon; but that sort of particularity is not necessary in order to arrive at the result that, beyond all question, there was loss and injury occasioned here. We may not have the materials for ascertaining what it was, but I think we have here abundance of materials for being satisfied, taking the whole case together, that beyond all doubt the defenders did gain by using this name, and that the pursuers did lose in consequence of that. Therefore, whatever might have been said if that element had not been here, I don't think this case raises any nice question of that kind at all. Accordingly, I am entirely of opinion, with your Lordship and the Sheriffs in the Court below, that in this case it is proved that the name of Singer had been adopted and accepted in the trade, and understood for many years as the designation of a sewing machine made by the pursuers, and that consequently they are entitled to protection in the use of that name.

LORD ARDMILLAN—I am of opinion that this case is a very clear one. It is not a question of patent rights. The petitioners for interdict, who are the respondents in this appeal, have no title and claim no right to this machine; but they are the manufacturers of, and do manufacture and sell, and have for years manufactured and sold, a certain machine, confessedly an ingenious, efficient, practical, and popular machine, which has found great favour with the public, and it is in consequence of that favour with the public that the whole of these proceedings have arisen. I think it is well proved that the name of Singers Machine, or Singers Sewing Machine, does mean, and in the trade is well understood as meaning, a machine manufactured by Mr Singer or by the Singer Manufacturing Company. It is not proved that the name indicated any special peculiarity in principle or in construction. With the usual eagerness of competitors, and the usual complacency of manufacturers, it seems that the respondents Singer & Co. have at different times, and in language copious and complimentary, described their machine as marvellous in point of invention and matchless in point of construction; but, after all, one cannot decide this case upon the footing of their having exaggerated the praises of their machine. After reading all the proof carefully, I have formed a clear opinion that the name "Singer" has been applied to and recognised by the public and by the trade, not primarily and mainly as denoting any particular principle or peculiarity in construction in the machines, but as denoting the fact that they were made by Mr Singer or by Singer & Co. He gave his own name to the machine, as was natural, and as the manufacture was a great success, the public accepted the name, and the trade recognised it as a distinctive and well understood designation. To the public it was a designation; to the manufacturer it was a trade mark. [His Lordship went over at some length the evidence by which this point was instructed, and remarked]—I do not know any better illustration of this than

what I have formerly suggested in the case of guns. Where there is a new invention and a patent, as in the case of the Armstrong gun, for instance, the gun is called by that name, because it is the invention of the party and is known as his invention; but I suggested the name of Manton, who had no patent. Manton was just the cleverest gun-maker of his day, and no man ever could sell a gun as a Manton gun unless it was made by Manton. It is quite different when an invention is protected by a patent. When the patent has expired the protection is gone, but a maker's name cannot be assumed by another without deception or wrong; and here it is the name that has been assumed. In that state of the facts I have no difficulty in finding a sufficient foundation for adhering to the interlocutor of the Sheriff and the Sheriff-Substitute. If it be true, as I think it is, that the name of Singer, being that of the manufacturer, was known and understood in the trade as denoting a machine which he manufactured, then the use of that name by applying it to a competing and rival machine, not made by Singer, is in my opinion a usurpation and a wrong to Singer. Any one may make them—any one may sell them, but there must be no deception, no sailing under false colours, no unfair and delusive assumption of a trade mark or of a name appropriated and known as a trade mark; and that the name of Singer has, under the circumstances, and with reference to the usage and understanding instructed by the proof, been in my opinion so applied to and associated with the Machines manufactured by them as to be equivalent to a trade mark.

LORD JERVISWOODE—My opinion is entirely in accordance with that which has been delivered by your Lordships. It appears to me to be unquestionable that there are relevant grounds stated to support the original application to the Court; and I cannot doubt either that, looking to the evidence, these averments have been sufficiently proved, and that the remedy sought by the petitioners ought to be granted.

The Court pronounced the following interlocutor:—

"Find that for a period of at least seven years prior to the petition for interdict being presented in the Inferior Court, the name Singer has been in the sewing machine trade used and appropriated exclusively to designate and identify the sewing machines manufactured by the pursuer; find that the defenders have recently sold and offered for sale machines made by themselves under the name of 'Singers,' 'Singers Machines,' and 'Singers Sewing Machines': Therefore refuse the appeal, and adhere to the interlocutor."

Counsel for Pursuers—Horn, Watson, and Balfour. Agents—J. W. & J. Mackenzie, W.S.

Counsel for Defenders—The Lord Advocate, Solicitor-General, and Macdonald. Agents—D. Crawford & J. Y. Guthrie, S.S.C.