Court; and in that case—which was the case of a train overrunning a station, and a woman getting out of one of the carriages and being materially injured—the presiding Judge took the case from the jury, and held that there was no evidence of negligence to go to them. The whole question came up before the Court of Appeal, and was very fully argued, and the result was that they held that the case of *Bridges* v. *The N.-W. Railway Company*, in the House of Lords Reports last year, has settled that the question of sufficient precaution is entirely a question for the jury, and accordingly they upset the ruling of Justice Archibald in the case of *Robson*.

In regard to the question What are reasonable means of crossing? it is said that the Company are not bound to provide a bridge, and the case of *Stutley* is referred to as having settled that point. But it is manifest that that case was entirely different from the present one. We are dealing here with a station upon a line with a great deal of continuous traffic, and I must say I do not entirely sympathise with all the observations which were made by Baron Pollock in that case. My impression is that there is a very great obligation laid upon a Company where there is a line with a large through traffic, and many express trains not stopping at the station but going on; it is their duty to provide sufficient means of crossing; and it is no answer to say that that is encouraging individuals not to look out for their own safety, because a very large proportion of those who travel by passenger lines consist of aged and infirm persons, women, and children—persons of whom you would not expect that in the darkness of a winter evening they shall have all their presence of mind that a man in health and strength ought to have. You must provide for them, and accordingly the question for the jury was whether sufficient means of crossing had been provided? What "sufficient" means, I have been quite unable to ascertain from the evidence in this case. I find that when the unfortunate man arrived at the station there were at least two express trains from the west overdue. Whether he knew anything about them or not I do not know. But this I do know, that until the accident occurred there was never one moment in which he could have set his foot upon the permanent way with any assurance of safety. It is said he should have waited until his own train came up, and then crossed the line behind it. Now, I doubt greatly that that was incumbent upon him. The Company were bound to afford him means of crossing in safety at the time his train was due. But supposing he had done that, and his own train had come up and stopped there, and an express from the east (for we have no evidence how they stood) had come up at the rate of 50 miles an hour before he crossed—is that a safe mode to enable passengers to cross? The result is there was no mode of enabling him to cross in safety that night, because the trains were entirely out of order, and no one could calculate upon when they might come up.

It is said that notice was given—and that is a very important element—and if notice had been given this case would have been entirely different. One of the very worst features against the Company is that no notice whatever was given. The stationmaster says he was bound to give notice, and there was nothing easier than to have given that notice to the passengers assembled. But he did not open his mouth until the unfortunate man was in the very act of springing from the platform. Nothing can be more clear on the evidence than that; and therefore on the first of the questions I have referred to I have no doubt at all.

As regards the question of contributory negligence, I have only to say that with the traffic in such a condition as it was, and with such an utter want of disclosure to the passengers of that which should have been disclosed to them, the state of matters that evening was really a trap for contributory negligence; and that the jury have not found that this man was guilty of contributory negligence when he attempted to cross the line under the belief that the approaching train was the train by which he was to travel. I do not think he was, and the jury did not think he was.

I shall only say in conclusion that I agree with what your Lordships have remarked about the bridge. A bridge is a safe mode of crossing at such a station, and if the Company were wise they would adopt the precaution and take that mode, which is certainly a safe mode. That they are under a legal obligation to do so I am far from saying, but so long as they do not they will be exposed to actions of this kind. We discharge the rule.

The Court accordingly discharged the rule, and applied the verdict.

Counsel for Pursuer — Fraser — C. Smith. Agents—Boyd, Macdonald, & Lowson, S.S.C.

Counsel for Defenders — Balfour — Jameson. Agent—Adam Johnston, S.S.C.

Friday, November 17.

SECOND DIVISION.

[Sheriff of Banff.

CHARLESON *v.* CAMPBELL.

Interdict—Trade-Mark.

Circumstances in which *held* that the proprietor of a hotel called the "Station Hotel" was not entitled to interdict the proprietor of another hotel in the same town from changing its name from "Royal Hotel" to "Royal Station Hotel."

This was an appeal from a decision in the Sheriff Court of Elginshire in a petition presented by Hector Charleson, hotel-keeper, Station Hotel, Forres, against James Campbell, hotel-keeper, Royal Station Hotel there. The petition *inter alia* set forth—"That in an advertisement in Bradshaw's Time Tables and Murray's Time Tables, published for the months of June, July, and August, the respondent has wrongfully and illegally used and appropriated the name or title of the petitioner's hotel by inserting the word 'Station' between the words 'Royal' and 'Hotel,' and thus naming his hotel as the 'Royal Station Hotel.' That the respondent's servants, when soliciting customers on the arrival of the trains at the railway platform, wrongfully, fraudulently

and illegally call the said Royal Hotel the 'Station Hotel' and the 'Royal Station Hotel,' whereby parties intending to put up at the petitioner's hotel are misled. That the foresaid advertisement by the respondent, and misrepresentations by his servants, have injured the petitioner's business, and he has suffered and is still suffering loss thereby." The prayer was for interdict against Campbell's using the title of 'Station Hotel' or 'Royal Station Hotel.'

The Sheriff-Substitute (MACLEOD SMITH) dismissed the petition, and the facts of the case will be found in the following note to his interlocutor :—

"*Note.*—A hotel, situated about 360 yards from the Highland Railway Station at Forres, was opened in or about the year 1864. The first name given to it was the 'Union Hotel.' A year or two afterwards this name was discontinued, and it then got as its name, or as one of its names, the name of the 'Station Hotel.' It seems also to have been known at the same time as 'MacLennan's Railway Hotel,' MacLennan being the name of the tenant at that time. At Whitsunday 1875 the occupancy of this hotel was acquired by Mr Charleson, the present tenant. Mr Charleson continues the name of the 'Station Hotel' as the name or one of the names of the hotel, and as tenant he claims the exclusive right to the use of the name 'Station Hotel,' as designating the hotel so occupied by him.

"Charleson complains that Mr Campbell, the respondent, who is tenant of another hotel at Forres, has since the month of June last wrongfully appropriated the name of 'Station Hotel' to his own hotel, and that he has advertised and otherwise used that name to the advantage of his hotel and the prejudice of Charleson's hotel. He maintains that Campbell had no right to do this, and has presented the present petition to have him interdicted from continuing to do so.

It appears that Campbell's hotel is in the immediate vicinity of the station, being only about 100 yards distant from the door of the passenger office. Campbell maintains that his hotel being so much nearer to the station than that of the petitioner, the term 'Station Hotel' applies more truly to his house, and that the prior use of the same term in regard to another house at a considerably greater distance does not prevent his adopting it also.

"I think that the view contended for by the respondent must be sustained. In regard to fancy names, adopted merely for the sake of distinguishing one hotel from another, such as the Caledonian Hotel, the Black Bull Hotel, or the like, these names are held to belong to the first house that adopts them, and no other person in the same locality is allowed to appropriate them. The reasons are obvious. But the name 'Station Hotel,' which is here in dispute, is a descriptive name. It is generally understood to refer to the nearest railway station in the neighbourhood, and it is understood to hold out to the public, or to imply, directly or indirectly, a certain representation, in regard to the house for which it is assumed, as to its proximity and convenience, or as to its superior and distinctive proximity and convenience for persons frequenting such station. The name of 'Station Hotel,' when originally adopted for the house now occupied by the petitioner, was substantially correct in holding out this assertion to the public. It was then the nearest hotel to the railway station. But since the respondent's hotel was opened this is no longer correct in point of fact. What was formerly a true representation has now become a misrepresentation, and in so far as the name has any effect it is a misrepresentation opposed to the interest and convenience of the general community. The law cannot recognise any right of property in a misrepresentation having present and continuous misleading effects as regards the general public in a matter of daily application, and will not therefore protect or defend, by interdict or otherwise, any claim to such right.

"If the petitioner's hotel was practically beside the railway station, or in immediate proximity to it—and if situated in that position, it had the prior use of the name 'Station Hotel,'—he might or might not be entitled to prevent any new hotel or hotels, although perhaps a few feet or yards nearer to the station, from adopting the same name. The point is not certain, because it might be maintained that any number of such hotels might be sufficiently distinguished by being designated as A's Station Hotel, B's Station Hotel, and so on. But where, as in the present case, the respondent's hotel is practically at the station, and the petitioner's hotel is at a substantial and considerable distance from it, it seems to be clear that the petitioner can have no right to debar the respondent from the correct use of a descriptive name which is so much more applicable to the respondent's house than to his own.

"The case of *Wotherspoon* v. *Currie*, 1872, English and Irish Appeals, Law Reports, vol. 5, p. 508, referred to by the petitioner, does not affect these views. In that case the name at issue, which was originally the name of a place in itself of no importance, was held to have been taken out of its ordinary meaning and to have acquired a secondary signification created by the appellants in connection with their manufacture, and in that secondary signification they were held to have an exclusive right to it. There is nothing of that nature in the present case."

At advising—

LORD JUSTICE-CLERK—I am very far from laying it down that the proprietor of an hotel, whose house has been known to the public by a specific designation, may not have in that designation a right of property, just as a firm of manufacturers have rights of property in a trademark. In the present instance, however, the designation of the appellant's hotel is not a specific but a descriptive title. By that descriptive title, no doubt, the hotel has been known for a considerable time, but there is also no doubt that another hotel proprietor may erect a hotel to which the designation is equally applicable.

In order to make the appellant's application relevant it would at the very least be necessary to add an averment that the designation assumed by the respondent for his hotel was so assumed for the purpose of deceiving the public, and of drawing away the custom of the hotel already existing. Whether even that would be sufficient to make the complaint relevant I do not mean to decide, but at any rate it is essential

and is totally wanting. The case, however, fall under yet another principle, for we have not even an averment here that Mr Campbell has assumed for his hotel the descriptive name of the appellant's house without variation. It is not stated that he has called his hotel the "Station Hotel," but that he has called it the "Royal Station Hotel." Now, where one man gives his house a merely descriptive title, and another, to whose house the description equally well applies, assumes the same descriptive title with a distinguishing addition, the latter is within his rights, and the former is not entitled to complain. Now, I am of opinion that with regard to such a descriptive title as this, even the addition of the word "Royal" is sufficient, although I by no means would say that a descriptive title may not be acquired by an hotel which could not be assumed by another without a sufficient distinguishing mark; but here we have not, I think, a case of that kind.

The contention of the respondent that he has built his hotel nearer the railway station than the older one, and is therefore better entitled to call it the Station Hotel than even the appellant, does not move me. Provided the descriptive term was fairly applicable to the appellant's hotel, I do not think the respondent was entitled to appropriate it without variation, even though truly more applicable to his own than to the appellant's house.

In this case I am quite satisfied that we should dismiss the appeal upon two grounds—(1) because there is no sufficient allegation of the assumption of the name for the purpose of injuring the appellant; (2) because the respondent's proceedings are not shown to have been a piracy or purloining of the appellant's title, nor even a colourable imitation—but the mere adoption of title with a sufficient distinction.

The other Judges concurred.

The Court dismissed the appeal, and found the respondents entitled to expenses.

Counsel for Appellant — Fraser — Moncreiff. Agent—W. Officer, S.S.C.

Counsel for Respondent—Macdonald—Rhind. Agent—R. Menzies, S.S.C.

Friday, November 17.

FIRST DIVISION.

BISHOP BURNET'S TRUSTEES *v.* DRUMMOND AND BATHGATE AND OTHERS.

Charity—Bequest—Intention—Scheme for Regulation of Charity—Nobile officium.

In 1714 a fund was bequeathed to a parish for educational and other purposes. The trustees who administered it, finding that they could not carry out the whole purposes contemplated by the founder, proposed a new scheme embodying certain alterations in the regulation and distribution of the charity, and applied to the Court to sanction it.—*Held* that the application might be granted on the ground, *inter alia*, that there was no more expedient method of expending the fund according to the founder's views, and that it was not intended to benefit any object different from that directed by him.

Expenses.

In a petition for the approval of a scheme for the regulation of a charity, expenses were refused out of the fund to a party who had appeared in the process, the Court holding that he was sufficiently represented by another party, and that it was necessary to protect a fund of the kind from being diminished by such a claim.

This was a petition at the instance of Andrew Fletcher of Salton and Baron Sinclair of Herdmanston, the trustees under the late Bishop Burnet's Trust, parish of Salton, praying the Court "to make such rules, orders, provisions, and directions for the management, regulation, support, and continuance" of the charity as should be found "agreeable to the tenor and true meaning of the will, . . . and the pious and charitable intention of the donor."

The truster was the Right Rev. Dr Gilbert Burnet Lord Bishop of Salisbury, who died in 1714, leaving a will, dated Oct. 24, 1711, in which funds were bequeathed for the foundation of the charity in question. The funds amounted to 1000 merks yearly, to be bestowed as follows:—"Thirty children of the poorer sort shall be put to school to learn reading, writing, and casting accounts; to every one of these ten merks Scottish shall be given to cloath them in plain grey clothes, all of one sort—this is 300 merks; after they have been four years at school and are fit to be bound out to trades or to follow husbandry they shall receive forty merks a-piece—which is four hundred merks more; but this four hundred merks during these four years that they are at school shall be applied to the building a good school-house near the churchyard and for purchasing half an acre of ground for a garden and outlet to the school-house. I appoint one hundred merks a year of addition to the schoolmaster's allowance, and fifty merks a year to the increase of the library began for the minister's house and use, of which he shall every three year give an account to the Lairds of Salton and Hermistone, and to any two neighbouring ministers, which they shall be obliged to sign for his discharge, unless they can shew reason to the contrary. . . . The remaining one hundred and fifty merks to be distributed yearly to the poor of the parish by the minister, with the approbation of the Lairds of Salton and Hermeston, and such others as join with him in taking care of the poor of that parish. And this course I order to be continued for ever, as an expression of my kind gratitude to that parish." The endowment was managed by trustees appointed under a private Act of Parliament, 22 Geo. II. No. 62, in whose name the Act directed that the funds of the charity should be invested, subject to the control and direction of the Court of Session. In the words of the Act, the proceeds of the fund were to be "under and subject to such rules, orders, provisions, and directions for the management, regulation, support and continuance of the said several charities, as the said Lords of Session shall in that behalf from time to time order, direct, or appoint, and as they shall judge and determine to be agreeable to the tenor and true meaning of the said will and codicil, and the