

who should take their own measures to protect their interests. In this case the executrix is bound to produce, or account for the value of, the estate as at the death of her husband. It is said, without being disputed—and I see no reason to dispute it—that part of that estate consists of the goodwill of the deceased's business, and accordingly I think that the pursuer may well be entitled, in order to ascertain the value of the estate, to inquire how the goodwill has been disposed of, and that we should follow the Lord Ordinary in allowing the pursuer a proof with that object in view.

But I agree with his Lordship that the pursuer is not entitled to anything more. It has been argued that where an executor does not pay creditors in full and fails to account for particular assets, if such exist in *forma specifica*, the creditor is not bound to take the executor's account, but may follow up and vindicate them from him. I am not aware that the authorities go beyond this, but in any view it is not the case here. The claim made is not for the value of the goodwill as it existed at the death of the deceased, but for a very different thing, viz., for the value of the profits of the business which has been carried on by the executrix. I agree with your Lordship that the proof allowed by the Lord Ordinary is sufficient to enable the pursuer to get everything to which he is entitled.

LORD KINNEAR—I agree that there is no reason for interfering with the interlocutor of the Lord Ordinary.

He has done no more than repel the first and third pleas-in-law for the pursuer, and allow the parties, before answer as to the remaining pleas, a limited proof. The pleas, which have been repelled are intended to impose upon an executrix the equities and liabilities of a trustee, to make her responsible for the profits earned in a business which it is said she has carried on wrongfully, inasmuch as she has made use for that purpose of a part of the assets belonging to the deceased's estate.

The pleas are based upon two propositions—that the executrix, in breach of trust, is using the assets of the deceased in carrying on a precarious business, and that having so used them, she is bound, as a trustee in default, to account for the profits which she has made in that business. I agree that the propositions are untenable, unless we disregard the judgments of the House of Lords in the case of *The Globe Insurance Company*.

But having repelled these pleas, the Lord Ordinary has not gone on to dispose of the conclusions of the summons, even of those which Mr Campbell admits he would not now maintain, nor has he assolvied the defender, nor dismissed the action. He has allowed the parties "a proof of their respective averments as to the value and disposal of the deceased John Stewart's estate," and I agree that a proof in accordance with these terms will enable the pursuer to establish all the facts averred by him relating to the claims in his conclusions. The Lord Ordinary has allowed his second and

fourth pleas, which are sufficient to allow the pursuer to maintain any views which Mr Campbell indicated his intention of maintaining, except those touching the two pleas repelled.

The LORD PRESIDENT concurred.

The Court adhered.

Counsel for Pursuer and Reclaimer—W. Campbell—M'Lennan. Agents—Miller & Murray, S.S.C.

Counsel for Defender and Respondent—Guy. Agent—A. C. D. Vert, S.S.C.

Friday, May 22.

## SECOND DIVISION.

[Sheriff Substitute of  
Stirling, &c.

CRAWFORD'S TRUSTEES *v.* LENNOX.

*Trade Sign—Hotel—Exclusive Right to Sign—"Golden Lion"—Interdict—Relevancy—Averments Necessary in Action to Interdict Use of Sign.*

The figure of a golden lion had for about 30 years stood over the porch of a hotel called the "Golden Lion Hotel." The figure belonged to the tenant of that hotel. Towards the close of his lease, having become proprietor of another hotel in the same town, he removed the figure to his new hotel and erected it upon the roof. He also used the figure of a lion on his bills of charges and advertising cards. The latter hotel bore in large and conspicuous letters on its front and side the words "Lennox's Station Hotel," and on the bills and cards these words were also conspicuously printed. In an action of interdict, removing, and declarator by the proprietors of the Golden Lion Hotel against the tenant, the pursuers averred that, in pursuance of a scheme for ruining the business of the Golden Lion Hotel, the defender had removed the figure of the lion to the Station Hotel with the purpose of misleading the public into the belief that they were going to the "Golden Lion." Held that interdict must be refused, and the action dismissed upon the ground (1) that the facts above stated being sufficiently established by admission, and by the documents and the photographs of the Station Hotel produced, there was nothing in the tenant's use of the figure of a lion or of the figure and sign of the golden lion which involved misrepresentation and consequent misleading of the public to the injury of the pursuers; and (2) that the averment above quoted was irrelevant, and could not be admitted to probation, there being no allegation that anyone had in fact been misled by what the defender had done.

*Great North of Scotland Railway*

*Company v. Mann*, July 15, 1892, 19 R. 1035, distinguished.

*Observations per the Lord Justice-Clerk* as to the averments necessary to support such an action.

This was an action at the instance of the testamentary trustees of the late William Crawford, china merchant, Stirling, heritable proprietors of the Golden Lion Hotel, King Street there, against James Lennox, hotel-keeper, the tenant of that hotel, brought in the Sheriff Court at Stirling.

The pursuers prayed the Court "to interdict the defender from using in any way upon or in connection with the Station Hotel, Stirling, a gilt figure or trade sign of a lion, or any painted or printed copy or facsimile thereof which has been used in connection with and recognised as the trade sign of the Golden Lion Hotel, Stirling; to ordain the defender to remove the said figure of a lion placed by him upon the said Station Hotel; to declare that the defender has no right to use the said figure or trade sign of a lion, or any painted or printed copy or facsimile thereof, as a trade sign elsewhere than in connection with the said Golden Lion Hotel."

The pursuers averred—"(Cond. 2) By lease dated the 10th and 11th days of November 1885 the said William Crawford let to the defender, for the period of ten years from and after the term of Whitsunday 1886, the said hotel, with stables, coachhouses, and other offices attached, which hotel was then only known as 'The Golden Lion Hotel.' The said lease therefore expires at Whitsunday 1896. (Cond. 3) The said licensed premises have from time immemorial been known and occupied as the Golden Lion Hotel, and further back than the memory of anyone there has always been a figure of a lion emblazoned as a sign on the front wall at the entrance to said hotel, and the hotel and the lion have always been associated together. (Cond. 4.) For about thirty years a gilt figure of a lion of about life size has been placed and exhibited over the front door of the said premises, which figure was fixed and attached to the building of the hotel by an iron bar and some kind of cement. (Cond. 5.) About four years ago the defender purchased another hotel in Stirling situated in Murray Place, and known as the Station Hotel, and since Whitsunday 1892 he has carried on business there as well as at the Golden Lion Hotel. (Cond. 6.) Since entering into occupation of the Station Hotel, the defender has endeavoured in various ways to divert the business which he previously carried on at, and which legitimately belonged to, the Golden Lion Hotel to the Station Hotel. He has ceased to give frequenters of the Golden Lion Hotel the comfort and attention which they were accustomed to and entitled to expect in a first-class hotel like the Golden Lion Hotel. He has also removed from the Golden Lion Hotel to the Station Hotel almost every good article of furniture which he had in the Golden Lion Hotel, including the billiard table, all with the view of injuring the Golden Lion Hotel. (Cond. 7.) About the month of July

1895 the defender, with the view of further injuring the Golden Lion Hotel, and transferring its business to the Station Hotel, removed, without warning to the pursuers, the said gilt figure of a lion from its position above the door of the Golden Lion Hotel, and placed it upon the Station Hotel. (Cond. 8) It is believed and averred that the defender has formed a scheme for ruining the business of the Golden Lion Hotel. The removal of the gilt figure of the lion from the Golden Lion Hotel, with which it was used as a trade sign and has been associated for so many years, and the placing of it over the Station Hotel, was done solely for the purpose, amongst others, of misleading the public into believing that they were going to the Golden Lion Hotel; that the Golden Lion Hotel had ceased to exist; and that the proprietor of the Station Hotel had acquired the right to use the golden lion, and so the right of the proprietors of the Golden Lion Hotel. There is only one bus used for conveying travellers from the railway station to both hotels, and after leaving the station the bus is drawn up at the door of the Station Hotel, where the gilt figure of the lion may be seen, and travellers going to the Golden Lion Hotel but who may be unacquainted with the outside appearance of the latter alight under the impression that it is the Golden Lion Hotel, this being heightened by the figure of the lion over the Station Hotel. (Cond. 9) With the view of leading the public to believe that the Station Hotel has right to the business and trade sign of the Golden Lion Hotel, the defender has placed in all the rooms of the latter a ticket similar to the one produced herewith, and has circulated in Stirling and neighbourhood a list of charges for carriages from the Station Hotel, which list bears on one corner an impression of a lion. Further, the defender in making up his bills for charges to frequenters of the Golden Lion Hotel and the Station Hotel, does so on forms with the name of the Station Hotel, and which forms have also an impression of a lion. (Cond. 11) The defender has been requested to remove the said figure of a lion from its position over the Station Hotel and to return it to its place on the Golden Lion Hotel, but he refuses or delays to do so, and the present action has thus been rendered necessary." They also averred (Cond. 10) that they had sustained and would still further sustain loss and damage through the actings of the defender, for which loss and damage they reserved their right of action.

They pleaded—"(1) The said gilt figure of a lion having been recognised as the trade sign of the Golden Lion Hotel, Stirling, the defender is not entitled to use it in connection with the Station Hotel or elsewhere than in connection with the Golden Lion Hotel, and interdict and declarator to that effect ought to be granted as craved. (2) The defender having improperly and without authority placed the said gilt figure of a lion over the Station Hotel, ought to be ordained to remove same as craved. (3)

The defender having stated no relevant defence, the pursuers are entitled to decree as craved."

The defender pleaded—“(2) The pursuers' averments are irrelevant and insufficient in law to support the prayer of the petition. (3) The figure of the lion in question being the property of the defender, and the pursuers never having had any right or property therein, or to the figure or sign of a lion in connection with their premises, the defender should be absolved from the petitory conclusions of the prayer. (4) The pursuers never having had any property or right in the trade sign of a lion in connection with their premises, interdict should be refused. (6) In any event, the pursuers not having any property in or exclusive right to the use of a figure of a lion in connection with their premises, the defender is entitled to absolvitor from the declaratory conclusion of the prayer of the petition. (7) The defender being entitled to place the figure of a lion on his Station Hotel, and to apply it on tickets, lists, bill-forms, and other documents in connection therewith, should be absolved, with expenses.”

It was also averred by the defender, and ultimately conceded by the pursuers, that the figure of the golden lion had been made about thirty years ago for a former tenant and paid for by him, and that it had been purchased by the defender from his predecessor, and was now his property.

Forms of bills of charges used by the defender at the Golden Lion Hotel and at the Station Hotel respectively were produced. On both there appeared an identical figure of a lion couchant. On the former the heading was “Golden Lion Hotel, King Street, Stirling, James Lennox, lessee,” and on the latter “Station Hotel (late Hendry's), Stirling, James Lennox, proprietor (late of Golden Lion Hotel).”

A card was produced containing “List of charges for carriages from the Station Hotel,” the title-page of which bore a lion identical with those already referred to, and “Station Hotel, Stirling, James Lennox, Proprietor.”

Cards advertising the two hotels were also produced. Both of these displayed a figure of a lion, but the figures were not the same.

A photograph was also produced, from which it appeared that the defender had placed the “Golden Lion” on the top of the Station Hotel and not over the porch, where it had stood at the Golden Lion Hotel, and that both on the front of the house and on the side towards the station there appeared in large and conspicuous letters the words “Lennox's Station Hotel.”

On 7th March 1896 the Sheriff-Substitute (BUNTINE) issued the following interlocutor:—“Repels all the pleas stated for the defender, and interdicts, ordains, and declares all in terms of the conclusions of the petition.”

Note.—“The following facts are admitted on record:—The premises now known in Stirling as the Golden Lion Hotel have been used as an hotel with a licence for

nearly one hundred years. For more than thirty years this hotel has gone by the name of the Golden Lion Hotel, and for the same period the gilded figure of a lion couchant, which has been recently removed by the defender, has been fixed over the front door.

“There can be little doubt that this long usage of name and trade sign created a property in the person of the owners of the hotel in both the name and trade sign, and that they have a right to interdict against any other person calling an hotel in Stirling by the same name, or placing over it the same trade sign—*Great North of Scotland Railway Company v. Mann*, 19 R. 1035.

“The pursuers are the owners of the hotel, while the defender has a ten years' lease which expires at Whitsunday next.

“He some four years ago became proprietor of another licensed house in Stirling, called the Station Hotel, which he carried on in connection with the Golden Lion, and which he proposes to carry on when his lease expires at Whitsunday next.

“For some reason, which he does not explain, in the month of July last the defender removed the gilded figure of the lion from its place over the door of the Golden Lion Hotel, and set it up above the door of his new hotel, the Station Hotel.

“It is not material to the present case whether the defender is the owner of this gilded image or not. The Sheriff-Substitute has come to the opinion that even if he was owner of it, and so entitled to remove it from its old place over the door where it had stood for so many years, he is not entitled to place it, or any figure resembling it, over the door of any hotel in Stirling. It is certain that a large sign such as this would mislead the public, and this is made doubly certain when the actual image is itself appropriated, and that by the man who had formerly a right to use it as an hotel sign.

“The question in all such cases as the present depends upon whether or not the use complained of involves misrepresentation and consequent misleading of the public, and injury to the owner's interest.—See Lord Kyllachy's opinion in *Cowan v. Miller*, June 28, 1895, 22 R. 833.

“The Sheriff-Substitute is of opinion that the use of this trade sign over the door of the Station Hotel is of necessity misleading, and thus injurious, or is likely to injure the pursuers by robbing them of custom which had been earned by the reputation of the house over which the sign had been placed in the past.

“Accordingly he is satisfied that the pursuers are entitled to the remedy they seek without any proof.”

The defender appealed to the Second Division of the Court of Session, and argued—The pursuers' averments were irrelevant. It was not averred that the public had been misled by what the defender had done. In *Great North of Scotland Railway Company v. Mann*, July 15, 1892, 19 R. 1035, it was proved that individuals had been misled, and that letters and parcels had gone astray. There was nothing like

that alleged here. It was impossible to suppose that any sensible person could be misled by anything the defender had done. An hotel conspicuously designed as "Lennox's Station Hotel" could not be mistaken for The Golden Lion Hotel merely because there was a golden lion on the roof. This case was a *fortiori* of *Charleson v. Campbell*, November 17, 1876, 4 R. 149; and *Mason v. Queen*, April 8, 1886, 23 S.L.R. 641. In *Cowan v. Millar*, June 28, 1895, 22 R. 833, there was a clear attempt to deceive former customers into the belief that the defender was carrying on business in the old premises. There was no case of this kind in which interdict had been granted without a proof, and at least the Sheriff-Substitute's interlocutor must be recalled and a proof allowed.

Argued for the pursuers and respondents—The public might as easily be deceived by the use of a device as by the use of a name. The use made of the figure of the golden lion here was calculated to mislead the public—*Great North of Scotland Railway Company v. Mann* was therefore an authority in pursuers' favour. The name "Station Hotel" was not sufficiently distinctive to prevent mistake—see *Charleson v. Campbell, cit.* There was no conceivable object which the defender could have in view except to mislead people who wished to go to the Golden Lion, into coming to his new hotel instead. It was not necessary, however, to aver and prove fraudulent motives if the natural result of defender's actings was to mislead the public, which was the case here. At least the pursuers were entitled to a proof of the averments in art. 8 of their condescendence. There was no case in which a proof of such averments had been refused.

At advising—

LORD JUSTICE-CLERK—The facts of this case as practically agreed upon are these:—Mr Lennox, the respondent, who was for some time tenant of the Golden Lion Hotel in Stirling, became proprietor of the Station Hotel. When he entered the Golden Lion Hotel he bought the moveable articles or furniture, and he bought also the figure of the lion which stood on the top of the porch of the hotel. It appears that about 30 years ago that lion was placed over the door of the hotel by a former tenant, and shortly afterwards the house came to be known as the Golden Lion Hotel. As the end of his lease of the Golden Lion Hotel was approaching, the respondent began to remove his own possessions which he had purchased, including the lion, which he placed on the top of the Station Hotel in the position in which we see it in the photograph produced. It was not placed on the porch as it had been at the Golden Lion Hotel, but on the top of the building. It was also stated, and not denied, that in his Station Hotel bills and cards the respondent uses the figure of a lion.

Now, the question, I think, is stated very fairly by the Sheriff-Substitute in his note when he says:—"The question in all such cases as the present depends upon whether

or not the use complained of involves misrepresentation and consequent misleading of the public and injury to the owner's interest." We have here no case of that kind stated on record. There is no averment that any effect of that kind was produced by the lion being placed where it was. The averments on record rather point to this, that Mr Lennox had a purpose rather to disparage the Golden Lion Hotel as he was leaving it, and to give a high character to the Station Hotel to which he had gone, and which he intended to occupy as his sole hotel. There is no allegation on record that I can find to the effect that what has been done has caused anybody to make any mistake whatever. If there had been averments to the effect that people, who wished to go to the Golden Lion Hotel had been misled, had been taken to the Station Hotel, and that the lion had been pointed to to make them believe that that hotel was the Golden Lion Hotel, I think there would be much to be said for allowing such facts, if averred, to be proved. But there are no such averments. What is averred is that the respondent endeavoured to disparage the old Golden Lion Hotel and to give it a bad name because he wished to improve his own prospects as the proprietor of the Station Hotel.

Now, the photographs which were exhibited to us bring out very clearly that every person coming from the station, and every person coming down the street towards that hotel in other directions, must see the name of the "Station Hotel" on the house, because it is on the end of the house in large letters, and it is on the front of the house also in large letters. As regards the bills, the hotel is spoken of in them solely as the Station Hotel, and in one of them there is a statement, under the name of the proprietor of the Station Hotel, that he was "late of the Golden Lion Hotel."

I have been unable in those circumstances to come to the conclusion that the use of the figure placed upon the top of the house was a misrepresentation, and that as a consequence the public were misled, to the injury of the Golden Lion Hotel. I cannot see that there is any ground for coming to that conclusion. It is quite certain that the proprietor of the Golden Lion Hotel has no monopoly of the use of the figure of a lion, whether golden or of any other colour. He is entitled to have any figure he pleases, and probably he would prefer to have the figure of a golden lion, as his hotel has got that name. But I cannot assent to the proposition that he is entitled on that account to exclude everybody else from using a lion as a sort of ornament on any part of his premises. If a man uses what is his own in such a way as to misrepresent, and by the way he places it, the way he uses it, and the way his servants speak of it, to lead people to believe that they are going to a certain hotel when that is not the case, and if he in fact does lead people to such an erroneous belief, that is a thing which the law will always step in to prevent. In the case of

*The Great North of Scotland Railway Company v. Mann*, 19 R. 1035, which was cited to us, there was a strong illustration of that doctrine. In that case the former occupant of an hotel in Aberdeen, which was called the Palace Hotel, having been deprived of the occupancy of that hotel, and having set up another hotel in the immediate neighbourhood, called his new hotel "Mann's Palace Hotel," thereby as plainly as possible giving it the name of "Palace," and only indicating that it belonged to a person of the name of Mann. That was held by the Court to be a practical misrepresentation tending to mislead the public into thinking that his hotel was the Palace Hotel, whereas the fact was that the Palace Hotel was elsewhere. We have no such case here. I think the Sheriff-Substitute has erred in the conclusion he has come to, and that the petition ought to be dismissed.

LORD YOUNG—I have arrived at the same conclusion—that this case is irrelevant. Mr Guthrie very candidly said that he was aware of no case in which interdict and an order of the kind asked here had been pronounced without inquiry or proof, and his motion accordingly was, not that we should sustain the appeal, but that we should allow a proof, and in support of that motion he said he was informed that some people had been misled, and had gone to this hotel under misapprehension. There was no such deceit averred upon record, but if any case had been made for amending the record we could have done that. I inquired what the misapprehension was, and I got no more particular information. One can hardly imagine anybody—in his senses and fit to go about alone—thinking because he saw a lion's figure upon a hotel, although there were on the side of it the words "Station Hotel," and also over the front door, very conspicuously, "Lennox's Station Hotel," and no other name—one can hardly listen to the statement that anybody thought when he was going into that hotel in Murray Place, that he was going into the Golden Lion Hotel in King Street, or that, wanting to go there, he was misled into the other, or into believing that the proprietor of the Golden Lion Hotel in King Street is the proprietor of Lennox's Hotel in Murray Place. Such a statement as that is ridiculous and incredible on the face of it. It so happens that down to the raising of this action, and thereafter down to to-day or the day before the hearing, the Golden Lion Hotel in King Street and this other hotel were under the same management. The Golden Lion Hotel in King Street has not been managed by the proprietor within the memory of man—it has been let—and the respondent in this case was the tenant and manager of the hotel for the last ten years, and was so at the time the Station Hotel was built, and this lion put up as an architectural ornament on the top of it. I think the Sheriff-Substitute has stated the rule of law that must govern the case quite accurately in his note. I think the

whole facts of the case are in the photograph. I agree with the Sheriff-Substitute that it is not material to the case whether the respondent is the owner of this gilded image or not. If he had put up "The Golden Lion Hotel" it would not signify, if he was the owner of the letters, because a man is not entitled to use his own lawful property in such a way as to mislead or deceive the public to the injury of his neighbour. But the observation which is material accompanying that is that the pursuers here have no exclusive right to the figure of a lion or of a gilded lion as an ornament for their hotel. They have no copyright or privilege in adorning with the figure of a lion, hotel cards or menus or cards put up in the bedrooms or in any of the rooms, stating their charges, or stating the terms on which they let out carriages. The question therefore is whether this figure, which anybody was entitled to use honestly, was used by the respondent so as to create misrepresentation to the injury of his neighbour. I think it is absolutely ridiculous upon the face of the case as stated—and the whole of it is upon the face of the photograph produced—to say that putting a lion on the top of a hotel which has as a sign "Lennox's Station Hotel" conspicuously upon the front and the side of it, would deceive people into the belief that it was the Golden Lion Hotel in another street altogether. Suppose he had called it King's Arms Hotel, and had put the King's Arms on it, and in that case there would not only have been a lion but a unicorn as well—would there have been any impropriety in that? Or if he had called this the Royal Hotel, and put up the Royal Arms, could that gentleman or any other say—"Well, but I have put the Royal Arms over the Golden Lion Hotel in King Street, and if you put up that, there are stupid people who would think they were going into the Golden Lion in King Street, and that is deception on your part to my prejudice." I think the case before us involves all those nonsensical contentions. There is no doubt whatever that Mr Lennox was entitled to any credit or reputation which he had acquired as the tenant and manager of the Golden Lion Hotel during the last ten years, and to bring prominently under the notice of the public that the Station Hotel had now come into his hands. He was entitled to proclaim that to the public, in advertisement and otherwise, so as to attract them to the new hotel which he had built, and to say—"I am the man who for the last ten years has been managing the hotel in King Street; it is now going under other management, and I give you notice that this is not the Golden Lion in King Street, this is my hotel—Lennox's Station Hotel in Murray Place." Every view we can take of the case, and every illustration we can give of it, shows the absurdity of it, for I cannot use a milder word in expressing my opinion of the complaint. I agree that the petition ought to be dismissed, and with costs to the respondent both in this Court and the Sheriff Court.

LORD TRAYNER—I also agree. I think the complaint indicates that the complainers did not properly appreciate what are their rights and what are the rights of the respondent. The prayer of the petition is not just so broad as to cover everything complained of in the condescendence, and although it is broad enough, I am not surprised that it does not cover all that is complained of, because in the condescendence the first thing that is complained of is that the respondent is removing or has removed almost every article of furniture which he has in the Golden Lion Hotel, including a billiard table, to Lennox's Station Hotel. Why should he not? He must take his furniture and his billiard table with him, but that is surely no ground of complaint against him. In the last article of the condescendence it is said that the respondent has been ordered, and has refused, to remove the figure of a lion from its position upon the Station Hotel, and to return it to its place on the Golden Lion Hotel. He was certainly not bound to return it to the Golden Lion Hotel, for it is his own property. Although it may not be material to the decision of this case that the figure of the golden lion in question is the property of the respondent, seeing that it is certainly not the property of the complainers, it is just material enough to lead me to observe that the complainers are asking us to interdict a man from using his own property. The respondent acquired it for all the purposes to which he might legitimately put it, therefore it just comes to the question whether the use of it is such as to misrepresent to the public that the respondent's hotel in Murray Place is the Golden Lion Hotel. I think there is no room for such an idea. The respondent has not put the lion over the porch in the same position in which it stood over the Golden Lion Hotel; he has not put it over the porch in connection simply with the word "hotel," so that the figure of the golden lion and the word "hotel" might be read together, but he proclaims to the public as plainly as he can that this is Lennox's Station Hotel. That is the only sign over the door—a sign which is repeated on that side of the house which would most readily catch the eye of the passenger or traveller coming from the railway station. But the lion is not only not over the porch, it is on the top of the roof as a piece of ornamentation, and I think it is no more objectionable there as ornamentation than if, instead of putting it outside, the respondent had put it inside in the hall. I am satisfied that what has been done is a legitimate use of the respondent's own property, and is not calculated to mislead anyone into the idea that by going into that house, so well labelled as Lennox's Station Hotel, they are going into the Golden Lion Hotel.

LORD MONCREIFF—I agree. The fact that the golden lion is the respondent's property, and the fact that he does not call the Station Hotel the Golden Lion Hotel, are not conclusive in the respondent's favour, because it is conceivable that he

might so use the sign as to deceive the public, as, for instance, by placing the lion over the door, or printing the words "Station Hotel" in such small characters that they would not be readily deciphered. But the photograph shows that not only is the lion not placed immediately above the door, but the words "Station Hotel" are in quite legible letters, and further that the words "Lennox's Station Hotel" appear in large letters on the side of the house. I am therefore unable to see that anything which the respondent has done would lead anyone to suppose that in entering the Station Hotel he was entering the Golden Lion Hotel.

The Court sustained the appeal, recalled the interlocutor appealed against, refused the interdict craved, and dismissed the petition with expenses in the Court of Session and in the Inferior Court.

Counsel for the Pursuers—Guthrie—Cullen. Agent—James Forsyth, S.S.C.

Counsel for the Defender—Jameson—R. L. Orr. Agents—Duncan & Black, W.S.

Friday, March 6.

OUTER HOUSE.

[Lord Low.

CARRON COMPANY v. CURRIE & COMPANY AND ANOTHER.

*Arrestment—Shipowner—Shipbrokers as General Managers of Shipping Company.*

A shipped coals in a ship belonging to a shipping company whose business was entirely conducted by a firm of shipbrokers. While the ship was still at the port of loading a creditor of A arrested the coals *jurisdictionis fundandæ causa* in the hands of the shipbrokers. *Held* that as the shipbrokers had the entire management of the affairs of the shipping company, they were not mere agents, but factors and commissioners, and that the arrestments were rightly used in their hands.

Error in Schedule of Arrestment which *held* not to invalidate it.

The Carron Company having obtained decree in absence against James Stevenson, Stettin, used arrestments in execution against him on 24th July 1895 in the hands of the defenders, who were designed in the schedule of arrestment as "James Currie & Company, 16 Bernard Street, Leith, owners or managing owners of the s.s. 'Orient.'"

The "Orient" formed one of a fleet of vessels belonging to the Leith, Hull, and Hamburg Steam Packet Company, a joint-stock company registered under the Companies Acts, but was, in terms of a resolution of the company, registered in name of James Currie and other two shareholders of the company, James Currie being the registered managing owner under the Shipping Acts.