proprietors of the whole of the subjects, and it is therefore immaterial to which of the sets of lodgings or flats the various pieces of back ground were originally attached. If they pertained in property to any of the lodgings in the stone tenement, the full right of property in them is in the defenders.

I find nothing in the defenders' title to make it a bounding title, so as to prevent the usual effect of prescriptive possession. It does not contain any inflexible boundary to the south, unless the walls of the tenement constitute such a boundary; but we were referred to no authority, and I know of none, in which the conveyance of a house with parts, pertinents, and privileges will not carry ground of the nature of a back-green, or curtilage, if exclusive possession for the prescriptive period is proved. The title is ambiguous in this sense, that without proof of possession it is impossible to say precisely what are parts and pertinents of the property, as they are not expressly described in the titles. But prescription "has the effect of construing the title upon which possession has followed and of removing any ambiguities which may have attached to the description of the property in that title"—*Auld* v. *Hay*, 7 R., *per* Lord President, p. 681. Construed in the light of exclusive possession, I am of opinion that the defenders' title includes as parts and pertinents the whole of the ground which they now claim.

I am therefore of opinion that the judgment of the Sheriff should be affirmed.

The Court pronounced the following interlocutor:—

"The Lords having resumed consideration of the appeal for the pursuers against the interlocutor of the Sheriff-Substitute of Lanark, dated 27th November 1897, with the opinions of the consulted Judges, in conformity with the opinions of the majority of the Judges, Dismiss the appeal: Find in fact and in law in terms of the findings in fact and in law in the said interlocutor appealed against: Therefore of new assoilzie the defenders from the conclusions of the action, and decern," &c.

Counsel for the Pursuers—Ure, Q.C.—Cook. Agents—Simpson & Marwick, W.S.

Counsel for the Defenders—Dundas, Q.C.—Guy. Agent—A. C. D. Vert, S.S.C.

Friday, July 15.

SECOND DIVISION.

NEWALL'S TRUSTEE *v.* INGLIS.

Vesting—Succession—Fee or Liferent—Fee with Protected Succession—Direction to Settle on Daughter so as to Exclude Jus mariti.

By her trust-disposition and settlement a testatrix directed her trustees to hold the capital of the residue of her estate, and all interest accruing thereon after her death, for behoof of her two sons and daughter *nominatim*, and on the eldest child attaining the age of twenty-five, to divide the capital and accumulations of interest equally among the survivors of them. The deed further directed the trustees, on the daughter attaining the age of 25 years, to "pay, assign, and dispone, or settle or secure the share falling to her of my trust-estate, and any interest and profits accrued on the said share subsequent to the said period of division hereinbefore mentioned in such way and manner as that the same shall be preserved and applied for behoof of my said daughter and her issue, exclusive of the *jus mariti* and right of administration of any husband she may then have, or may marry at any future period thereafter, . . . and I declare that none of my said children shall have any vested right to the capital of the trust-estate, or interest and produce thereof, till they shall respectively have attained the age of 25 years, except to the effect of transmitting the same to his, her, or their lawful issue."

Held (*diss.* Lord Young) that an absolute fee of one-third of the residue of the estate of the testatrix vested in the daughter on her attaining the age of 25 years.

Mrs Joanna Christian Newall died on 10th August 1871, survived by two sons, William Normand Newall, born on 28th September 1854, and James Normand Newall, born on 13th June 1862, and one daughter, Elizabeth Maude Newall, afterwards Elizabeth Maude Inglis, born on 10th August 1856.

By her trust-disposition and settlement, dated 3rd May 1871, and recorded 17th August 1871, Mrs Newall conveyed her whole estate for certain purposes, and *inter alia* directed as follows with respect to the residue of her estate—"Lastly, the said trustees shall hold the capital of the residue of my said estate and effects, and also all interest and profits accruing thereon after my death, for behoof of my said children William Normand Newall, Elizabeth Maude Newall, and James Normand Newall, and after deduction from said interest and profits of all payments therefrom for keeping up a house or establishment as above provided, and all expenses, incurred for board, education, and maintenance of any of my children, they shall accumulate the same until the eldest of my children who may survive shall have attained the age of twenty-five years complete; and upon the eldest of my said children attaining said age, the said trustees shall divide the capital of said residue and all accumulations of interest and profits thereon equally among said children or the survivors of them; but excepting always from said division the household furniture and others belonging to me in the event of the said trustees continuing to keep up a house or establishment for any of my children at the period at which such division may

take place; and the said trustees shall pay, assign, and dispone to each of my said sons, on their respectively attaining the age of twenty-five years, the share falling to such son of my trust-estate and any interest and profits on the said respective shares accruing subsequent to the said period of division hereinbefore mentioned, as soon as such payment can conveniently be made after each son shall respectively attain said age; and the said trustees shall, on my daughter, the said Elizabeth Maude Newall, attaining the said age of twenty-five years, pay, assign, and dispone, or settle or secure the share falling to her of my trust-estate, and any interest and profits accrued on the said share subsequent to the said period of division hereinbefore mentioned, in such way and manner as that the same shall be preserved and applied for behoof of my said daughter and her issue, exclusive of the *jus mariti* and right of administration of any husband she may then have, or may marry at any future period thereafter, the *jus mariti* and right of administration of such husbands in regard to the whole provisions falling to my said daughter being hereby expressly excluded and debarred, the receipt and discharge of my said daughter, without the consent and concurrence of her said husband, being hereby declared to be sufficient to the trustees and all others concerned, for any sums or benefit that she may be entitled to receive under these presents; and in the event of there being only one child who shall attain the said age of twenty-five years, the said trustees shall pay, assign, and dispone the residue of my said trust-estate and effects, and interest and profits accrued thereon, to such child on his attaining the said age if a son, or if my daughter, the said Elizabeth Maude Newall, shall be the only child who shall attain the said age of twenty-five years, the said trustees shall pay, assign, and dispone said residue, and interest and profits thereon, or shall settle or otherwise secure the same in such way and manner as that the same shall be preserved and applied for behoof of her and her issue, exclusive always of the *jus mariti* and right of administration of any husband she may then have or may marry at any future period thereafter; and I declare that in the event of the said trustees keeping up a house as a place of residence for any of my children at the periods when my eldest son, the said William Normand Newall, or my daughter, the said Elizabeth Maude Newall, attain the said age of twenty-five years respectively, the share of the proceeds of the household furniture and others belonging to me shall only be payable to them when the said trustees discontinue the maintenance of said place of residence, or so soon as they may find it convenient, after selling and realising the said household furniture and others; and I declare that none of my said children shall have any vested right to the capital of the trust-estate, or interest and produce thereof, till they shall respectively have attained the age of twenty-five years, except to the effect of transmitting the same to his, her, or their lawful issue; and further, that the share or shares of any of my said children dying without issue before acquiring a vested right to his, her, or their share or shares as aforesaid, shall fall and belong to the survivors, but that the issue of any child who may have died leaving issue shall be entitled to the share or shares which would have fallen to such child if he or she had survived; and I further declare that the period of vesting in the case of the issue of any deceased child shall be held to be at the death of such child if he or she shall have survived me, or at my death if such child shall have predeceased me."

Upon Mrs Newall's death her trustees accepted office and administered the estate until 28th September 1879, when William Normand Newall, the eldest child, attained the age of 25. The trustees then paid to him his one-third share of residue, and continued to administer the remaining two-thirds,

On 18th January 1881 Miss Elizabeth Maude Newall married James Tennent Inglis. In their marriage indenture she conveyed to trustees, *inter alia*, all real and personal property to which she should become entitled during her marriage. The income was to be paid to Mrs Inglis during her life, the fee to the children of the marriage attaining the age of 21, or if daughters being married. Power was reserved to Mrs Inglis to appoint the income or part thereof to be paid to her husband after her death, and to allocate the shares of the fee to be paid to the children.

On 10th August 1881 Mrs Inglis attained the age of 25. Thereafter the trustees, with the approval of Mr and Mrs Inglis, allocated and set aside certain of the securities forming the trust-estate of Mrs Newall, as representing Mrs Inglis' share of the estate, to be administered for behoof of her and her issue exclusive of her husband's *jus mariti* and right of administration. These securities, which were invested in the name of Mrs Newell's trustees were not realised, or made over to Mrs Inglis, but continued in possession of the trustees, who paid the income thereof to Mrs Inglis, and these funds remained invested in the trustees' name until Mrs Inglis' death.

Mrs Inglis died on 12th September 1897, survived by her husband and by three children born in 1882, 1883, and 1888. She left a will by which she appointed the income of her estate to be paid to her husband and the fee to be divided equally among her children alive at her husband's death. She appointed Mr Inglis her sole trustee and executor.

Questions thereafter arose as to the vesting, management, and payment of the one-third share of the residue of Mrs Newall's estate conveyed by her to her trustees for behoof of Mrs Inglis, and to decide these questions a special case was presented to the Court by (1) Mrs Newall's sole surviving trustees, (2) Mr and Mrs Inglis' marriage trustees, (3) Mr Inglis, as trustee and executor under his wife's will,

(4) Mr Inglis as an individual, and (5) the children of the marriage,

The questions at law were—"(1) Was the fee of one-third of the residue of the said Mrs Newall's estate vested in the said Mrs Inglis to the effect of passing under her marriage indenture or will or either of them? or (2) Did it vest directly in the fifth parties subject to Mrs Inglis' liferent? or (3) Did it vest to the extent of one-fourth in Mrs Inglis to the effect foresaid, and to three-fourths in her issue? or (4) If the fee of the said one-third share of the residue of Mrs Newall's estate, or of three-fourths thereof as the case may be, is now vested in the fifth parties, is the first party bound (*a*) to continue to hold the same and to accumulate the capital and interest until the fifth parties individually attain the age of 21, or (*b*) to continue to hold the capital and to pay over the income to the fourth party to be applied by him for behoof of the fifth parties, or (*c*) to hand over the whole capital to the fourth party as guardian of the fifth parties?"

Argued, *inter alia*, for the second, third, and fourth parties—A right of fee in the third of Mrs Newall's estate was vested in Mrs Inglis when she attained the age of 25, and fell under the conveyance in her marriage settlement or will, or one or other of them, and the first party was bound to convey the share to the second parties, to be held by them in terms of said indenture, or to the third party as trustee and executor under Mrs Inglis' will, for behoof in either case of the fourth party in liferent and the fifth parties in fee. No intention was expressed in Mrs Newall's trust-disposition to limit the right of fee in her daughter, and the case was ruled by *Houston* v. *Mitchell*, November 17, 1877, 5 R. 154.

Argued for the first and fifth parties—The right of Mrs Inglis in the third of the residue of Mrs Newall's estate was restricted to a liferent, and the fifth parties were entitled to the fee of the share unburdened by their father's liferent—*Murray* v. *Scott's Trustees*, December 5, 1872, 11 Macph. 173. This latter case was weaker than the present, because in it there was a distinct direction to pay. Even where a fee was conveyed in the first part of a deed the beneficiaries' interest might be restricted in the latter clauses—*Chambers' Trustees* v. *Smith*, April 15, 1878, 5 R. (H.L.) 151. The children had in any event a protected right of succession, which could not be defeated by their mother's marriage contract or will—*Gibson's Trustees* v. *Ross*, July 12, 1877, 4 R. 1038.

At advising—

LORD JUSTICE-CLERK—The testatrix, the interpretation of whose will forms the subject of this case, left her estate to trustees, and as regards the residue she directed them to hold it for behoof of her three children, subject to certain payments for their housing, maintenance, and upbringing, until the eldest surviving child should attain twenty-five years of age, on which event they are directed to divide it with its accumulations "equally among said children or the survivors of them." They are then directed to pay to each son his share on his attaining twenty-five years, and as regards the daughter she gives a direction in the following words—[*reads*].

The daughter attained twenty-five years of age in 1881 and died in September 1897, and the principal question in this special case is, whether the share of residue falling to her vested in her to the effect of passing under her marriage-contract.

It is contended by the parties of the fifth part that no vesting in her took place—that there was no right given to her except to the annual proceeds of her share. In short, that although no words importing a restriction of her interest to a liferent are used in the deed, nevertheless the right which she took was one of liferent only, and that the fee went to her issue. The direction given in regard to the daughter's share has for its purpose to shut out any husband she might marry from his rights at law, so that she, if she reaches the prescribed age, or her children if she does not, may get the share exclusive of him. Now, as regards the words "and her issue," I think these must be read solely as substituting her children should she fail before the stipulated time. The event which happened was that there was no failure, and therefore the bequest to issue became of no effect. Therefore the sole question is, did this clause, which was designed to prevent the *jus mariti* and right of administration from taking effect, make the interest of the daughter a liferent interest only. Does that clause necessarily infer any such thing, which plainly would not be a carrying out of the equal division of the residue declared in the primary purpose? Does the settlement, which in all its terms bears to be a settlement of fee, by absolute inference—for it can only be inference—give no fee to the daughter? I cannot so hold. I am confirmed in that opinion by the decision in the case of *Houston* v. *Mitchell*, in which case there was, as regarded the female legatees, a provision for securing their shares and in the event of their marrying, directing that they were to be settled on them and their children. In that case the Court held, in the words of the then Lord Justice-Clerk (Lord Moncreiff), that "the direction to invest on good security neither infers a liferent nor a restriction of the fee," and that the direction for a settlement on them and their children in the event of marriage "would not restrict the bequest of fee . . . because the gift being an express gift of fee it cannot be qualified unless there follow words leading necessarily to an opposite result." In that case the gift was expressed by an appointment to divide. This seems to me to be in direct analogy with the present case. There is here no other expression of gift, except the direction for equal division, which in the case of sons undoubtedly meant a fee, and no words are used as regards the daughter to express liferent and not fee. Had liferent been intended it is not comprehensible why it

should not have been expressed in the ordinary and well-known terms instead of being left to be guessed at from an expressed anxiety to exclude spouse's rights. But even in the direction itself power is given to pay the share as one alternative—an alternative inconsistent with a restriction to a liferent. It seems to have been the idea that the share might be paid to the daughter in some such way as would make it safe against the husband. But however erroneous that might be, it does not, as I think, indicate any intention to restrict the gift to the daughter or to her children if they as substitutes should succeed in consequence of her predeceasing the event on which the gift was to take effect. In my opinion, any procedure resulting in the restriction of the daughter to a liferent, which is the only practical alternative to her having a right of fee, would be doing something which, whatever the testator's views may have been, she has not done by her deed.

I am therefore in favour of answering the first question in the affirmative, and that makes it unnecessary to answer any of the remaining questions.

Lord Young—The question in this case is, what is the meaning of certain language used in a testamentary deed as a direction to trustees with a view to carrying out the will of the testator. There is no question of conveyancing in the case, the question is, what is the will and intention of the testator? One view of the meaning of the truster is that she intended a certain share of her estate to be handed over absolutely to her only daughter when she attained the age of twenty-five years to do what she liked with, so that it was possible for the money to go to the husband, and if he had creditors ultimately to get into their hands. The other view is that the truster intended her testamentary trustees to hold the share of the estate destined to the daughter so as to reserve it for herself and her offspring, and not pass under the *jus mariti* of her husband. The trustees who have been acting as such under this deed from 1871 till now have acted in the latter view. It did not occur to them that the money was to be handed over to the daughter when she attained twenty-five years of age so as to be attachable by creditors; they thought it to be their duty to uphold the trust, giving the daughter the income, and thus keeping the estate out of the hands of her husband. After that lapse of time this idea seems to have occurred—not to the trustees but to some-one else—that no protection was given to the daughter under the deed. I cannot assent to that. I do not think it is the true meaning of the deed. Your Lordship said that if the testator desired to give her daughter merely a liferent, that would have been stated. No doubt that would have been easy to express, but then it can also be argued that if the testator intended the one-third of the residue to be handed over to the daughter absolutely, language to that effect would have been used. It is a very common practice for a mother to desire that the share of her estate left to her daughter should be protected so that she should have it secured to her during her life, and that at her death her issue should run no risk of being destitute. I cannot say that the language of the deed has been well expressed, because I agree with your Lordship in thinking that it would have been better expressed if the trustees had been instructed to pay the income to the daughter, and the fee to her children at her death. The deed has been bungled no doubt, but our duty is to ascertain what the testator intended.

The question, then, must be decided according to one or other of the contentions which I have stated. Would any man of business use the following language to express the intention of a truster that the money should be paid over at once:—"The said trustees shall, on my daughter the said Elizabeth Maude Newall attaining the age of twenty-five years, pay, assign, or dispone, or settle or secure the share falling to her of my trust-estate . . . in such way and manner as that the same shall be preserved and applied for behoof of my said daughter and her issue exclusive of the *jus mariti* and right of administration of any husband she may then have or may marry at any future period thereafter." I think it is an extravagant view that a direction is given to the trustees to pay over at once, or if they thought better to settle or secure it on her. This view was repudiated as not maintainable. The alternative view is that the trustees are instructed to settle and secure it in such a way that the money shall be preserved and applied for behoof of herself and her issue exclusive of the *jus mariti* and right of administration of her husband. If that could not be done except by means of a trust, then it follows that the trustees must do what is necessary to accomplish the intention expressed either by continuing the trust or by executing a new trust. The words are plain to the effect that the daughter's share is to be secured against any husband she may have. Is that an unlawful direction? If not, has it not to be carried out? The Married Women's Property Act was not then in existence, and does not apply to the case. I know of no other way of carrying out this direction but by continuing the trust or constituting another trust so as to give the income to the daughter exclusive of the *jus mariti* of her husband. I am therefore of opinion that the intention of the testator was to prevent the share of the daughter being handed over to her, and that the idea of vesting is excluded, because we would be violating the intention of the testator if we held that the estate had vested in the daughter. We have here to deal with no technicalities, and our object should be to get at what is reasonably certain to have been the intention of the testator. I think the question is one of general interest and importance.

Lord Trayner—The testatrix Mrs Newall directed her trustees to hold the residue

of her estate for behoof of her three children, and on the eldest of them attaining 25 years of age to divide the residue "equally among said children or the survivors of them." She further directed that no right to the capital of said residue should vest in her children until they respectively attained the age of twenty-five. With regard to her daughter's share (with which alone we are here concerned), the testatrix directed her trustees, on her daughter attaining the said age, "to pay, assign, and dispone, or settle or secure the share falling to her . . . in such way and manner as that the same shall be preserved and applied for behoof of my said daughter and her issue, exclusive of the *jus mariti* and right of administration" of her husband then existing, or any husband she should afterwards marry. It is maintained for the fifth parties that the direction imports a direction to the trustees to give the daughter a liferent of her share only, and the fee to her issue. I am unable to see anything in the deed, on any fair reading or construction of it, which supports this view, and I cannot adopt it. I think such a view is directly negatived by the decision in *Houston* v. *Mitchell* (5 R. 154). There is nothing in the deed to suggest that the daughter's right was thereby made, or was at any time to be made, a right of liferent merely. Nothing could have been easier than to have said this if it had been intended. But so far from that, the whole tenor of the deed makes it clear to my mind that the testatrix meant her daughter's right in the residue to be co-extensive with the right of the other two children, and they no doubt took a fee. The words on which the whole argument for the fifth parties is based are those which direct the trustees so to pay, "or settle or secure," the daughter's third, "as that the same shall be preserved and applied for behoof of my said daughter and her issue," But when that part of the clause is read along with the part which immediately follows, the meaning and purpose of the whole clause rather appears to have been to exclude all claim on the residue at the instance of the daughter's husband or his creditors, whether the residue was taken by the daughter on her attaining the age of twenty-five, or by her issue if they took on their mother's failure.

I do not think the words "and her issue" can in any view be regarded as doing more than substituting the children to their mother in the event of the failure of the latter. But attributing to the words that meaning, they have become inoperative, the mother not having failed. I must say, at the same time, that in my opinion the words in question were not intended to operate in any sense as a destination in favour of the issue of the testatrix's daughter. I think the deed before us conferred on the daughter a right of fee in one-third of the residue, vesting on that daughter on her attaining twenty-five years of age, and that therefore the first question should be answered in the affirmative. It is, on this view, unnecessary to answer any of the other questions.

LORD MONCREIFF—The question is whether we should follow the case of *Lady Massey*, 11 Macph. 173, or the case of *Houston* v. *Mitchell*, 5 R. 154. I am of opinion that we should follow the latter decision. It cannot be distinguished from the present case; it was decided only five years after the case of *Lady Massey*, and two of the Judges—the Lord Justice-Clerk and Lord Ormidale—took part in the judgment in the case of *Lady Massey*, and all the Judges had that decision fully in view.

The decision in the case of *Lady Massey* for the first time extended the principle of protected destinations, which had previously been confined to rights depending upon contract, to testamentary provisions. It is plain, however, from the opinions of the Judges in the case of *Houston* v. *Mitchell*, that in the opinion of the Court it was not thought expedient to extend the principle further than was done in *Lady Massey's* case; and accordingly, as the circumstances in *Houston* v. *Mitchell* differed in certain respects from those in the earlier case, the Court declined to hold that it was ruled by that decision.

In *Houston* v. *Mitchell* there was first a direction to divide the residue among the nephews and nieces of the testator, three-fifths to be divided equally among four nieces, "but my nieces' share is to be invested in good security, and in the event of any of them being married, to be *settled on themselves and their children.*"

It was held that these words which I have italicised did not restrict the legatees' right to a liferent or create a protected succession, and that they operated as a simple substitution and to no other effect. *Lady Massey's* case was distinguished on the ground that there was distinct evidence of intention to limit or qualify the bequest and to restrict the mother's right in favour of her children.

The same remarks apply to the case of *Gibson's Trustees* v. *Ross*, in 4 R. 1038.

I think that in the present case the issue of the daughter are identified with herself, and that the sole purpose of the direction to pay or settle the share falling to the daughter for behoof of her and her issue exclusive of the *jus mariti* and right of administration of her husband, was not to restrict the daughter's share to one of liferent or restricted fee, but to protect her against her husband. I do not find in this deed any indication of an intention to restrict the daughter's interest unless it is to be found in the words "and her issue." In all other respects in this residuary clause the right of the daughter in her share of the trust-estate after vesting is treated throughout as one of fee; and if these words were read out, the case would be identical with *Allan's Trustees* v. *Allan*, 11 Macph. 216, in which the daughters were held entitled to receive payment on their own receipts, the receipts bearing that payment was made exclusive of the *jus mariti* and right of administration.

At the highest the interest of the issue is

that of substitutes, which has been in this case evacuated by the deeds executed by Mrs Inglis.

The case of *Chambers' Trustees* v. *Smith*, 5 R. (H. of L.), p. 151, is in marked contrast, because there the truster gave his trustees express power, if they saw fit, to restrict the interest of the children to a liferent, and to settle the capital on their lawful issue.

I am therefore for answering the first alternative question in the affirmative.

The Court pronounced the following interlocutor:—

"Answer the first question in the affirmative: Find it unnecessary to answer the other questions: Find and declare accordingly, and decern."

Counsel for First and Fifth Parties—Constable. Agents — Cadell & Wilson, W.S.

Counsel for Second, Third, and Fourth Parties—Blackburn. Agents—Dundas & Wilson, C.S.

Tuesday, July 12.

FIRST DIVISION.

[Lord Low, Ordinary.

BAYER *v.* J. & L. BAIRD.

Trade-Mark—Trade Name—Exclusive Use of Letters Disclaimed in Trade-Mark.

The registration of a trade-mark does not preclude the holder from protection at common law against the use by rival traders of some other name by which his goods have become known, although he has disclaimed such name as part of his trade-mark.

Trade Name—Infringement—Initial Letters—Interdict.

A corset manufacturer sold and advertised his corsets under the designation of "C.B. Corsets," the letters C.B. being the initial letters of his name. He had registered a trade-mark containing these letters, but had disclaimed their exclusive use. Evidence upon which *held*, in an action for interdict and damages against another firm, who advertised and sold corsets marked C.B. & Co., that (1) the letters C.B. had acquired in the trade an exclusive application to the complainers' goods; and (2) that the respondents had sold corsets not made by the complainers in such a manner as to mislead purchasers into the belief that they were of the complainers' manufacture.

Interdict accordingly *granted*.

Cellular Clothing Company v. *Maxton* (*ante*, p. 869), *distinguished*.

An action was raised by Charles Bayer, corset manufacturer, London, against J. & L. Baird, corset manufacturers, Glasgow, craving the Court to interdict the defenders "from marking for sale, exposing, selling, or advertising, or offering for sale as C.B. corsets, corsets not made or supplied by the pursuer, and from marking for sale, exposing, selling, or supplying, as in implement of orders for C.B. corsets, corsets made by the defenders, or corsets not made by the pursuer." The summons also contained a conclusion for damages. The pursuer averred that more than twenty years ago he had introduced into the market corsets manufactured by him which he then described as C.B. corsets, and that since then the corsets manufactured by him had been so described and known in the market. "All the corsets manufactured and sold by him are marked and designated as C.B. corsets, and these letters appear on all the boxes containing them, and are known and recognised by the trade and the public as the distinctive mark of the corsets manufactured by the pursuer."

The pursuer further averred—"(Cond. 3). The pursuer has recently ascertained that for some time past the defenders have been regularly in the habit of selling to parties dealing with them corsets marked as C.B. corsets, in the same manner as the pursuer's corsets, and so as to lead the public to believe them to be pursuer's corsets although manufactured by other parties than the pursuer. . . . In the beginning of March 1896 the pursuers' traveller purchased from William Sandison, merchant, Keith, a corset which was marked with the letters C.B. in such a manner as to lead the public and purchasers to believe that it was a C.B. corset manufactured and sold by the pursuer. This corset Mr Sandison had purchased from the defenders in the belief that it was a corset of the pursuer's manufacture. . . . The letters C.B. occupy the same prominent position on the goods supplied by the defenders as they do on the pursuer's goods, the words "& Co." being added in such small type as to be barely observable."

He averred further that he had spent a considerable sum in recent years in advertising his corsets, with the result that the name "C.B. corset" had become a valuable property, and that in consequence of the defenders selling as C.B. corsets inferior corsets not manufactured by him, he had sustained loss and damage.

The defenders, who were in the habit of purchasing corsets from manufacturers and selling them to shopkeepers, and had no retail trade, admitted that they had sold to Mr Sandison in the ordinary course of trade corsets manufactured by Connell Brothers & Company, Dublin, which were marked "C.B. & Co.," while on the cover of the boxes there appeared "C.B. & Co., Paris, London, and Dublin," "None genuine unless Stamped," "The original C.B. & Co.," "The original Sewn Corset." They averred that they had sold such corsets made by these manufacturers before they heard of the pursuer; that they had never offered them for sale on the representation that they were the pursuer's, and that there was no resemblance in the general appearance of the boxes containing the two makes of corsets, while the markings on the corsets themselves were quite different.

The defenders further averred—"On 26th