entitled to be represented at the trial by any law agent duly qualified to whom he might give a mandate to appear on his behalf, and that in a case where the complaint has been signed by a certain law agent the appellant is not excluded from having the prosecution conducted by any law agent whom he might appoint: Sustain the appeal: Recal the judgment of the Sheriff-Substitute appealed against: Remit the case to him to proceed as accords, and decern."

Counsel for the Appellant—Hunter, K.C. —Black. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Respondent — Armit. Agent—W. B. Rainy, S.S.C.

HOUSE OF LORDS.

Wednesday, July 24.

(Before the Lord Chancellor (Loreburn), Lord James of Hereford, Lord Robertson, and Lord Collins.)

DUNLOP PNEUMATIC TYRE COMPANY, LIMITED *v.* DUNLOP MOTOR COMPANY, LIMITED.

(*Ante*, July 20, 1906, 43 S.L.R. 784, 8 F. 1146.)

Trade Name — Infringement — Personal Name.

The Dunlop Pneumatic Tyre Company was a company of world-wide reputation whose chief business was the manufacture and sale of "Dunlop" tyres, but which also supplied motor accessories. To these the name "Dunlop" was also usually attached, but had not become appropriated. It sought to restrain from the use of the name "Dunlop" the Dunlop Motor Company, Limited, a small company formed in 1904 by two brothers Dunlop in Kilmarnock, where they had been since 1898 carrying on the business of cycle and motor repairing under their own names, R. & J. F. Dunlop. The objects of this company were the manufacture and sale and repair of motors, and the supply of motor accessories, but from its size the company's business was restricted to the sale on commission of motors, their repair, and the supply of the accessories. There was no evidence of anyone dealing with it in the belief he was dealing with the Dunlop Pneumatic Tyre Company.

Held that there was not sufficient similarity in the businesses carried on, or sufficient likelihood of confusion in the mind of the public to entitle to the restraint sought.

This case is reported *ante ut supra.*

The Dunlop Pneumatic Tyre Company, Limited (the complainers), appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—The question here is—Ought the respondents to be restrained in substance from using the style and name of the "Dunlop Motor Company Limited" on the ground that it is misleading and enables them to acquire part of the goodwill of the appellants?

I think the pursuers in this case fail upon the facts. It is not necessary to enter into the evidence in detail. In each case it nearly always is a question of fact as it is here. The real complaint in this case was as to the use of the name "Dunlop." That name is the true name of the two brothers who got up the respondent company. I can see very little proof that anyone was misled by its use, and I can see no proof that any article was bought by anyone from the respondents in the belief that they were a branch of the appellant company. The two companies do not to any considerable extent in fact deal in the same articles, and I see no ground for thinking that the little repairing business in Kilmarnock does or can do any unlawful harm to the appellant company.

I am therefore of opinion that this appeal ought to be dismissed.

LORD JAMES OF HEREFORD—The complainers in this case, the appellants, have by themselves or their predecessors in title carried on business using the name of Dunlop to designate the goods manufactured and sold by them, and such name was stamped on most of the goods so manufactured.

These goods were principally tyres—and the name of the appellants' company, the Dunlop Pneumatic Tyre Company, so represents. Other goods, accessories used in relation to and on and about motor cars and bicycles, were also manufactured and sold by the appellants.

Previously to the year 1904 two brothers, Robert and John Fisher Dunlop, had carried on a small business at Kilmarnock under the style of R. & J. F. Dunlop. The principal business of this firm was that of selling and repairing bicycles and tricycles.

In 1904 a small company with very limited capital was formed under the name of the Dunlop Motor Company for the purpose of selling (on commission) and repairing motors and motor cycles and parts thereof.

The business carried on by this—the respondents'—company was a small local trade in Kilmarnock, and consisted principally in the repairs of motor cars and the sale of petrol.

The complainers, the appellants, seek to prevent the respondents' company from carrying on its business under the name of the Dunlop Motor Company, on the ground that the use of such name is calculated to deceive the public into purchasing the respondents' goods in the belief that such goods are those of the appellants'.

In my judgment the appellants have failed in making out this contention. They do not allege that they sell motors or any other vehicles, but they do deal in parts or accessories of such vehicles, viz., tyres, pumps, and other adjuncts, and they allege

that a confusion may be caused and a belief created that the respondents' company were selling these same portions as being those of the appellants.

Now, in what does the deception consist, and who were the persons deceived?

The complainers have no claim to the exclusive use of the name Dunlop. It is a common name in Scotland. The respondents had traded as R. & J. F. Dunlop. The appellants have chosen to announce themselves as the Pneumatic Tyre Company preceded by the name Dunlop, and their case seems to be that having done so they can shut out persons named Dunlop from employing that name in connection with a company at all similar in object to the tyre company. I agree that the objects of the two companies need not be absolutely identical in order to entitle the complainers to relief, but there must be great similarity. In this case I do not think that the measure of similarity established is sufficient either in the name employed or in the nature of the trade sought to be carried on.

The complainers say we are a pneumatic tyre company. The respondents represent themselves to be a motor company. Then, as I have said, the tyre company does not sell motors. The motor company appears to do so, or at least seeks to do so. If in respect of some minor articles there might be a common production, yet the main objects of the two businesses are different.

As to these minor articles I agree with the view expressed by Lord Kyllachy, that the complainers have not proved that they have any exclusive right in connection with the sale of those articles to the use of the name Dunlop, nor have they proved that the name in question has any special reputation or value in connection with such minor articles.

Then, secondly, who are they who will be deceived by the name used by the respondents? It appears to be admitted that an ordinary business person would not be misled, but it is alleged that the unwary would. Well of course there are unwary people in this world, but I think that a man who employs his own name in carrying on his business has the right to regard the people whom he may attract as being capable of exercising and being in the habit of exercising thought; and I cannot differ from the judgment of Lord Low, in which he says:—"Anyone who took the trouble to think about the matter would see that the respondents' company was a motor company and the complainers a tyre company. I do not think that the respondents are liable to have their business practically stopped unless they change their name simply because a thoughtless person might unwarrantably jump to the conclusion that they were connected with the complainers."

Under the circumstances of the case before your Lordships I do not think that the average citizen of Kilmarnock would be deceived, and I cannot speculate upon the degree of unwariness that would induce the confusion necessary to support the appellants' claim.

It is not without full consideration of the very lucid judgment of the Lord Ordinary that I have come to the conclusion that the decision appealed from is correct, and that therefore this appeal should be dismissed.

LORD ROBERTSON—I agree in the judgment of the Lord Chancellor.

LORD COLLINS—I am of the same opinion.

Their Lordships dismissed the appeal with costs.

Counsel for the Appellants—Sir Robert Finlay, K.C.—Clyde, K.C. Agents—Deas & Company, W.S., Edinburgh—John B. & F. Purchase, London.

Counsel for the Respondents—Upjohn, K.C.—Hon. W. Watson. Agents—Campbell & Smith, S.S.C., Edinburgh—John Bartlett, London.

Wednesday, July 24.

(Before the Lord Chancellor, Lord Ashbourne, Lord Macnaghten, Lord Robertson, Lord Atkinson, and Lord Collins.)

HOPE VERE *v.* HOPE VERE.

Husband and Wife—Antenuptial Contract – Divorce—Obligation in Scots Contract to Infeft in a Liferent after Decease, and in French Contract to Make Donation of a Liferent by the Marriage.

A domiciled Scotsman and a domiciled Frenchwoman, about to be married, executed in Paris two antenuptial contracts, the one in English in Scots form, the other in French and as required by the law of France By the Scots contract the husband undertook "to infeft and seize" the wife "in liferent during all the days of her life after his decease" in a free yearly annuity of £1500. The French contract, which narrated the existence of the Scots deed, and set forth in the early articles the wife's undertakings, in article seven, stated—"In complement of the deed to be executed this day in the form prescribed by the law of Scotland as above mentioned," the husband "makes by these presents a donation to his future wife in case she shall survive him, and by way of jointure, which she accepts in case of her survivance, (1) an annual liferent of £1500, in which she shall be vested by the mere fact of the celebration of the marriage, to be enjoyed by her during her life, and to be reckoned from the day of the death of the future husband, which liferent . . . shall, moreover, be secured by bond over the estates of the future husband situated in Scotland, but reducible to half in case of her second marriage, all as is to be provided for by the deed above mentioned executed in the form prescribed by Scots law. . . ."

The husband having been divorced, *held*, without deciding the effect of the Scots deed, that the two deeds not being conflicting must both be taken,