

LORD KINNEAR—If the motion is repeated, it will be the duty of the defender's representative to make a more specific statement than he is at present able to do.

The Court accordingly refused the motion *in hoc statu*.

Counsel for the Pursuers—W. C. Smith.
Agent—Alex. Morison, S.S.C.

Counsel for the Defenders—Rhind.
Agent—William Officer, S.S.C.

Friday, February 6.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.]

POTTER & COMPANY v. THE BRAÇO
DE PRATA PRINTING COMPANY,
LIMITED.

Copyright—Copyright of Design—Infringement—Patents, Designs, and Trade-Marks Act 1883 (46 and 47 Vict. cap. 57)—Relevancy.

The protection given to a copyright in design under the Patents, Designs, and Trade-Marks Act 1883 has no extra-territorial effect, and such a copyright can only be infringed by the application of the registered design to goods, or the sale of goods bearing such a design, in this country.

The proprietors of certain designs registered under the Patents, Designs, and Trade-Marks Act 1883 brought a suspension and interdict against a company registered in Glasgow, to have the respondents interdicted from infringing the said designs. The complainers failed to aver distinctly that the designs had been applied to goods, or that goods bearing the designs had been sold by the respondents in this country, and the respondents averred that they had never either used the designs or sold goods bearing them except in Portugal.

Held (rev. Lord Kyllachy) that the complainers had not relevantly averred any infringement by the respondents of their rights in the registered designs.

Edmund Potter & Company, calico printers, Manchester, for protection of certain designs registered under the Patents, Designs, and Trade-Marks Act 1883, raised this action of suspension and interdict against the Braço de Prata Printing Company, Limited.

In 1884 William Graham & Company, merchants, 55 Cathedral Street, Glasgow, with four other persons, carried on in Lisbon, Portugal, under the firm of William Graham junior & Company, the business of calico printers and dyers. In 1884 William Graham junior & Company transferred the plant, goodwill, and stock of the business to the respondents' company, which was incorporated in that year, and of which the principal shareholders were the partners of

William Graham junior & Company. The registered office of the company was at 55 Cathedral Street, Glasgow.

The complainers craved the Court (1) to interdict the respondent from infringing the complainers' rights in certain designs registered in the years 1887, 1888, and 1889 under the Patents, Designs, and Trade-Marks Act 1883, and which were specified and described by their registered numbers; and (2) "to interdict, prohibit, and discharge the respondents, by themselves or others acting for them, without the licence or written consent of the complainers, from applying or causing to be applied the said registered designs or any of them, or any fraudulent or obvious imitation of them or any of them, to goods in the foresaid class 13 for the purposes of sale, and from selling, publishing, or exposing for sale any article in the foresaid class to which such designs or any one or more of them, or any fraudulent or obvious imitation thereof, shall have been applied, other than goods manufactured by the complainers, and that during the existence of the complainers' copyright of said designs."

The complainers averred in statement 3—"The complainers have recently ascertained and they aver that in breach of their rights as proprietors of the sixteen registered designs enumerated in the prayer of the note of suspension, and without their licence or written consent, the respondents have applied or caused to be applied to goods in the said class 13 the said registered designs, or fraudulent or colourable imitations thereof, and have manufactured such goods bearing said designs, and have exposed for sale and sold in Lisbon and other markets in Portugal, Brazil, and elsewhere goods in the said class 13, to which the said registered designs, or fraudulent or obvious imitations thereof, have been applied, knowing that the same have been applied without the consent of the complainers. The complainers produce herewith a sheet containing a specimen of each of the said sixteen registered designs, and sixteen specimens of the goods which the respondents have printed or caused to be printed and sold in infringement of the complainers' rights as proprietors of these designs. The said goods, bearing the complainers' said designs so wrongfully and illegally applied, have been publicly offered for sale and sold, and are now being sold by the respondents, by themselves directly and through William Graham junior & Company, in Portugal, Brazil, and elsewhere; and the respondents have also carried on a considerable trade in this country for the sale and disposal of goods to which the complainers' said designs have been illegally and wrongfully applied as aforesaid. In this way the respondents undersell the complainers, so that there has been an almost total stoppage of orders from the Portuguese market, and from other markets supplied therefrom, for the complainers' goods, printed with their said sixteen registered designs, which prior to the infringement thereof by the respondents sold well in

Portugal, Brazil, and other markets supplied from Portugal. In so using the said designs both the respondents and Messrs William Graham junior & Company well knew that they were using the complainers' designs, and that the same were registered. The respondents, in order to enable them to copy the complainers' goods, ordered, either by themselves or through Messrs William Graham junior & Company, or through Messrs William Graham & Company, the grey cloth required, and had the same manufactured and bleached in this country, and also had the necessary rollers engraved with the complainers' designs in this country, this being also ordered either by the respondents themselves or through one or other of said firms of the Grahams for the respondents, in breach of the complainers' rights in said designs, the said rollers being used by the respondents for the purpose of printing the said cloth with the complainers' said designs." They also alleged that for some time prior to the present proceedings the respondents and William Graham junior & Company had been pirating their designs, and they reserved their claim for damages sustained through the respondents' infringements.

The respondents denied having printed copies of the complainers' designs except at their works near Lisbon, or having offered the designs for sale except in Portugal. They also denied that when they printed them there they knew that they were using the complainers' designs, or that the same were registered. They averred that in Portugal there was a register of trade-marks but no register of designs, and that there was no means of ascertaining whether designs were registered in other countries or not. They further averred that the proceedings of Messrs William Graham junior & Company in Portugal were in full accordance with the laws and practice of that country, but that as they were averse to having any litigation on the matter they had destroyed all the designs complained of, and were prepared to undertake that they would neither be printed nor in any way utilised.

They pleaded, *inter alia*—“(1) Irrelevancy. (3) In respect that the said designs are printed and applied to the goods only in Portugal, and the goods themselves sold only in Portugal, the respondents are entitled to absolvitor.

By section 50 of the Patents, Designs, and Trade-Marks Act 1883 (46 and 47 Vict. cap. 57) it is provided—“(1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration.” Section 58 provides—“During the existence of copyright in any design—(a) It shall not be lawful for any person, without the licence or written consent of the registered proprietor, to apply such design, or fraudulent or obvious imitation thereof, in the class or classes of goods in which such design is registered for purposes of sale, to any article of manufacture, or to any substance artificial or natural or partly arti-

cial and partly natural; and (b) it shall not be lawful for any person to publish or expose for sale any article of manufacture, or any substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, knowing that the same has been so applied without the consent of the registered proprietor. Any person who acts in contravention of this section shall be liable for every offence to forfeit a sum not exceeding £50 to the registered proprietor of the design, who may recover such sum as a simple contract debt by action in any court of competent jurisdiction.” By section 60 “copyright” is defined to mean “the exclusive right to apply a design to any article of manufacture or to any such substance as aforesaid in the class or classes in which the design is registered.”

On 24th September 1890 the Lord Ordinary (KINNEAR) passed the note, and granted interim interdict; and on 26th November 1890 the Lord Ordinary (KYL-LACHY) allowed the parties a proof of their averments.

The respondents reclaimed, and argued—
1. *On relevancy*—There was no relevant averments to go to proof. If the complainers had alleged that the respondents had applied the rollers to the fabric in this country, then a proof could not have been successfully resisted. It was not averred that the respondents had infringed in this country, but only in Portugal, and if, as the respondents alleged, this was not an illegal act in Portugal, no remedy could be obtained from the Courts of this country. The Patents, Designs, and Trade-Marks Act 1883 did not extend to Portugal, or indeed *extra territorium*—See Maxwell on Statutes (2nd ed.) 168-9; Bar's International Law (Gillespie's ed.) 363; Westlake's Private International Law (3rd ed.) 236. Any foreigner could have done with impunity what the respondents did here. If they were to be held liable, British merchants in Portugal would be put to an immense disadvantage with foreigners—*Phillips v. Eyre*, L.R., 4 Q.B.D. 225; *Goodman v. London and North-Western Railway Company*, March 6, 1877, 14 S.L.R. 449. From its very nature the Act of 1883 could have no extra territorial effect; it was a piece of positive and recent legislation, and the purpose of registration under it was to give notice that a particular design was protected. Under the statute an offence was committed only when one party applied a design to goods in this country for which he was aware another party had secured protection, or sold goods bearing such a design in this country. The respondents neither came under the statute in doing what was forbidden or in “causing it to be done.” 2. *On the question of interdict*—The Court in the present case should refuse the interdict craved, as the respondents were willing to undertake that the acts complained of would not be repeated. To grant interdict would make it appear that they had acted intentionally, whereas they had acted throughout in ignorance.

Argued for complainers and respondents—1. *On the question of interdict*—The interim interdict ought to be continued, as the respondents were not innocent infringers, but fraudulent pirates. All that was done abroad was to apply the rollers; everything else was done here. The effect of the Act of 1883 was to make the respondents liable if they applied the protected design anywhere—See Sebastian on Trade-Marks, 14, 15, and 16; Kerr on Trade-Marks, 431. [LORD PRESIDENT—The distinction between trade-marks and designs must be kept in mind.] The case of *Millington*, 3 Mylne & Craig, 338, showed that an injunction might be granted against the use of a trade-mark, even when it had been used innocently. 2. *On relevancy*—The complainers were entitled to a proof to show how their rights had been infringed. When the inventor and the infringer were both British subjects, the inventor was entitled to claim the protection of the Courts of this country to restrain the infringer wherever the infringement took place. No territorial question was raised here, and the fact that foreigners might infringe should not prevent the Courts from punishing a British infringer. The Statute of 1888 (51 and 52 Vict. cap. 50), sec. 7, read into the Statute of 1883 the words “cause to be applied.” This was a case of causing “to be applied,” as everything was done in this country but the applying of the design to the fabric. The respondents were thus brought under the 1883 Act, and its provisions applied—*Lord Advocate v. Witherington*, June 17, 1881, 8 R. (Just. Cas.) 41; *Scott v. Seymour*, 1 Hurl. & Colt. 219; *M'Larty v. Steele*, January 22, 1881, 8 R. 435; Copyright of Designs Act 1842 (5 and 6 Vict. cap. 100), sec. 3; Copyright of Designs Amendment Act 1861 (24 and 25 Vict. cap. 73).

At advising—

LORD PRESIDENT—The complainers Edmund Potter & Company have secured rights in certain designs which they have registered in pursuance of the Patents, Designs, and Trade-Marks Act of 1883, and the object of the present suspension and interdict is to prevent an infringement by the respondents of the rights thus secured to them for five years.

The prayer of the note of suspension and interdict is twofold. In the first place, interdict is sought against the respondents infringing the complainers' rights, which are specified and described by their registered numbers; but there is a further prayer to this effect—“to interdict, prohibit, and discharge the respondents, by themselves or others acting for them, without the licence or written consent of the complainers, from applying or causing to be applied the said registered designs or any of them, or any fraudulent or obvious imitation of them or any of them, to goods in the foresaid class 13 for the purposes of sale, and from selling, publishing, or exposing for sale any article in the foresaid class to which such designs or any of one or more of them, or any fraudulent or obvious imitation thereof, shall have been

applied, other than goods manufactured by the complainers, and that during the existence of the complainers' copyright of said designs.”

These two parts of the prayer raise quite different questions. The first raises the question, what constitutes an infringement of a copyright in design? but the second raises this larger question whether the rights secured to the complainers under the registration of their designs may be infringed by the production of goods of the same kind, or any fraudulent imitation of the goods secured by the registration of the design. And that leads one necessarily to inquire what it is that constitutes an infringement of a copyright in design. Now, the registration of a design in this country must be to a certain extent of a limited kind. It is impossible to say that a registration under a British Act of Parliament is to have effect all the world over, and that the manufacture of goods in a foreign country, although identical in pattern and design with those that are registered by the complainers, necessarily constitutes an infringement of their rights, because a British statute cannot have such an effect *extra territorium*. Suppose that in a foreign country such as Brazil, which is one of the countries mentioned here, a commercial firm manufactures goods which are identical in design with those that are registered under the complainers' copyright in design, it could never be said that that was illegal because it would be illegal in this country to do it. No doubt it would be illegal in this country in that way to infringe the rights secured by the law of this country, but it does by no means follow—on the contrary, it is quite obvious that it cannot follow—that the manufacture of goods of the same kind in a foreign country is therefore illegal—illegal either in that country or here. I say illegal either in the foreign country or here for the purpose of making this distinction. Of course it could not be illegal in the foreign country, because there is no right secured to the registered design in the foreign country, and therefore there can be no illegality in using or copying it. But I mean further to say that the manufacture by British subjects of goods in imitation of the design registered in this country cannot be illegal abroad, for the very plain reason that the infringement of a design of this kind consists in the production of the goods in this country, where they are protected, and nowhere else. The design is a thing that may be conveyed from the mind of one man to another, from a person in this country to a person abroad, without any illegality, and the person who has received that idea, either from the original designer or from anybody else, may in a foreign country legally manufacture goods of that description, if there is no law in that country to forbid him; and there is no law directed against the person of a British subject for doing anything excepting infringing copyright of design as registered in this country—that is, manufacturing goods in this country in fraudulent imitation of a design

which has been secured. It therefore appears to me that infringement of a copyright of design must consist in the production in this country of goods made according to the design—no doubt either for sale or use in this country or for exportation; but the goods which are under the statute forbidden to be manufactured are goods made in this country and nowhere else; and therefore my conclusion is, that to make this a relevant complaint in either of its branches you must have goods manufactured in this country by the alleged infringer. The point is very well brought out by the third plea-in-law for the respondents, which is in these terms—"In respect that the said designs are printed and applied to the goods only in Portugal, and the goods themselves sold only in Portugal, the respondents are entitled to absolvitor." That was the foundation of the opening argument for the respondents, and I confess I have never heard any good answer made to it; and therefore I am disposed to examine this record with a view to its relevancy for the purpose of seeing whether there is any allegation that comes up to this, that the designs were used in this country, or, in other words, that the goods were printed and manufactured here for the purpose of sale—were in a complete state either to be sold in this country, or to be exported for purposes of sale.

Now, keeping that in view, the important averment of the complainers is in the third article of their statement of facts, and what they say is this—"The respondents have applied or caused to be applied to goods in the said class 13 the said registered design or fraudulent or colourable imitation thereof, and have manufactured such goods bearing said designs, and have exposed for sale and sold in Lisbon, and other markets in Portugal, Brazil, and elsewhere, goods in the said class 13, to which the said registered designs or fraudulent or obvious imitations thereof have been applied, knowing that the same have been applied without the consent of the complainers." Now, in so far as that averment is concerned, we have no allegation that the goods were made in this country—that is to say, that goods were made in conformity with designs in this country for the purpose of sale here or elsewhere. The article goes on to say that the complainers produce a sheet containing a specimen of each of the 16 registered designs, and 16 specimens of the goods which the respondents have printed and sold in infringement of the complainers' rights, and then proceeds—"The said goods bearing the complainers' said designs so wrongfully and illegally applied, have been publicly offered for sale and sold, and are now being sold by the respondents by themselves directly and through William Graham Junior & Company in Portugal, Brazil, and elsewhere, and the respondents have also carried on a considerable trade in this country for the sale and disposal of goods to which the complainers' said designs have been illegally and wrongfully applied as aforesaid." Now, that is a somewhat ingeniously stated averment, because it leaves

a good deal to inference. It leaves one to infer that the goods were made in this country and then were sold abroad, but it is not distinctly alleged that they were made in this country and sold abroad, and that averment they were bound to make, especially in the face of the answer which is made to this statement, in which it is admitted that Graham & Co. have printed what now appear to be, but were not then known to have been, copies of the complainers' designs, but only at their works near Lisbon, and in no place or country subject to the operation of the Patents, Designs, and Trade-Marks Act of 1883. In the face of that answer it was the undoubted duty of the complainer to make his meaning perfectly distinct, and to say whether he meant to allege that the goods were actually made in this country in order to be sold abroad. I do not understand the complainers to make that allegation. There has been no proposal to amend the record for that purpose, and it seems pretty clear on the face of the record as it stands that he has no case of that kind. I am therefore of opinion that there is here no relevant allegation of an infringement by the respondents of a copyright design registered in name of the complainers under the Patents, Designs, and Trade-Marks Act of 1883; and I am for recalling the Lord Ordinary's interlocutor and dismissing the action.

LORD ADAM—The complainers here are the proprietors of the sixteen registered designs specified in the prayer of the note of suspension, and they seek interdict against their rights being infringed, and in particular, interdict against the respondents from applying, or causing to be applied, those designs to goods registered in class 13, being the species of goods which are manufactured here, or exposing for sale any article to which such pirated designs have been applied, and of course the complainers, like everybody else, are entitled to have interdict in order to protect their rights.

It appears to me that, in order that the complainers should be entitled to interdict, they are bound to prove that the parties complained against have infringed their just rights, or have threatened to infringe their just rights, and in order to be entitled to such a proof they must aver acts in breach of the complainers' rights, either actually done or threatened, and that raises the question whether or not there is any relevant case set forth on the record. That question, again, is rested on this, whether or not the Trade-Marks Act of 1883 has any application beyond the territory of Great Britain—beyond the United Kingdom—and whether it is effectual to prevent or does prevent acts of alleged infringement committed not in this country at all but in foreign countries.

Now, I do not propose to go through this record again, as your Lordship has already done so, but it is clear that the only allegations of infringement made are applicable to Portugal, and

Portugal alone. The allegation is that the respondents have applied or caused to be applied to goods in class 13 the said registered designs, and have manufactured such goods for sale, and have sold them in Lisbon and other markets in Portugal, Brazil, and so on. Then they go on to say that the goods to which these alleged pirated designs have been applied have been publicly offered for sale through William Graham & Company in Portugal, Brazil, and elsewhere—that, as I read it, is elsewhere than in this kingdom—and then they go on, with reference to the illegal application of the design, to say that the respondents, in order to enable them to copy the complainers' goods, ordered through Graham & Company the grey cloth required, and had the same manufactured and bleached in this country, and also had the necessary rollers engraved with the complainers' design in this country, in order that the completion of the application of these designs to the goods previously ordered might be carried out. As your Lordship pointed out, it is not said that the application of the design to the cloth was made in this country—in other words, that the manufactured article was produced in this country, and accordingly it humbly appears to me that both as regards the averment of the application of the design to the goods in class 13, and as regards the sale of the goods in which the pirated designs have been applied, there is no allegation here whatever that that was done in this country. The question therefore which arises, as your Lordship said, is this, whether or not the acts which the respondents do not deny they did, in applying the design to the goods in question in Portugal and selling such goods in Portugal, are struck at by any of the Patents or Trade-Marks and Designs Acts.

Now, I should say that *prima facie* there can be no doubt of the general principle that an Act passed in this kingdom is only intended to have application within the territory over which the Legislature of this kingdom has jurisdiction. It is not to be presumed that an Act passed in this country is intended to prohibit something being done in a foreign country where our legislature has no jurisdiction. It would require very strong evidence to satisfy my mind that, notwithstanding that principle, this particular Act was meant to apply to acts of British subjects *extra territorium*, and the question appears to me to be very much whether or not there are indications of that kind in this Trade-Marks Act of 1883—whether or not there is anything to take it out of the common case, that an Act passed by the Legislature of this kingdom is intended only to affect acts done in this kingdom. I can find nothing in the Trade-Marks and Designs Act indicating that there was any such intention on the part of the Legislature. On the contrary, I think everything points the other way. The clauses which bear upon designs particularly, and under which these proceedings are taken, begin at the 47th section of the Act of 1883, which provides for a register. Where is the register

to be kept? The party who wishes a design registered sends it to the Controller of the Patent Office; and where is the Patent Office situated? It is situated in London, and nowhere else. That points, it humbly appears to me, to local action, and nothing else. A person in this kingdom can apply at the register very easily to ascertain whether a particular design is a protected design, a registered design, or is not a registered design, but how can a British subject in Portugal, in Brazil, or anywhere else acquire that knowledge? That was an illustration that was put with great force by the Dean of Faculty. Suppose a person brings a design to a manufacturer of cloth in Brazil—a British subject—and asks him to manufacture cloth embracing that design. If he had access to the register in this country he could easily satisfy himself whether that design was protected or not. He would obtain the necessary information under the Act and under the Board of Trade rules, because the Controller is bound to give him the necessary information, and with such information in his favour he is perfectly safe to manufacture such goods. But how can a British subject abroad acquire that knowledge? He might in the most innocent way possible be guilty of infringing those designs, if you are to say that this Act has application to every British subject wherever he is. Then, if we look to the nature of the right which registration gives, we find, to my mind, the same indication. The provision conferring the right is contained in the 50th section, and the privilege there described is the privilege which the registration of the design gives. When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design for five years from the registering of the design. Now, we are familiar with copyright—perhaps more familiar with copyright in books than in anything else—but I never heard that the copyright which a man had in a book in this country extended beyond this kingdom. I never heard that a British subject who happened to be resident in the United States of America could not publish as many copies as he pleased of the work of a British author. It has no privilege there. It is copyright here, but not in the United States. Now, this right being a right of copyright also indicates to me very clearly, that the privilege so given was not meant to extend and does not extend beyond the area of this country, beyond the jurisdiction of the Legislature. Then we may take also the 58th clause, under which more particularly these proceedings were taken, and which provides that it shall not be lawful for any person without licence to apply or to cause to be applied such design to any class of goods—that is directed evidently against the manufacture—and the second part is against the sale, and provides that it shall not be lawful for any person to publish or expose for sale any article to which such designs have been applied. But what is the object of these two provisions? It is this, that

any person who acts in contravention of this section shall be liable to forfeit a sum not exceeding £50 to the registered proprietor of the design, who may recover such sum as a simple contract debt by action in any court of competent jurisdiction. Is that intended to be a direction to a person, a native of this country, that they can go to Portugal and sue him in a Portuguese Court for a penalty? I do not say it excludes such a thing, but I can only say that it points very clearly to local application—namely, application to a competent court in this country to recover a penalty for such unlawful proceedings. That also appears to me clearly to indicate that this is a local Act, in the sense of being confined in its application to British territory, and is not universal as was contended, and I do not think that any sufficient reason was adduced for putting another construction upon the Act.

It was contended that one of the other Designs Acts—the 5th and 6th Vict. c. 100—specially provided that the proprietor should have sole right to apply the design, provided the same was done within the United Kingdom, showing, as it was argued, that this particular Act of 5 and 6 Victoria was limited to the United Kingdom, and it was pointed out that the provision as to the same being done within the United Kingdom was not contained in the Act 24 and 25 Vict. c. 73; and it was argued, that seeing that the Act 5 and 6 Vict. was limited specially to the United Kingdom, the taking away of the words of limitation by the subsequent Act indicated that such acts were to be of universal application. But, as the Dean of Faculty pointed out, a very little attention to the terms of these Acts shows what the reason was. The Act 5 and 6 Victoria, c. 100, which enacted that the proprietor should only be privileged provided the application was within the United Kingdom, left it open to people who wished to pirate the designs simply to step across to the Continent, have the designs manufactured there, and then bring them here and sell them. It was to put a stop to that, and that only, that the subsequent Act declared that the application of the designs should be prohibited whether done in the United Kingdom or done abroad. That is to say, it was no longer to be possible simply to go away and pirate the design abroad, have the goods manufactured abroad, and bring them here and sell them with perfect impunity. It was to put a stop to that and nothing else that these words were deleted, and it appears to me very properly deleted, and therefore I think the removal of these words in the Act 5 and 6 Vict. gives us no indication that this effect of the Trade-Marks Acts was meant to have universal application.

I have only further to say that it does appear to me that it would be a very remarkable and improper state to leave British subjects in, because if the argument on the other side was right, it would come to this, that every person in Portugal, Brazil, or other foreign country, provided he was not a British subject, might manu-

facture and sell these goods *ad libitum* wherever he might be situated, but that if he had the misfortune to be a British subject he must stand by and take no share in the enterprise of producing or selling such goods, and be put entirely at a disadvantage in such matters as compared with natives and everybody else. It may have been a probable or possible intention on the part of the Legislature to do so, but I certainly am far from thinking it is so; and I think, upon the whole matter, there can be no doubt that the acts here, which to my mind are averred to have been done in Portugal and Brazil, and not within this kingdom, are not unlawful acts, and therefore, as in my view the respondents are not averred to have done anything or threatened anything in breach of the complainer's rights, I think this suspension ought to be refused.

LORD M'LAREN—I am of opinion that the exclusive privilege given under the copyright of design has no extra territorial operation except what it may receive from the agreement of parties, and in that respect it is a privilege precisely analogous in its extent and operation to the cognate privilege given to patentees of inventions dealt with in the same statute. If a party should, in exchange for some advantage or concession, offer not to make use of the other party's design abroad, and if that offer is accepted, of course the law will enforce it, but beyond that I do not think there is any right given to a proprietor of a registered design to complain of an imitation abroad.

I have really nothing to add to your Lordship's explanation of the law, and the additional observations of Lord Adam, unless to call attention to the 54th section of the statute, which may have been referred to, but I do not think it was referred to in argument. It is in these terms—"If a registered design is used in manufacture in any foreign country, and is not used in this country within six months from its registration in this country, the copyright in the design shall cease." Now, that section seems rather to point to its being lawful to copy a design in a foreign country, because the owner of the design would not be likely to make use of it abroad and at the same time refrain from producing his invention in the knowledge that he was thereby defeating the copyright given by the Act of Parliament. But the provision seems to be that if the owner has not thought his invention so good that he has made use of it for manufacture and sale in this country, and if it has been in public use elsewhere, then the public of this country shall be entitled to compete with the foreign maker. I do not attach much importance to the clause, but it does appear to me in some degree to strengthen the argument derived from the general scope of the statute, and the evident limitation of its effect contained in the clauses your Lordships have referred to.

LORD KINNEAR—I am of the same opinion.

The right which the statute confers upon the proprietor of a registered design is a right of copyright, and that is defined by statute to be an exclusive right to apply the design to certain articles of manufacture. Now, I think it is a very well-settled rule of international law, as we administer it in this Court, that an exclusive right of this kind does not extend beyond the territory of the sovereign by whom it is granted. And I think that general rule is very clearly recognised in this statute, because there is a provision under which persons may have the benefit of this statute, and under which it is assumed that British subjects may have the benefit of similar provisions abroad in the event of Her Majesty being pleased to make arrangements with the governments of foreign states for mutual protection of inventions and patents. It is not alleged that any such treaty has been made with Portugal, and therefore I am of opinion with all your Lordships that no right conferred by this statute extends to Portugal. Where there is no right there can of course be no infringement. No doubt it may be competent for the Legislature to prohibit British subjects from using inventions registered here, even in countries where no exclusive right would be conferred by our Legislature. The reasons in policy why such legislation should be considered improbable were pressed upon us very strongly by the Dean of Faculty, but the material consideration is that there is no such prohibition in this statute, because, as your Lordship pointed out, the statute does not operate by prohibition *in personam* but by conferring a right *in rem*, and where the right does not extend, the consequent prohibitions against infringement cannot extend either. I am therefore of opinion with your Lordship that the complainers have no exclusive right to use their designs in Portugal which we can protect by interdict against either British subjects or anybody else, and that therefore there is no relevant allegation of infringement.

The Court recalled the interlocutor, sustained the first and third pleas-in-law for the respondents, repelled the reasons of suspension, and refused the note.

Counsel for the Complainers—Graham Murray—Dickson. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Respondents—D. F. Balfour, Q.C.—Guthrie—Sir L. Grant. Agents—Fraser, Stodart, & Ballingall, W.S.

Friday, January 30.

FIRST DIVISION.

[Lord Trayner, Ordinary.]

COMMERCIAL BANK *v.* PATTISON'S TRUSTEES AND OTHERS.

Bank—Cash-Credit to Company's Cautioner—Interest—Effect of Voluntary Liquidation of Company Interest.

A company and five of its shareholders granted a cash-credit bond for an account to be operated on by the company. By the terms of the bond they bound themselves to pay to the bank on demand the sum of £1500, or such part thereof as should be due to the bank, with interest at 5 per cent. Subsequently, in consideration of the company being allowed an additional credit of £1000, two of its directors granted a letter of obligation binding the company and themselves to pay the bank the said sum, or whatever smaller sum might be overdrawn on the cash-credit account.

At the bank's annual balance on 31st October 1878, the amount drawn out under the cash-credit was £2468, and there were no operations on the account after that date, but on 31st October of each year the bank accumulated interest with principal, and carried forward the total. In November 1881 the company went into voluntary liquidation. In October 1884 a statement of account was sent to the liquidator of the company showing the sum then due with accumulations of interest to be £3164. On the 15th of the same month the liquidator wrote to the bank to "explain the wishes of the guarantors," informing the bank that the guarantors had great hopes that the properties belonging to the company would soon be sold, and that "they accordingly would desire that your bank should allow this account to remain in the position it is at present," and the bank in their reply agreed "to take no steps for payment in the meantime."

In 1888 the bank claimed from the cautioners under the respective obligation the principal sums of £1500 and £968 drawn out under the cash-credit in October 1878, with the interest annually accumulated thereon down to the balance in 1887, founding this claim upon the liquidator's letter of 15th October 1884 and the bank's reply thereto, and an alleged agreement by the cautioners therein contained, that they would be responsible for the accumulations of interest in consideration of the bank not pressing for immediate payment. Alternatively the bank claimed simple interest from 31st October 1881, the last balance before the company's liquidation.

Held (1) that the letters founded on contained no such agreement as the