

Friday October 25.

FIRST DIVISION.

(SINGLE BILLS.)

WILSON AND OTHERS,
PETITIONERS.

Company—Process—Petition for Judicial Winding-up—Induciae.

In a petition for winding up a company by the Court, the petitioners having averred that many of the company's creditors were resident in the West Indies, the Court allowed all parties having interest to lodge answers within twenty-one days after intimation, advertisement, and service.

Company—Winding-up—Petition for Judicial Winding-up—Provisional Liquidator—Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), sec. 149 (2).

The Companies (Consolidation) Act 1908 enacts—Section 149—“(1) For the purpose of conducting the proceedings in winding up a company . . . the Court may appoint a liquidator. . . . (2) The Court may make such an appointment provisionally at any time after the presentation of a petition and before . . . the first appointment of liquidators.”

In a petition for winding up a company by the Court the petitioners moved for the appointment of a provisional liquidator, in respect that many of the creditors of the company and the bulk of its assets were in the West Indies. The Court appointed a provisional liquidator.

Company—Winding-up by the Court—Provisional Liquidator—Powers of Liquidator Sanctioned by the Court—Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), sec. 151 (1) (a) and (b), (2) (a), (d), and (e).

Circumstances in which the Court authorised the provisional liquidator of a company (1) to carry on the business of the company until the appointment of a permanent liquidator; (2) to draw, accept, make, and endorse bills of exchange and promissory notes; (3) to borrow money on the security of the company's assets; and (4) to defend any action or other legal proceedings.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), enacts—Section 149 (2)—“. . . [v. sup. in rubric] . . .” Section 151—“(1) The liquidator in a winding-up by the Court shall have power . . ., with the sanction of the Court—(a) to bring or defend any action or other legal proceeding in the name and on behalf of the company; (b) to carry on the business of the company so far as may be necessary for the beneficial winding-up thereof. . . . (2) The liquidator in a winding-up by the Court shall have power, but . . . only with the sanction of the Court—(a) to sell the real and personal property and things in action of the company . . .; (d) to draw, accept, make, and endorse any bill of exchange or promissory-

note in the name and on behalf of the company . . .; (e) to raise on the security of the assets of the company any money requisite.”

On 17th October 1912 Gilbert Taylor Wilson, Broomrig, Dollar, the North of Scotland and Town and County Bank, Limited, Aberdeen, being subsequently sisted a party, presented a petition for winding up Wilsons (Glasgow and Trinidad) Limited, 166 Buchanan Street, Glasgow, by the Court.

The petition, *inter alia*, set forth—“As many of the company's creditors are in the West Indies, and the bulk of its assets are situate there, the petitioner considers it expedient for the preservation of these assets that the Court should appoint a provisional liquidator in terms of section 149 (2) of the” Companies (Consolidation) Act 1908.

On 18th October 1912 the Court pronounced an interlocutor ordering intimation, advertisement, and service, and allowing all parties having interest to lodge answers within twenty-one days, and further, on the motion of the petitioners and on cause shown appointing Charles Ker, C.A., Glasgow, provisional liquidator of the company.

On 24th October 1912 the said Charles Ker, as provisional liquidator of the company, Wilsons (Glasgow and Trinidad) Limited, presented a note to the Court for special powers under section 151 of the Companies (Consolidation) Act 1908.

The note contained, *inter alia*, the following statement—“The company carries on an extensive warehouse business in the island of Trinidad. This business consists in the wholesale and retail selling of goods of all descriptions, including hardware and soft goods, and there are at present stocks of goods lying in the company's warehouses or stores in Trinidad to the value of approximately £100,000. It is of the utmost importance, for purposes of advantageous realisation, and in order that the same may be disposed of as a going concern, that this store business should meantime be continued. The store is the largest of the kind in the island, and it is feared that to close it would bring about disastrous results, including the complete loss of the goodwill.

“About this season of the year it is usual for the company, through its head office in Glasgow, to purchase and ship to Trinidad large quantities of goods suitable for the Christmas trade. It appears there are at present on order for the company quantities of goods and other merchandise to the value of about £15,000, which it was intended to devote to this purpose. Goods for the Christmas trade will require to be shipped by the end of this month. In addition there are on order for shipment during the months of January, February, and March 1913 goods to the value of about £5000. The liquidator is advised that the fulfilment of these orders and the shipment of such new goods is essential to the beneficial realisation of the goods already in stock.

“By the interlocutor of 18th October 1912 the provisional liquidator was appointed in general terms and no special powers were conferred upon him. The provisional liquidator is advised that he has not power, without the consent of the Court, to carry on said business and to implement the above orders. Power is also required to borrow money on the security of the assets of the company in order to pay for such goods preferably out of the company's estate. It is believed that the purchase and shipment of such goods will have the approval of the company's creditors and shareholders as tending to promote the best interests of all concerned. It is also necessary to borrow money as aforesaid to pay wages and current expenses. These are approximately as follows—Glasgow establishment to, say, middle of December, £550; the Trinidad establishment to same date, £5850.

“It is also expedient that the provisional liquidator should have power to sell the goods and other merchandise of the company in ordinary course. In connection with such sales, as also in connection with the orders above referred to, it is necessary for the provisional liquidator to have power to draw, accept, or endorse bills of exchange and promissory notes in ordinary course of trade. It is also expedient that the provisional liquidator should have power to defend any action raised against the company.”

Counsel for the petitioners cited *Lochore and Capledrae Cannell Coal Company and Others*, March 2, 1889, 16 R. 556

The Court pronounced this interlocutor—

“Grant warrant to and authorise the provisional liquidator to carry on the business of the company, Wilsons (Glasgow and Trinidad) Limited, until the appointment of a permanent liquidator takes effect, should such appointment be made later, and in particular at his discretion (1) to implement the orders for goods and merchandise and other contracts already entered into by the company; (2) to sell in ordinary course the goods and merchandise belonging to the company, and to draw, accept, make, and endorse any bill of exchange or promissory note in the name and on behalf of the company in connection with the said orders for goods and sales; (3) to borrow money on the security of the assets of the company for the purpose of paying (a) the price and other charges in connection with the said orders for goods and merchandise and other contracts, and (b) the current wages and expenses, but that only to the extent of twenty-one thousand pounds sterling (£21,000), and said sum so borrowed to be payable out of the first asset of the company, and meanwhile to be a first charge on the assets and property of the same; and (4) to defend any action or other legal proceedings,” &c.

Counsel for the Petitioners—MacRobert. Agents—Webster, Will, & Company, W.S.

Wednesday, November 27.

OUTER HOUSE.

[Lord Hunter.]

BRODIE v. LONDON AND NORTH-WESTERN RAILWAY COMPANY.

Judicial Factor—Curator Bonis—Powers—Investment of Curatorial Funds in English Company—Authority to Curator to Register Stock in his Own Name—Acknowledgment of Trust by Endorsation on Stock Certificate.

A *curator bonis* to a lunatic purchased debenture stock of an English railway company as an investment for funds under his charge, and accepted transfers thereof in the name of his ward—*per* himself. The company, however, intimated that it was contrary to their practice to recognise trusts or limited titles on their register, and declined to enter the stock in the ward's name.

In an application by the *curator bonis* for special power to register the stock in his own name, the Court, in view of the fact that the transfer had already been taken in the name of the ward, granted the authority craved, but held that in investing in the stock of such English companies it had already been recognised that the appropriate course for a *curator bonis* was to register in his own name, and to endorse on the share certificate a statement to the effect that he held the stock for behoof of his ward.

Clark v. Accountant of Court, November 12, 1886, 14 R. 55, 24 S.L.R. 38, approved.

William Brodie, writer, Glasgow, *curator bonis* to John Proudfoot Dick, presented a note for special powers in which he craved authority as *curator bonis* “(1) to accept and sign the transfer or transfers for and to register in his own name £3800 of the 3 per cent. debenture stock in the London and North-Western Railway Company in the stock register of the said company, and (2) to accept and sign the transfer or transfers for and to register in his own name (a) any stocks of English railway companies and (b) any stocks transferable in the books of any bank authorised as investments under and by virtue of the Trusts (Scotland) Amendment Act 1884 and the Colonial Stock Act 1900, or any other Act amending or extending the same, and which may hereafter be purchased by the said *curator bonis* as investments for curatorial funds under his charge.”

In his report to the Accountant of Court the *curator bonis* stated the facts of the case as follows:—“The *curator bonis* having available for investment some of the curatory funds under his charge, in November 1911 instructed a firm of stockbrokers in Glasgow to purchase £3800 3 per cent. debenture stock of the London and North-Western Railway Company. The trans-