

“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-

fers for said stock were taken in name of the ward and were signed by the *curator bonis* as follows—"John Proudfoot Dick per his *curator bonis* William Brodie." On completion the said transfers were sent, along with the extract decree of the appointment of the curator, to the secretary of the London and North-Western Railway Company to be registered in the company's books. The railway company, however, refused to acknowledge the extract decree of appointment and to register the said transfers in name of the ward, and accordingly returned the transfers."

Answers were lodged for the London and North-Western Railway Company, in which they, *inter alia*, stated—"The respondents have no alternative but to place the names of all persons who purchase their stocks on their stock registers without qualification or notice of any trust. They are not entitled to register as an absolute owner any person whose title as presented to these respondents shows that he is not an absolute owner in his own right, and if the limited nature of his title appear in a stock certificate it would be inconsistent with the statutory provisions applicable to the respondents' undertaking."

The following authorities were referred to—*Accountant of Court v. Bennet Clark*, November 12, 1886, 14 R. 55, 24 S.L.R. 38; *Morrison, Petitioner*, November 19, 1901, 4 F. 144, 39 S.L.R. 114.

LORD HUNTER—This is an application made by a *curator bonis* of a Mr Dick. It appears that a certain amount of the estate of the ward being available for investment, the petitioner purchased £3800 3 per cent. debenture stock of the London and North-Western Railway Company, and the transfers for the said stock were taken in name of the ward, and were signed by the *curator bonis* as follows—"John Proudfoot Dick"—that is, the ward—"per his *curator bonis* William Brodie." On the transfers being completed they were sent along with the extract decree of appointment of the curator to the secretary of the company in London. The company refused to acknowledge the extract decree of appointment and to register the transfers in the name of the ward, and they did so upon certain specific grounds. In that situation the *curator bonis* has brought the present application for authority of the Court to accept and sign the transfer or transfers for, and to register in his own name, the £3800 3 per cent. debenture stock. The petitioner has also a general conclusion for authority to be given to him with reference to investments in English companies.

For a considerable time there have been certain difficulties with English companies owing to the fact that such companies do not recognise on their registers trusts or qualified titles and require registration to be in the names of individuals. That, as is seen in the case of *Morrison*, reported in 4 F. 144, has created difficulty in connection with the transfer of a ward's estate upon a

sale affected by the curator; but the present application is, as the Accountant of Court points out, the first application that has been made by a *curator bonis* for authority to invest in his own name. I see no objection to the first branch of the prayer of the application being granted to the *curator bonis* in this case. So far, however, as the second branch is concerned, I think it is quite unnecessary for me to deal with it. In fact I do not think there would have been any difficulty here at all if the *curator bonis* had followed in connection with this investment what the Accountant of Court points out has been the practice in the past in connection with investment by *curators bonis* of their wards' funds in companies which refuse to recognise limited titles. That custom is that the curator endorses upon a share certificate a statement to the effect that he holds the stock for behoof of his ward. Now the present *curator bonis* appears to have thought that by following this course he was in some way incurring personal responsibility. I have not heard from his Counsel what exactly the nature of his fear was, and so far as I myself can see or appreciate the point I think his fear was quite unfounded. That there is a recognised practice in a matter of this sort appears to me to make it quite unnecessary for the Court to pronounce a general finding, and the only reason why in this case I pronounce a particular finding is that in this case the transfers have been taken in name of the ward, and the *curator bonis* appears to have got an opinion that he was following a right course. If he comes with another application like the present I should have no difficulty in refusing it and in refusing the expenses as a proper charge upon the curatory funds.

The case I was referred to of the *Accountant of Court v. Thomas Bennet Clark*, 14 R. 55, appears ample authority for the proposition that without such an application as the present a *curator bonis* is entitled to invest in suitable English investments and to take the investments in his own name.

The Lord Ordinary granted the first and refused the second crave of the prayer of the note.

Counsel for the Petitioner—R. S. Brown.
Agents—W. & J. Mackenzie, W.S.

Counsel for the Respondents—Morison, K.C.—Strain. Agents—Drummond & Reid, W.S.