not, is the libel relevant in regard to dogs that are dangerous to sheep?"

These questions involve very much the same thing, and in the present instance an answer, either affirmative or negative, to the first must also dispose of the second.

Now, in regard to the limitation of the Act to dogs which are dangerous to human beings, there is certainly nothing in it expressly to that effect. Neither am I satisfied, looking at the statute in all its clauses, that any such limitation was intended. The title to the Act is quite general, being simply "An Act to provide further Protection against Dogs;" and the preamble is in the same terms. The second section, again, of the Act, being that on which the complaint is founded, provides that any Court of Summary Jurisdiction may take cognisance of a complaint "that a dog is dangerous and not kept under proper control;" and if it appear that such dog is dangerous, may make an order directing the dog to be kept by the owner under proper control or destroyed, and that failing compliance he shall be liable to certain penalties. Now, it is not said here that the dog must be dangerous to human beings, although, if that had been meant, nothing could have been more simple and easier than to have so expressed the enactment. Nor can I find anything in the other sections of the Act indicative of a limitation of the second section to dogs dangerous to human beings.

But it is only with the second section of the Act we have to deal at present; and considering that it contains no express limitation of its operation to dogs dangerous to human beings, but that in the generality of its words it is fairly, and I think not unreasonably, applicable to dogs dangerous to sheep, and it may be to other property as well as human beings, I am of opinion that the first question submitted in the case must be answered in the negative; and if so, it necessarily follows that the second question must be answered in the affirmative, as there can be no question or doubt, I think, that the complaint is relevant. The result on a proof we cannot anticipate, and this Court has nothing to do with it.

The result, therefore, is that the interlocutor or deliverance of the Sheriff-Substitute sustaining the respondent's objection must be reversed, and the complaint allowed to proceed, with a view to an investigation and disposal of its merits.

The Lord Justice-Clerk and Lord Gifford concurred.

Lord Neaves was absent.

The Court accordingly answered the first question in the negative, and found the libel relevant, remitting the case to the Sheriff for further procedure.

Counsel for Appellant—Burnet. Agent—James Auldjo Jamieson, Crown Agent, W.S.

Counsel for Respondent—Strachan. Agent—James Gardner, L.A., Solicitor, Bathgate.

Saturday, March 18.

FIRST DIVISION.

[Lord Rutherfurd Clark.

GILRAY (CURATOR BONIS TO ROBERTSON), PETITIONER.

Judicial Factor—Curator Bonis—*Powers.*

A *curator bonis* added to his ward's estate by purchase of certain subjects without judicial sanction. He then applied to the Court for their sanction and approval, and for authority to borrow over the subjects. The reason of the omission to apply before making the purchase was explained chiefly to be that if he had come to the Court and disclosed his intentions the price of the property would have risen in the market, and he would have been prevented from acquiring it. The estate was further said to be greatly benefited, and on remit to a man of skill that statement was confirmed.—*Held* that the rule which forbade the exercise of such a power without previous sanction is not of absolute inflexibility, and that in the special circumstances of the case the application might be granted.

This was an application by John Gilray, appointed on 2d April 1867 *curator bonis* to William Robertson, ironfounder, Edinburgh, then and still confined in the Royal Lunatic Asylum at Bothwell. It arose out of circumstances which were of so special a nature that the Court desired they should be reported at length.

The report to the Accountant of Court, dated 6th December 1865, upon which the application was made, was as follows:—

" . . . . The ward, previous to the time he became insane, carried on the trade of an ironfounder in the said foundry. On the *curator bonis* being appointed he continued to carry on the business of his ward, and still does so. During the period the *curator bonis* has conducted the said business he has rendered it very remunerative, and has also increased it to a very considerable extent, as will be seen from the different accounts lodged by the *curator bonis*, and the reports by the Accountant thereon.

" The ward at the date of the curator's appointment was proprietor of one-half of the tenement of land No. 112 Pleasance, the lower flat as well as the ground to the back of which was used by him as part of the foundry premises, and in connection with the said business, both by the ward and afterwards by the curator.

" The local authorities, on 30th September 1873, intimated to the ward and his curator 'that it has been ascertained to the satisfaction of the Magistrates and Town Council of the city, as the Local Authority under the Public Health (Scotland) Act 1867, that a nuisance exists in connection with the premises situated at 112 Pleasance, of which you are owner or part owner, in terms of the Act, in respect of insufficiency of size, defect of structure, want of repair, want of water and privy accommodation, rendering the tenement injurious to the health of the inhabitants, and unfit for human habitation or use.' And further, that 'proceedings under the said Act,

to have the said nuisance discontinued or removed,' would be immediately taken. This order practically condemned the property as it stood, or at all events occasioned such a thorough repair as to be unprofitable, and indeed impossible, without taking down nearly the whole property, and incurring a heavier outlay than has been put out by the curator as after-mentioned, while the return to the ward's estate would have been much less. This tenement was entered by only one common stair, and the other half of the tenement belonged to a Mr Kettle, who had been out of this country for many years. The rents of Mr Kettle's half had been drawn by holders of a bond for £400, granted by him upwards of forty years ago over this and some other property. These parties declined to concur with the curator in making the repairs so ordered, while these could not have been carried out by the curator alone on the half of the property belonging to his ward. To get over the difficulty, however, the holders of the aforesaid bond agreed to expose for sale the half of the property held by them, and this was done, when the curator, in order to conserve the property belonging to his ward, was in a great measure forced to purchase the other half at the price of £260. At the time that this property was so purchased it would have been highly impolitic and injudicious for the curator to have made any application to the Court, as in order to have justified the purchase he would have required then to have shown the value which he put upon the property, and to have explained his object in making the purchase. To have done so would have resulted in a competition which would have raised the price of the property far beyond that for which he acquired it. One of the advantages derived by the ward's estate from this purchase is the retention of the ground on which the tenement stood, part of which, and also the lower flat of the house, was used in connection with the foundry; and also the preservation of the usefulness of the background attached to the ward's other property, which would by itself have been too limited to be of much use. The foresaid purchase also gives entire property of an entry common to the two properties, and enables the curator to shut this entry up, and retain it as his own. The ward's half of the property produces a gross rental of £14, but after the foresaid intimation from the authorities, and for a year prior to the purchase of the property, the ward's half had stood empty and uninhabited. The tenants were warned out in consequence of a letter from the agent of the town, dated 6th March 1874, herewith produced.

"Since the purchase the curator has applied for and obtained a Dean of Guild warrant for the erection of new buildings in connection with the foundry, which have now been erected. These will materially increase the business facilities of the foundry, and also increase the value of the property belonging to the ward.

"In carrying out these erections the *curator bonis* incurred the expenses afterwards referred to, *videlicet*:—

"1. The price paid for said subjects, and the expenses of the transfer thereof, was £263 16 11

"2. He has also paid by cash and bill in accounts to tradesmen, . 381 17 3

£645 14 2

"Before erecting the said buildings and incurring the accounts before mentioned, the curator got the sanction of the heir-at-law of the ward to these proceedings, and an undertaking by him that the sum so expended by the curator should be a burden on the heritable property of the ward in the event of the said heir succeeding to the property. The agreement is produced herewith.

"The ward's wife and family also approve of the curator's proceedings, and have written a letter to that effect. The letter is produced herewith.

"The foundry proper is rented by the curator from year to year, but these premises were insufficient for and could not be used separately as a foundry. In this way the rent is cheap, and the curator is not likely to be put out as tenant. If he were to be so, he might not be able to carry on business in the ward's own property and the property purchased, although he is better with both these and the foundry proper.

"Although the curator has not the direct sanction and approval of the Court for carrying on the said trade, the Lords of the First Division, on advising (on 21st May 1872, 10 Macph. 715), a reclaiming note against an interlocutor pronounced by Lord Mackenzie, Ordinary, in the following terms, *videlicet*,—'*8th March* 1872.—Lord Mackenzie.—*Act.* Black.—The Lord Ordinary having heard the counsel for the *curator bonis* on the report by the Accountant of Court, No. 12 of process, refuses *in hoc statu* the motion of the *curator bonis* that Accountant be ordained to fix the commission to be allowed to the *curator bonis*. —D. Mackenzie,'—unanimously recalled that interlocutor, and directed the Accountant to fix the commission to be allowed to the *curator bonis* 'for the years from 30th June 1868 to 30th June 1871,' the period for which the *curator bonis* had then actually carried on the said foundry business.

"At the advising the Lord President, while expressing sympathy with the curator, who, his Lordship said, had boldly and generously carried on the business on his own responsibility, and advantageously for the ward and his family, guarded against implying approval of future management; and although not making any provision for future commission, he stated that he considered the curator entitled to commission for the past.

"Thereafter the *curator bonis* continued the said business until 1874, when, on a representation by him, Lord Curriehill (Ordinary), on 24th November 1874, allowed him a commission for the period between 1871 and 1874.

"With such encouragement in view, and seeing that the *whole* tenement was condemned as aforesaid, the *curator bonis*, when the half of said tenement which did not belong to him came to be exposed to sale by public roup, took advantage of such a favourable opportunity, and purchased the part for sale at the very moderate price of £260 sterling. The articles of roup under which the said subjects were exposed, and the disposition by George Hay and others, dated the 9th, 11th, 20th, 24th, 25th, and 26th days of February, and recorded 3d March 1875, conveying that part of the said subjects to the *curator bonis*, is herewith produced.

"Instead of making the alterations ordered by the authorities, the curator, after taking down

such part of the tenement which was ruinous, proceeded to erect the additional buildings before referred to, which have formed a very advantageous addition to the foundry, at a cheaper price than in any other circumstances could have been obtained; and has also been enabled at a cheap rate to utilise the ruinous and condemned property of his ward.

"The *curator bonis* would here beg to remind the Accountant that if the foundry business had been abandoned, or in any way materially interfered with, so that no profits had arisen therefrom, the ward's estate would long before this time have been exhausted, or at least greatly reduced, by the expenses of the maintenance of the ward and that of the ward's family.

"The *curator bonis* now proposes to borrow £200 over the said subjects, as now altered and improved, to enable him to meet the bills granted for part of these expenses, without interfering unduly with the capital of his ward or curtailing the said business. If this advance is granted, the *curator bonis* believes that he could pay it off in a few years.

"In these circumstances the *curator bonis* most respectfully craves the Accountant—

"To report these matters to the Lord Ordinary, with the view (first) of having the foresaid purchase by the *curator bonis* sanctioned and approved of; and (second) of granting warrant and authority to the *curator bonis* to borrow £200 over the said subjects."

In his opinion, the Accountant of Court, after narrating the facts, concluded thus—"The Accountant has no evidence before him from which he can judge whether the purchase by the factor, and his subsequent expenditure on the subjects, are likely to result in advantage to the ward and his estate, and it may be for the consideration of the Lord Ordinary whether an inspection of the premises should be made by a competent party under remit from the Court, with instructions to report on the state of the premises and their value either in connection with the adjoining buildings now occupied as a foundry or separately. The factor having acted *ultra vires*, though it may be in the interests and for the advantage of the ward's estate, the Accountant offers no opinion on his application for judicial sanction of his past actings. But if the Lord Ordinary grant that application, the Accountant is of opinion that the further powers craved to borrow a sum not exceeding £200, and to grant a heritable bond over the said premises acquired for the ward, may be granted."

The Lord Ordinary therefore remitted to Mr William Watherston, builder, Edinburgh, "to inspect the subjects mentioned in the said report, and to inquire and report on the condition and value of the same—(1) As at the date of the factor's purchase thereof; and (2) As the subjects now exist, together with any other facts and circumstances bearing on the question; whether the factor's said purchase and his subsequent expenditure on the said subjects, all mentioned in the report, were necessary or prudent in the interests of the ward and his estate."

Mr Watherston reported as follows:—

"I. In pursuance of the foregoing interlocutor, the reporter has examined the subjects as described in No. 16 of process, of the condition of which he had previous knowledge. The tenement, which belonged to two proprietors, was in a semi-ruinous conditition, and in such a state that the property of William Robertson (the ward) could not be repaired without at the same time repairing the property recently acquired by Mr Robertson's *curator bonis*.

"The expense of the repairs necessary to put the premises in a proper habitable condition to the satisfaction of the Local Authority would have been such as to deter the *curator bonis* from executing the repairs, as the return on the outlay from rental would have been quite inadequate. The fair market value of the property and pertinents belonging to the co-proprietor with the ward, as at February 1875, would be Two hundred and sixty pounds sterling to a purchaser other than the ward; but to him or his estate the property and pertinents were of greater value, in consequence of his having acquired by the purchase the exclusive right to three pieces of ground in connection with the property; these are situate on the east, north, and south of the tenement, which would give a feuing area of the value of (£25) Twenty-five pounds sterling at the least.

"Another important advantage which the ward's property derives from the purchase is that he has now a continuous frontage to the Pleasance (including the large new tenement of which he is also proprietor) of about ninety-two feet or thereby. The half of the old ruinous tenement above referred to, which belonged to the ward, was the northmost half, and this half was separated from the large new tenement above referred to by the southmost half of the ruinous tenement, so that not only could the curator not repair the ward's half of the ruinous tenement without at the same time repairing the half belonging to the other party, but he could not repair it to advantage, owing to the very small frontage. Now, however, there is a continuous frontage, which consequently increases the value both of the new tenement and of the northmost half of the ruinous tenement which belonged to the ward. Considering the whole of these circumstances, I am of opinion that it was really a matter of necessity for the curator to purchase the intervening half of the ruinous tenement if he meant to conserve the advantages and rights of his ward's property. To have allowed another party to have purchased this half would have materially lessened the value of the rest of the ward's property. I am also satisfied that as a matter of prudence and policy the factor acted rightly in purchasing the south half of the ruinous tenement as quietly as he possibly could.

"II. The area so acquired was of more value to the ward's estate than for feuing, as by its acquisition the foundry business carried on in adjoining premises would be more easily and profitably conducted by the increased area obtained for the manufacture of light and heavy castings.

"Before these operations could be carried on it was necessary to erect walls to enclose the front next the street, and brick or other pillars to carry beams, in order to have the area roofed in and protected from the weather. This has been carried out in a very judicious and inexpensive manner, at a cost of Three hundred and eighty-one pounds seventeen shillings and three-

pence, and the result is a large and well-lighted casting-shop, which would readily command a rent, for such purpose or many other purposes, of about £50 sterling per annum; but it is of more value than this at present, from its connection with the other works of which the ward is lessee.

"The reporter is of opinion that the purchase of the property by the *curator bonis*, and the subsequent expenditure thereon, has been of great importance to the ward's estate in carrying on the foundry business; and, apart from that, it leaves a subject of a marketable description, and of greater value than the half of the old tenement belonging to the ward, the cost of the other half tenement acquired by his *curator bonis*, and the subsequent expenditure of £381, 17s. 3d."

The Lord Ordinary pronounced an interlocutor reporting the case to the First Division, and added the following note:—

"The case is so special that in the opinion of the Lord Ordinary it should be dealt with by the Inner House.

"1. The *curator bonis* asks judicial sanction for the purchase of heritable property which he made without the authority of the Court. He says, with great force, that if he had asked for authority beforehand he would have raised the price against the estate, but if he chooses to act beyond his powers it may be questionable whether he can obtain the subsequent sanction of the Court.

"2. It is not disguised that the purchase was made to some extent at least with the view of enabling the *curator bonis* to carry on the business of the foundry to better advantage. The business has been successfully managed, and the Court has allowed the curator a commission for his past management, as it was beneficial to the estate. But in giving the opinion of the Court the Lord President said, 'we cannot sanction his carrying on the manufacturing with the funds under his charge, and we must not do what would imply an approval of his doing so.'

"3. But the curator states that the purchase was in truth a matter of necessity in order to preserve the estate. He says that the repairs which had been ordered by the Local Authority to be made on the estate of the ward could not have been executed without at the same time repairing the property which the *curator bonis* acquired, and that the owners or bond-holders of that property refused to concur in executing the repairs which were ordered. The reporter, to whom the Lord Ordinary remitted does, not go quite so far, but he is satisfied that the purchase was very beneficial to the estate of the ward, and represents it to have been in a certain sense a necessity. He is also of opinion that the sums laid out in repairs has been properly expended."

At advising—

Lord President—This is a matter of some delicacy, but the circumstances are undoubtedly very favourable to the application. The purchase of this property was in a manner forced upon the curator in order to prevent the property of the ward from being destroyed, and he seems to have made a good purchase, and to have turned it to a good account. The sum expended was considerable; the price of the property, including expenses, amounted to £263, and the alterations to £381; but it is impossible not to see from the report before us that this money was well spent, and that the property has been acquired on favourable terms.

That the act was beyond the power of the curator is plain enough; and if there had not been a good reason for his not consulting the Court in the matter, we could not have sanctioned it. But the reason given is quite satisfactory. If he had come to the Court and disclosed his intentions, the price of the property would have risen in the market, and he would thus have been prevented from acquiring it.

The only point of difficulty is, whether there is any precedent for our sanctioning such a course as the curator has taken here, and I am not aware that there is. But we have authorised a curator to purchase property the acquisition of which was of great importance to the ward. That was done in the case of *Watt* (Feb. 23, 1856, 18 D. 652) when power was granted to the curator of a lunatic to purchase the Crown's right in the alveus of a river lying *ex adverso* of the ward's property. Now, that being so, it might have been competent to us to give the curator power to make this purchase, and as he has assigned a good reason for not asking our authority I am disposed to sanction his actings.

He further asks for authority to borrow £200 over the subjects, to enable him to pay the expenses incurred in connection with the purchase and alterations, and that power, I think, must follow of necessity if we grant the other part of what is asked.

On the whole matter I am inclined to concede what the curator craves.

Lord Deas—I am very much of the same opinion. It is plain that if the curator had not taken the course he did nothing would have been left for the support either of the ward or of his family. If the curator had come to the Court he would have had difficulty in satisfying us prospectively that the purchase was sure to turn out favourably. He purchased the property without sanction, and it seems to me that every case of this kind must be considered on its own circumstances.

Here the real circumstances very distinctly appear. If we were to withhold approval from what has been done it would outrage common sense; it is a case where the curator has taken the step to prevent the absolute ruin of the ward and of his family, who are dependent upon him for support. Whether there is a rule of law or not, your Lordships have in previous cases indicated that you are not disposed to carry it so far as to effect the ruin of the parties concerned. I agree that we should here sanction the actings of the curator.

Lord Ardmillan—I concur. The rule of law which forbids any officer of Court occupying such a position as that of curator from exercising powers over the estate under his charge such as have here been used without first obtaining judicial sanction has been long recognised. Nothing that we do to-day indicates any departure from that rule. We only do not assign it an absolute inflexibility. Before we can relax it we must be assured of the necessity of the case which called for different treatment, of care and prudence in

the management, and of benefit to the estate under charge. All these are found here, and I think we may grant the curator the sanction and authority he wishes.

Lord Mure concurred.

The following interlocutor was pronounced:—

"The Lords, on the report of Lord Rutherfurd Clark, Ordinary, having heard counsel for the *Curator Bonis*—Remit to the Lord Ordinary to grant the prayer of the curator's application."

Counsel for Curator — Black. Agent — D. Curror, S.S.C.

Saturday, March 18.

FIRST DIVISION.

PETITION—CHRISTIE & OTHERS.

(*Ante*, p. 303.)

Company—Voluntary Winding-up under the Supervision of the Court—Companies Act 1862, *sections* 147, 148, *and* 151.

In an application under sections 147, 148, and 151 of the Companies Act 1862, for the voluntary winding-up of a company under the supervision of the Court, an order was made for intimation for two days on the walls and in the Minute-Book, and for advertisement, and thereafter the Court ordained the winding-up to continue, subject to its supervision, "with liberty to creditors and contributories to apply to the Court by motion."

This petition was the sequel of the case reported *ante*, p. 303, and was presented at the instance of G. Fyffe Christie and others, directors of the Glasgow and District Co-operative Society (Limited), with consent of John Wilson, its liquidator. After the judgment of the Court in the previous petition, an extraordinary general meeting of the company had been held, after due notice to the shareholders, on 2d March 1876, and an extraordinary resolution passed in terms of sub-section 3 of section 129 of the "Companies Act 1862." John Wilson had been further appointed liquidator, and the resolution of 3d May 1875, and the whole actings of Wilson under it, as previously reported, confirmed. The resolution had been advertised and recorded at the office of the Registrar of Joint-Stock Companies for Scotland. It was further stated in the petition that certain creditors of the company were raising actions and using diligence against it with a view to obtaining payment to the prejudice of the general body of creditors.

It was provided by the 147th, 148th, and 151st sections of the "Companies Act 1862," as follows:—Section 147—"When a resolution has been passed by a company to wind up voluntarily, the Court may make an order directing that the voluntary winding-up should continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others, to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just." Section 148—"A petition, praying wholly or in part that a voluntary winding-up should continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits and actions, be deemed to be a petition for winding up the company by the Court." Section 151—"Where an order is made for a winding-up subject to the supervision of the Court, the liquidators appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all their powers without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily; but, save as aforesaid, any order made by the Court for a winding-up subject to the supervision of the Court, shall for all purposes, including the staying of actions, suits, and other proceedings, be deemed to be an order of the Court for winding up the company by the Court, and shall confer full authority on the Court to make calls or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court, and in the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression official liquidators shall be deemed to mean the liquidators conducting the winding-up subject to the supervision of the Court."

The petition prayed the Court, after such intimation or service as seemed proper, "to pronounce an order directing that the said voluntary winding up of the said company should continue, but subject to the supervision of the Court, all as is provided in the 147th, 148th, and 151st sections of the 'Companies Act 1862;' and farther, to make such orders, decrees, and appointments, and to give such directions as are authorised and warranted by the said 'Companies Acts 1862 and 1867,' in so far as may be found necessary or expedient for facilitating the continuance of the said voluntary winding up, subject to the supervision of the Court."

The Court ordered intimation on the walls and in the Minute-Book for two days, and advertisement once in the *Edinburgh Gazette*, and once in the *Glasgow Herald* and *Daily Mail* newspapers, and thereafter pronounced the following interlocutor:—

"The Lords having resumed consideration of the petition, Direct that the voluntary winding-up of the Glasgow and District Co-operative Society (Limited), mentioned in the petition, shall continue, subject to the supervision of the Court, with liberty to creditors and contributories to apply to the Court by motion."

Counsel for Petitioners—Henderson. Agents—Mitchell & Baxter, W.S.
