

of winding up the business. Pending the petition he died, and after his death his trustees and executors craved to be sisted in his place. The application was refused.

This was a petition by a partner of a firm for sequestration of the partnership estate and appointment of a judicial factor to wind up the firm's affairs.

It was stated in the petition—On 1st April 1880 a firm of law-agents in Glasgow entered into a contract of copartnership with the petitioner, who had been a clerk in their service. Under this contract the capital of the new firm was to consist of £3000, of which £1000 was to be furnished by the petitioner and the remainder by the other partners; the petitioner was also bound to give his whole time and attention to the business, but the other partners of the firm, of whom there were two, were only to give so much time as might be necessary. It was also provided that the petitioner was to receive one-fifth of the profits, and all the partners were entitled to draw a certain sum monthly in anticipation of profits. The contract further provided for a dissolution in the case of death or bankruptcy, but there was no provision for the dissolution of the firm by a majority. The deed also provided for a reference in case of certain disputes or differences arising between the parties.

The petitioner presented in July 1884 this petition craving the Court to sequester the estate of the firm and to appoint a judicial factor to wind up its affairs. He set forth that though the business had been a prosperous one, his partners had been very extravagant and had far exceeded the stipulated amount of the drawings they were entitled to make under the contract; that in May 1883 he had pointed out that they were by so exceeding their proper amount of drawings bringing the firm into difficulties and making bankruptcy inevitable; that he had fallen into bad health, and was unable to attend to the business; that he had been persuaded by his partners to remain in it though he wished to retire, but that they had in May 1884 executed, as a majority of the partners, a deed of dissolution bearing that in consequence of his having been unable to attend to business from ill-health and other causes, and having infringed the contract in various ways, they declared the copartnership to be renounced and dissolved. This he alleged to be an illegal attempt to expel him, which was *ultra vires* of his partners. He further set forth that his partners had taken exclusive possession of the business and effects, and transferred the funds to their names.

The other partners of the firm lodged answers asking that the petition should be dismissed, and stating that the firm of which they were partners was quite solvent, and that the debt of the firm to the petitioner amounted to about £3000, which they were willing to pay to him under deduction of his drawings and all other proper deductions. They also stated that the pursuer from the state of his health and of his habits had not attended to the business according to the contract, and that he had subscribed certain obligations in breach of it, and that they were entitled to terminate the partnership. They offered without prejudice to pay him a sum of £2000 on his retreat, or to refer to the arbiters named in the contract the questions

raised as to his contraventions or as to the deductions claimed by them.

The petitioner died on 9th August 1884, and thereafter the trustees and executors under a trust-disposition and settlement lodged a minute craving that they might be sisted as trustees and executors in the place of the petitioner. In this minute of compareance they stated that the state of the firm had changed for the worse, and submitted that the respondents did not stand to the deceased's estate in the ordinary relation of surviving partners who might be safely trusted to ingather the estates of the firm, but were truly large debtors to it, whose obligations had recently increased and whose interests conflicted with those of the estate. They therefore craved that a neutral party should be appointed to wind up the firm.

The Lord Ordinary refused the application, and issued the following interlocutor:—"The Lord Ordinary having heard counsel on the motion for the comparers, the trustees and executors of the petitioner A. B., now deceased, to be sisted in terms of the minute, refuses the craving of the said minute."

Counsel for Petitioner—Brand. Agent—Adam Shiell, S.S.C.

Counsel for Respondents—R. V. Campbell. Agents—W. & J. Burness, W.S.

Saturday, December 20.

OUTER HOUSE.

ORR (MACLEAN'S TRUSTEE), PETITIONER.

Trust—Investment of Trust Funds—Colonial Stocks—Trust (Scotland) Act Amendment Act 1884, sec. 3.

Investment of trust funds in certain Colonial Government stocks approved after a report from a person of skill.

This was a petition by the trustee under the settlement of the late Donald Maclean, who died in 1853. The purposes of the trust were, so far as need here be narrated, for behoof of the testator's children. There was only one beneficiary in life at the date of the petition.

The estate consisted of house property in Edinburgh, and certain funds, including a sum of £3200 which had been for many years lent to the Glasgow Improvement Trust at 4 per cent., but had been repaid, the trustees declining to renew the loan at higher interest than 3½ per cent. The petitioner set forth that the beneficiary was in delicate health, and that the trust income being barely sufficient to meet his necessary expenditure, it was very desirable that there should be no diminution of income.

The trust-deed gave the trustees power to "alter, change, or vary such funds, stocks, or securities in or upon which they shall have lent or placed out the monies in virtue of the present trust, for others of the like nature, when and so often as it shall seem to them expedient."

The petitioner stated that he had been unable to find for the £3200 an investment yielding 4 per cent. of a class which he could of his own authority under the trust-deed or the statutes accept without incurring personal responsibility.

The Trusts (Scotland) Amendment Act 1884, enacts, sec. 3, that "Trustees under any trust may, unless specially prohibited by the constitution or terms of the trust, invest the trust funds (a) in the purchase of . . . 7. East India stock, stocks or other public funds of the Government of any colony of the United Kingdom approved by the Court of Session, and also bonds or documents of debt of any such Government approved as aforesaid, provided such stocks, bonds, or others are not payable to the bearer." . . .

The petitioner craved authority to invest the funds in certain Colonial Government stocks. The stocks proposed by him included "(1) Dominion of Canada 4 per cent. stock, redeemable, 1904/1908; (2) Dominion of Canada 3½ per cent. stock, redeemable, 1909/1934; (6) New South Wales 4 per cent. stock, redeemable, 1933; (7) New South Wales 3½ per cent. stock, redeemable, 1924; (8) New Zealand 4 per cent. consolidated stock, redeemable, 1929; (9) Queensland 4 per cent. stock, redeemable, 1915/1924; (11) Victoria Government 4 per cent. railway loan 1881, redeemable, 1907; (12) Victoria Government 4 per cent. loans 1882 and 1883, redeemable, 1908/1913."

The Lord Ordinary (LORD ADAM) remitted to Mr Syme, manager of the British Linen Bank, to inquire and report whether the several colonial stocks set forth by the petitioner, or any of them, were such as the Court should approve of as investment for trust funds.

Mr Syme reported that having inquired from the best informed channels in London, he found that the stocks above mentioned were considered sound investments, and such as might be approved of without hesitation. He reported that he could not recommend certain other stocks named in the petition, being Nos. 3, 4, 5, and 10 of these mentioned in the prayer thereof.

The Lord Ordinary on 20th December 1884 pronounced this interlocutor—"Having resumed consideration of the petition and proceedings, with the report by Mr James Syme, Approves of the petitioner investing the trust fund mentioned in the prayer of the petition, or any part thereof, in the purchase of one or more of the stocks mentioned in the prayer, excepting Nos. 3, 4, 5, and 10, and that in such proportions as he may find expedient, and decerns."

Counsel for Petitioner—J. A. Crichton.
Agent—F. J. Martin, W.S.

Tuesday, January 6, 1885.

SECOND DIVISION.

[Sheriff-Substitute of
Lanarkshire.

THE COATS IRON AND STEEL COMPANY

v. ROWAN.

*Sale—Sale of Patent Article under Patent Name
—Disconformity to Contract—Warranty.*

An order was given for two "Wilson's Patent Gas Producers of 4 cwt. per hour size." The seller fitted up two of Wilson's

Patent Gas Producers of 4 cwt. an hour size, according to the system and plans of the patentee, but the purchaser rejected them on the ground that they did not burn 4 cwt. an hour. *Held* that having furnished the goods described, of the size and construction according to the patent, the seller was entitled to the contract price.

On 29th June 1883 Frederick John Rowan, civil engineer in Glasgow, wrote to The Coats Iron and Steel Company (of which the partners were William Jardine and Matthew D. Goodwin) as follows:—"In accordance with the arrangement entered into with your Mr Jardine to-day, I beg hereby to state that I undertake to supply you with the ironwork, bricks, and brickwork of two 'Wilson's Patent Gas Producers' of the 4 cwt. per hour size, erected as soon as possible at your works, for the sum of £130 each producer, nett cash; this amount includes Mr Wilson's charge for royalty." To this Mr Jardine, for the company, replied on the next day—"We accept your offer of yesterday's date, to supply us with two 'Wilson's Patent Gas Producers' of 4 cwt. size, for the sum of £130 each producer, including royalty." The patent consisted of an apparatus for producing gas by the patent combustion of coal, by the introduction of steam in a particular manner, by the arrangement of the parts of the producer, and by a steam-jet for forcing in air arranged in a certain manner. A producer might be of a size to burn any number of tons of coal.

Rowan thereafter, on Wilson's system, and after obtaining plans from Wilson, proceeded to erect two gas producers in the works, and about the end of August of the same year informed the company that they were ready for use. They were put to work, but the company did not succeed in getting them to burn so much as 4 cwt. per hour or produce the gas they expected. Rowan went out to see them. He thought they were not properly worked.

In the end of December of that year the company's law-agents wrote to Rowan's law-agents intimating that their clients rejected the producers as disconform to contract.

Rowan then raised the present action in the Sheriff Court of Lanarkshire at Airdrie, against the Company, for payment of £260 and interest, as the price of the two gas producers, which he alleged to be due to him by the defenders on his completion of his part of the contract constituted by the offer and acceptance contained in the above-recited letters, and which the defenders refused to pay.

The action was defended by the company, who averred:—"The producers were found when used not to consume 4 cwt. of fuel each per hour, and consequently not to supply the amount of gas which they wanted from them. They intimated this to the pursuer, who sent skilled workmen to examine the producers, but was unable to give any explanation of the failure, and refused to do anything further in implement of the contract. The defenders then themselves made a thorough trial of the producers, and found that they would not consume more than 2½ cwt. of coal each per hour. They averred that in supplying them with producers which failed to burn 4 cwt. per hour the pursuer had committed breach of contract.