section says that the notice shall contain "the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date on which it was sustained," and then it refers more particularly to the case now before us. It provides that it "shall be served on the employer, or if there is more than one employer upon one of such employers." Then it goes on to say that the notice may be served "by delivering the same to or at the residence or place of business of the person on whom it is to be served." Then a following clause is still more applicable to this case:—"Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office, or if there be more than one office, any one of the offices of such body."

That is what the Act requires in regard to service. Now, in this case there is no question whatever of the notice that was given being in accordance with the requirements of section 7. It contains the particulars necessary, and it was addressed to the defenders; but the objection taken here is that it was not properly served. Now, the jury have found in point of fact that this notice was delivered at the office of the company by the witness John Duncan on the morning of Thursday 21st January 1904. That seems to me, so far as service is concerned, to satisfy everything in the Act of Parliament. The Act requires service, and nothing but service, and provides that it will be served on the company by being delivered at their office. Now, that was done. But the objection taken was this, that it was put into an envelope addressed not to the defenders but to the cashier Bogie, and it was contended that the inference from that is that it was not actually delivered into the hands of the company. Now there is no substance in that objection at all. The jury has held that this notice was served at the company's office as required by the Act. Had it been addressed to the office boy or something less there might have been a question raised, but when it is addressed to a man Bogie, who is found by the jury to have been in charge of the company's office at which it was received, I think it would be idle to say that there was objection to that being good service. And therefore I see no objection to the service.

I entirely agree with your Lordship as to the general question of future proceedings. We have profited by the experience we have had in this case to review the matter.

LORD KINNEAR—I entirely agree on both points—that is to say, the grounds on which this bill of exceptions should be refused, and also on the general point.

I only add that I agree with what I understand to be your Lordship's opinion, that the statute itself, by providing that an action shall not be maintainable unless notice is given within six weeks, makes it clear that when a question of notice arises it is a prejudicial question which must be settled before anything else is done in the conduct of the process. The action cannot be maintained unless notice has been admitted or proved, and therefore if the fact of notice is disputed it should be settled by the Sheriff in the first place before the pursuer is allowed to go to proof on the case he alleges against his employer.

LORD KYLLACHY—I concur and have nothing to add.

LORD M'LAREN was not present.

The Court disallowed the exceptions, applied the verdict, and gave decree for the award of damages with expenses.

Counsel for the Pursuer—G. Watt, K.C.—Munro. Agent—P. R. M'Laren, Solicitor.

Counsel for the Defenders—Hunter—Horne. Agents—W. & J. Burness, W.S.

Thursday, July 20.

FIRST DIVISION.

[Lord Johnston, Junior Lord Ordinary.

TAYLOR (BROWNING'S TRUST'S JUDICIAL FACTOR).

Judicial Factor—Factor on Testamentary Trust—Powers—Special Powers—Position of Factor on a Trust Estate and of a Curator Bonis—Permission to Retain Shares with Liability for Calls.

On the application of the trustees a judicial factor was appointed on a testamentary trust estate which, *inter alia*, included a large number of £9 shares of a company with an uncalled liability of £8, 10s. per share, the total liability being nearly double the amount of the whole other trust funds. The factor found that he could only get rid of these shares upon a payment of £3 per share, and presented a note to the Junior Lord Ordinary asking power, in view of a probable appreciation, to hold and retain the shares for two years and thereafter for such period as the Accountant of Court should allow. His Lordship having reported the matter to the Division, the Court *granted* the power to retain *in hoc statu* without fixing any period, with a direction to the factor to report to the Accountant of Court should any change of circumstances occur.

William John Taylor, C.A., Glasgow, was on 2nd February 1904, on the application of the testamentary trustees, appointed judicial factor on the trust estate of the late Alexander Mackinnon Browning formerly of Blantyre. The estate, *inter alia*, consisted of 1696 ordinary shares of £9 each in the New Zealand Loan and Mercantile Agency Company, upon each of which there was an uncalled liability of £8, 10s. Upon May 25, 1905 the judicial factor presented a note to the Junior Lord Ordinary, Lord

Johnston, in circumstances which are fully detailed in his Lordship's opinion. In the note he, *inter alia*, craved his Lordship to authorise the judicial factor to continue to hold these shares for at least the space of two years and during such further period as the Accountant of Court should authorise, unless during such period the shares should become saleable.

By the following interlocutor, pronounced 1st July 1905, his Lordship reported the cause to the First Division of the Court:—"Reports the cause to the First Division of the Court to which it has been marked, and grants warrant for enrolling the same in the Inner House rolls."

Opinion—"The late Mr Alexander Mackinnon Browning, formerly of Blantyre, died on 3rd April 1902 in Australia, during a temporary residence there, survived by his widow and an only child Miss Robina Frazer Browning. Mrs and Miss Browning have continued to reside in Australia.

"Mr Browning left a settlement under which he conveyed his whole estate to Robert Parlane, Bonhill, Dumbartonshire, and Joseph M. Taylor, LL.D., Writer, Glasgow, as trustees. Substantially the purposes of the trust were for payment to Mrs Browning of the free annual income of the estate for her alimentary liferent use only, and, in the contingency of there being only one child, to hold and convey the residue, subject to her mother's liferent, to Miss Browning, under the declaration that in the event of her predeceasing her mother, leaving issue, the fee destined to her should be held not to have vested, and should be payable to and equally among her issue. Accordingly, Mrs Browning is restricted to an alimentary liferent, while Miss Browning has a fee which at best is subject to defeasance, and which, if certain other clauses, which it is not necessary to narrate, are considered, may be not even vested subject to defeasance, but may prove to be entirely suspended. I refer to the above in order to make it clear, with reference to the question at issue, that Mrs and Miss Browning have no such rights in the estate as would enable them by their consents to empower the parties administering the estate to deviate in any way from the strict lines of trust administration, or to give any effectual indemnity to the parties administering should the necessities of the estate require them to undertake abnormal responsibilities.

"The deceased's estate may be taken as of the value of £8000, excluding from consideration one asset, which is truly not an asset except negatively, but a very grave liability. For the testator left at his death 1696 ordinary shares of £9 each, 10s. paid, in the New Zealand Loan and Mercantile Agency Company. The liability for calls on these shares at £8, 10s. per share was therefore £14,416, or nearly double the whole other estate. The circumstances of this company have long been, and still are, such that this liability for calls is a very real anxiety to those involved as shareholders. Not only are the shares unrealisable in the ordinary sense, but they could not be got rid of except on payment of a very large sum to anyone taking them with their liability. In these circumstances, although the trustees-nominate accepted the trust and confirmed, they very soon came to the conclusion that they would not take the responsibility of managing the estate, and acccordingly they applied for the appointment of a judicial factor in January 1904, in order to their own resignation. Mr William John Taylor, C.A., Glasgow, was appointed judicial factor on the estate on 2nd February 1904, and he has found caution, given up a factorial inventory, and entered on the administration of the estate.

"The factor found, on investigating into the circumstances, that at the time of his appointment he could not get rid of the New Zealand Loan and Mercantile Agency Company shares and their liability for calls, except upon a payment of £4 per share, amounting to nearly £6800, a payment which would have substantially exhausted the estate and left only about £1200 for the widow's liferent and for the daughter, or whomsoever it may ultimately concern, in fee. He has, during the last twelvemonth, continued to watch the situation, and owing to the prospects of Australasian affairs generally, and of those of the New Zealand Loan and Mercantile Agency Company in particular, having improved with a change of seasons, he has found that he could now probably get rid of the shares for a payment of £3 per share, involving the sacrifice of about £5100 of the general estate, leaving him with a balance of about £2900. He himself is of opinion that in the interests of the estate he should continue to hold the shares, but he is not unnaturally averse to undertake the very grave responsibility involved at his own hand, and he has accordingly presented a note in the factory asking the Court to authorise him to hold the shares in question 'for at least the space of two years, and during such further period as the Accountant of Court shall authorise.' In his report the Accountant commits himself to no opinion, but he states that he is not aware of such powers having been granted, and therefore reports the matter to the Court. I have, however, had an interview with the Accountant, and discussed the matter with him, and he has informed me that, had the factor taken the reverse course, and craved authority to apply the necessary portion of the estate in getting rid of the shares in question, and freeing the estate from the corresponding liability, he would have felt himself justified in recommending that the power craved should not be conferred, at least *in hoc statu*. I have felt the situation to be so exceptional that I have not thought myself justified in dealing with the application without reporting it to the Inner House. I have been led to the conclusion that I ought to take this course, because, while, if I acted on my own responsibility, I should grant the application though only *sub modo*, the result one way or the other is of such grave importance to the estate and to those interested therein, and more par-

ticularly because, there being no contradictor, there would be no prospect of bringing my judgment under review.

"The point raised by the application is whether the factor is entitled to ask the Court to sanction the course which he proposes to take, so as to relieve him *a priori* of responsibility, or whether the factor must either act on his own responsibility or relieve himself by resigning. The question whether, should the Court entertain the application, it will sanction the course proposed, is subsidiary and depends on practical considerations.

"In determining the preliminary question, the first point for consideration is the precise relation of the Court to the judicial factor and the estate. In appointing a judicial factor on a lapsed trust—and that is virtually the position in the present case —while the factor appointed is to certain effects the officer of Court and responsible to it, the Court does not undertake the administration of the estate or make itself the trustee and treat the factor merely as its agent. I may refer to the case of *Ferguson* v. *Murray*, 15 D. 682, where in the course of administration of a lapsed trust, part of the estate being heritable property subject to a bond, the bondholders resorted to an action of maills and duties, thereby summarily dispossessing the factor, who hitherto had been managing the property. It was held that the estate was not by the appointment of the factor *in manibus curiæ*, so that the freedom of creditors to proceed in ordinary course of law should be in any way interfered with. I refer to the case not because its circumstances are analogous to those of the present, but only for the expression of opinion of the Court in defining the position of the factor—'We must look to the object and nature of the appointment' (*per* Lord President Colonsay). 'The matter depends entirely upon the nature of the appointment. There is merely a failure of the family trust, and the appointment was made to defend the interests under that trust' (*per* Lord Fullarton). 'It appears to me quite clear that the powers of a judicial factor appointed to supply the place of trustees in a lapsed trust can never be greater than those of the party over whose estate he is appointed. The measure of a factor's power is exactly the same as that of the trustee, in whose place he comes, would have been had the trust subsisted. The factor takes the estate with all its burdens as if the trust had subsisted, and his duty is to execute the trust. The Court have always held the measure of his power to be the same as that of a trustee' (*per* Lord Ivory). These expressions are naturally limited by the subject-matter of the case which the Court had been considering, but I think that they support the view that not merely the powers but also the duties and the responsibilities of a factor appointed in lieu of trustees are the same as those of the trustees whose place he supplies. There are, it is true, superadded safeguards, in respect that the factor now reports to and is under the supervision of the Court through the Accountant of Court, but I do not think that he is in any way relieved of any of his trust functions to the effect of throwing the administration of the estate on the Court. I refer to *Hutton* v. *Annan*, 25 R. (H.L.) 23, 35 S.L.R. 416, where it was held that the passing of certain investments by the Accountant of Court at his annual audit of the accounts of a *curator bonis*, did not relieve the latter from responsibility for an improper investment.

"The chief difficulty which I have experienced in dealing with the case has arisen from the doubt—which I am personally satisfied is well founded—whether a judicial factor in room of trustees does not stand in a different position in relation to the Court from a *curator bonis*, factor *loco tutoris*, &c., who are more entirely the creatures of the equitable jurisdiction of the Court, and whether the former class of factors is entitled to come to the Court for instructions and powers in the same circumstances and to the same effect as are factors of the latter class, or are not bound to act on their own discretion in the same degree as the trustees whom they replace.

"The pupil or the lunatic is in a sense a ward of Court—though in Scotland Chancery terms are not used nor does the Court exercise such extensive intervention or accept such extensive responsibility as does the Court of Chancery. But a trust estate, even where a judicial factor is appointed in room of the trustees, is still a trust estate governed by the deed of the deceased. I am, of course, not referring to the case where an estate is sequestrated for any cause and placed under judicial management. Then it becomes properly *in manibus curiæ*.

"It is as well therefore to see what is the express provision of Mr Browning's settlement empowering his trustees in the matter of investment.

"It is this—'That my trustees in the execution of the trust shall be entitled to the fullest powers, privileges, and immunities enjoyed by gratuitous trustees, with power to them to invest my estate in the purchase of heritable property, to borrow money on security thereof, and to appoint any one of their own number to be law-agent or factor to the trust; and my trustees shall have power of sale by public roup or private bargain, and persons transacting with them shall have no right to inquire into or see to the application of moneys paid to them, but shall be satisfied by their receipt therefor alone; and I declare that they shall not be liable for any omissions nor neglect of management so long as they act honourably and in good faith.' Accordingly, the powers and duties of Mr Browning's trustees were of the most common law kind, and the present question is not affected one way or the other by his settlement.

"In the next place, I do not find the position of a judicial factor *vice* trustees declining, resigning, or otherwise failing, is to any effect defined by statute or Act of Sederunt.

"The appointment of judicial factors was originally dependent entirely on the *nobile*

officium of the Court. But though the Court was, I understand, early in use to supply the failure of trustees, it is to be noticed that the Act of Sederunt, 13th February 1730, was in terms confined to factors of the class *loco tutoris*, &c.

"This Act of Sederunt was virtually superseded by the Pupils' Protection Act 1849 (12 and 13 Vict. c. 51), which was also in terms confined to the same class of factors, and section 7 provides pointedly for the application by such factors for special powers, and with reason, for the powers of such factors are derived from the Court solely. They neither represent a truster nor take their powers derivatively from him in succession to his trustees-nominate. This Act established for the first time the office of Accountant of Court.

"Prior to 1856 there was no statutory provision for the appointment of judicial factors on the estates of deceased persons, whether testate or intestate, and no express provision for the regulation of such factories. By the Bankruptcy Act 1856, section 164, provision was made for the appointment of factors on the estates of deceased persons. But its object, though its terms might receive wider application, was to provide summarily for the administration only of estates left derelict and subject to claims, though not necessarily bankrupt, on the death. And realisation and division according to a scheme to be approved was all that was contemplated, not a continuing administration. The only thing which was, as I read the section, subjected to the direction of the Court, as precedent to the factor's action, was the realisation of heritage.

"It was the Trusts Act 1867 that incidentally made statutory the method of appointing, as in the present case, 'of a judicial factor to administer the trust' where trustees desired to resign and could not otherwise provide for the continuance of the trust after their resignation. But it does not appear that there is any special provision either in the statute or by Act of Sederunt in any way further defining the position, functions, &c., of such factors. I think accordingly that such factors stand exactly where they were prior to the statutory enactments above referred to.

"I have further considered the few cases which have occurred where the liability of judicial factors in realising and investing factorial estates has been in question — *The Accountant of Court* v. *Baird*, 20 D. 1176; *Crabbe* v. *White*, 18 R. 1065, 28 S.L.R. 806; *Cowan's Trustees* (*in Ferrie's Curatory*), 24 R. 590, 34 S.L.R. 449: and *Hutton* v. *Annan*, *supra*, were all cases of factors *loco tutoris* or curators *bonis*. *Guild* v. *Glasgow Endowment Board*, 14 R. 944, 24 S.L.R, 676, was the case of a judicial factor on an executory estate.

"From these it would appear that factors *loco tutoris* and curators *bonis*, and therefore *a fortiori* judicial factors on trust estates, have substantially the same responsibility as trustees in the matter of investment. And I may here note that the Trusts Act 1884, widening the powers of trustees in the matter of investments, includes under the definition of 'trustee' all classes of judicial factors.

"Lastly, it is necessary to look at the cases in which the Court has intervened to give directions or approval regarding investments on the application of factors or otherwise.

"In the old case of *Wright*, 1701, M. 7429, the Court very markedly refused directions, and left a factor to act on his own discretion and on his own responsibility.

"The case of *Bontine's Curator*, 8 Macph. 976, 7 S.L.R. 641, was that of a curator *bonis* to a lunatic. And the ward being involved as partner in the lease and working of a Welsh slate quarry, which had not proved successful, the curator obtained powers to unite with the other partners in turning the business into a limited company, with a view of limiting his ward's liability, as he could not apparently extricate his estate from the adventure entirely.

"In *Grainger's Curator*, 3 R. 479, 13 S.L.R. 308, the curator having made certain investments on the security of local rates, the Accountant of Court required him to realise these investments, but, at the desire of the curator, requested instructions from the Lord Ordinary, and on report by the Lord Ordinary the Inner House approved the investments and instructed the Accountant to withdraw his requisition for realisation.

"In *Lloyd's Curator*, 5 R. 289, an investment in railway debentures was brought in the same way before the Court at the request of a curator *bonis*, but the Court disposed of the case by finding that debentures of railway companies were securities which the Accountant of Court may sanction as investments for funds in the hands of a curator *bonis*, provided he is satisfied that the special investment is a good and safe one of its class.

"In the case of *Dunn* v. *Chambers*, 25 R. 247, 35 S.L.R. 203, where the validity of the sale under direction of the Accountant of Court of the ward's shares in a mercantile company by her *curator bonis* was in question, it was incidentally observed by Lord M'Laren, p. 250, 'to begin, the Accountant's opinion was not absolutely binding on the *curator bonis*. Mr Mowat was an officer of Court, and he might have applied to the Lord Ordinary, and if necessary to the Court, for authority to hold the shares for a definite term, or until he should be able to test their value.' It does not, however, appear that this has ever been done except in the solitary instance to be now mentioned.

"The Accountant of Court has also informed me that he finds that in the case of *Barr's Curator bonis* in 1898 (unreported), where the ward was sole partner of a bonded warehouse business, power was given in the Outer House, on strong representations as to the absence of risk in such businesses, first to float the concern as a limited company, accepting payment

for the ward's interest chiefly in shares, and afterwards to retain the shares for a year, and for such time thereafter as the Accountant of Court might approve. These are the only cases I have been able to find bearing on the Court's intervention in the matter of investments, and it will be observed that they are all cases of *curatores bonis*, between whose position and that of factors on trust-estates I conceive, as I have above indicated, that there is a difference.

"But notwithstanding that difference, I should myself be disposed to say, though the general rule is that it is the duty of judicial factors of all kinds to realise funds of the estate involved in business ventures or otherwise speculatively invested, that where such realisation involves so serious a question of responsibility, the factor, even though a factor *vice* trustees under a settlement, is entitled to the direction of the Court as to the course he should follow. Otherwise, for his own safety, the factor may be compelled to relieve himself by prematurely parting with the major part of the trust estate to effect the realisation of the loss upon the particular asset, against the real interest of the estate, or to be compelled to resign, in which case presumably no other satisfactory factor would be likely to accept the position.

"I should therefore be disposed to authorise the factor to retain the shares, but only *in hoc statu*, and for no definite term, with instructions to communicate with the Accountant of Court, not merely in his annual reports, but at any time should any change of circumstances occur.

"But, as above mentioned, I have thought it proper to report the matter to your Lordships for instructions."

During the course of the hearing, the Court having indicated a desire for information as to the English practice in the case of such applications, a letter was produced from a firm of English solicitors of good standing who stated that they had consulted one of the masters of the Supreme Court on the subject and also the official solicitor, and summed up the result of their inquiries as follows:—"Therefore we have no hesitation in advising that the practice of the English Courts is to give ordinary trustees liberty to hold shares involving liability for uncalled capital for a limited period (to be renewed on reasons justifying the application) so long as there is kept in hand sufficient estate to meet the calls should they be made. In deciding upon similar cases the English Court invariably gives great weight to the reasonable wishes of the persons for the time being entitled to the property in question."

Counsel for the factor argued — The applicant was entitled to the sanction of the Court as one of its officers in very special circumstances of great difficulty. In the case of *Lindsay*, December 9, 1848, 11 D. 232, the Court had authorised a payment by a judicial factor *loco tutoris* of a capital sum from the pupils' estate to transferees of shares owned by the factorial estate on which there was liability; but here, by holding, the estate would not be diminished by any such payment. The proposed operation had the consent of the persons presently in right of the trust funds. As the report of the Lord Ordinary set forth, curators had been granted very wide powers of a similar character, and the distinction between them and the present applicant was very slight. The matter for the Court chiefly to consider was the well-being of the trust estate, and that would be best served by granting the prayer of the note.

LORD PRESIDENT—This is a report by Lord Johnston, Junior Lord Ordinary, upon a note presented by a Mr Taylor, a judicial factor, asking for special powers. Mr Taylor was appointed judicial factor upon the trust estate of the late Mr Browning, who by settlement conveyed his whole estate to two gentlement in Glasgow as trustees. For reasons which will shortly appear the trustees found that they were unwilling to hold the estate of the testator, and resigned, and the present petitioner was appointed judicial factor on the trust estate. What then happened may be conveniently taken from the narrative which the Lord Ordinary gives in his opinion, which is this—[*His Lordship then quoted the 3rd and 4th paragraphs of the Lord Ordinary's opinion*].

I think that gives your Lordships the whole of the material facts upon which you have to come to a decision, with this addition, that we are told now that the prospects of the company have still further improved, and that although of course the liability for uncalled capital remains, yet at the same time the company at present has succeeded in paying up the arrears of interest upon its debenture stock, and that accordingly if affairs continue, as they seem likely to continue, as at present, there is every reason to believe that the company will resume paying a dividend upon its ordinary capital. We are also told that the prayer of the petition here is concurred in and urged by the beneficiaries who have at this moment an interest in the estate. I say, at this moment, because from the way in which the trust settlement is conceived the liferenter is certain but the ultimate fiar is not absolutely certain until certain events have happened.

There is no doubt that this is a novel application, and that it is one of considerable difficulty. Undoubtedly your Lordships would be the very last to countenance the idea that an officer of the Court such as a judicial factor should be encouraged to hold speculative investments, and I do not think it is too much to say that it is clearly the duty of a judicial factor in ordinary circumstances to get rid at once of all investments which by having uncalled capital subject the estate under his charge to a future and uncertain liability. I think that would be his duty even although the selling of the shares might involve what in ordinary words is called "a considerable sacrifice"—that is to say, that the shares might not bring in what the truster had

paid for them. But of course that is a different set of circumstances from the question of having to sacrifice a large amount of the trust estate in order to get rid of the liability. Even that might, I think, in some circumstances be the duty of a factor. But it is, I think, obviously a question of degree, and indeed the only authority which has been brought before our notice, and I am satisfied that Mr Horne has diligently searched for authorities on this matter, the only authority he has been able to find touching the question at all is just a case of that sort. It is the case of *Lindsay*, 11 D. 232, where a factor *loco tutoris* had a certain amount of shares on which there was uncalled capital, and the other shareholders, for it seems to have been a sort of semi-private company, offered to take over the shares and discharge all liability upon payment of the small sum of £158. The Court granted the application and allowed him to pay away that £158 so as to get rid of the liability. But as I have said that is not the question here.

Now, after all, one I think is entitled to begin the consideration of this question by thinking what an ordinary prudent man of business would do if the shares were his own. Of course as long as the shares are kept there is a risk. But I have no doubt upon the facts I have narrated that an ordinary prudent man of business in the circumstances would not pay £3 a share to get rid of these shares, that is to say, if his estate consisted only of the amount represented by this estate. If he were a wealthy man he might perhaps pay that sum, but if you suppose a man with a capital equivalent to the capital of this estate, I do not think that he would pay this amount of money and so reduce his capital in order to get rid of his liability for these shares. Therefore it really comes to this, whether your Lordships feel yourselves bound to prevent this judicial factor doing what an ordinary prudent man of business would do. For myself, I do not find myself compelled to go that length.

Your Lordships were anxious to discover if there was any practice in England to help us. There seems nothing to be found in the ordinary text books, but we have the advantage of a very sensible letter from a London solicitor who has made inquiry into the matter, and which points to this, that although the question might not arise in the same way, yet in special circumstances in England persons have been allowed to keep shares on which there was a liability for a limited term. This is an investment which must be watched, and if things were taking a turn the other way it might become the duty of the factor to save the little that would be left of the estate rather than lose it all. But in the meantime I do not think we would be stretching the powers of the Court in allowing this judicial factor to do what a prudent man would do, and that being so, I would suggest that your Lordships should take the suggestion of the Lord Ordinary and grant the prayer of the petition in the form suggested by his Lordship rather than in the form suggested by the petitioner.

His Lordship says this—"I should therefore be disposed to authorise the factor to retain the shares, but only *in hoc statu* and for no definite term, with instructions to communicate with the Accountant of Court not merely in his annual reports but at any time should any change of circumstances occur."

I think we should grant the prayer of the petition in that form, but I desire to make it excessively clear that we are not sanctioning any speculation, and I think that the moment these shares can be got rid of without sacrificing the rest of the trust estate, that then they ought to be sold or transferred at once, and should not be held on the speculative prospects of a rise in their value.

LORD M'LAREN—I agree. I look upon this as a point of considerable importance in the judicial administration of estates, where the estate consists of shares on which there is uncalled capital. Even when such shares are paying a dividend it is the recognised duty of a factor to realise prudently, because such stock is not suitable for trust investment. On the other hand, where there is reasonable expediency for keeping the shares the Court has sometimes authorised their retention. When it comes to paying a sum of money to an outside person to take the shares off the hands of a judicial factor, I hardly think that is a step which he would be entitled to take on his own responsibility, and I agree that this is an application for special powers which we ought to entertain, and to deal with according to our belief of what is best for the estate. A prudent man of business would hold the investment for a year or two years rather than give a sum of money to a transferee to take it over. What a prudent man would do in his own affairs, not by way of speculation but for the purpose of lessening the loss to his estate, is, I think, a proceeding which in the interests of this estate the Court has power to authorise.

LORD ADAM and LORD KINNEAR concurred.

The Court pronounced this interlocutor—

"Find that in the circumstances of the case the factor is entitled, and is hereby allowed, to retain the shares, but only *in hoc statu* and for no definite time, and direct the factor, should any change occur in the circumstances of the New Zealand Loan and Mercantile Agency Company, Limited, at any time to communicate with the Accountant of Court as to his continuing to hold said shares. With this finding and direction remit to the Lord Ordinary to grant the prayer of the note on the conditions specified, and to proceed."

Counsel for the Petitioner — Horne. Agents — Bonar, Hunter, & Johnstone, W.S.