

*paid this balance, took cession of the bond, and brought action against defendant, a tenth surety, for one thirteenth share of the 12,000*ƒ.*, being one twenty-fifth of the 20,000*ƒ.* unpaid by the principal debtor, and a proportion for four insolvent sureties. Defendant tendered one twenty-fifth of the 12,000*ƒ.* HELD, he was liable for one twenty-fifth of the 20,000*ƒ.*, but not, under the stipulations of the bond, liable for deficiency caused to plaintiff by the insolvency of the four sureties.*

On the 15th July, 1819, the plaintiff, the defendant, and twenty-three other persons executed a bond as sureties (*waarborgen*) for the behalf of the plaintiff and E. A. Buyskes, who were thereafter to bind themselves as sureties and co-principal debtors for 25,000*ƒ.* for G. Buyskes, in favour of the Lombard Bank. This bond of the 16th July, 1819, was in these terms: "Who declared to bind and interpose themselves as sureties for the aforesaid sum of 25,000*ƒ.* and the interest in favour of both of the here-inbeforementioned sureties, and that each of them only for and to the concurrence of a sum of 1,000*ƒ.* to that effect, and under promise and undertaking, as they, the appearers, by these presents promise and undertake, each of them to satisfy and pay the said sum of 1,000*ƒ.* of the said value, or so much less as shall in the course of time appear to be as yet unpaid by the aforesaid principal debtor, with the interest then due and payable upon the whole or the balance of the abovementioned capital sum in the course of time, each of them in the proportion of their abovementioned shares, and that upon the first demand to the aforementioned securities, E. Buyskes and J. F. du Toit, and as soon as both the lastmentioned sureties, Buyskes and Du Toit, &c., shall in the course of time be called upon, in virtue of the suretyship, &c., either for the entire or partial payment of the abovementioned capital of 25,000*ƒ.*, and the interest to grow due thereon."

1834.  
Aug. 28.

Du Toit vs. Vos.

The plaintiff and E. A. Buyskes ceded this bond to the Lombard Bank on the 31st December, 1819, and on the 11th January, 1820, the plaintiff and E. A. Buyskes, in a bond executed by them and G. Buyskes, bound themselves as sureties and co-principal debtors, for and with G. Buyskes, to the Lombard Bank, for the said sum of 25,000*ƒ.* Thereafter, G. Buyskes, in discharge of the bond of 11th January, 1820, paid to the Bank, on or before the 15th July, 1826, 5,000*ƒ.* Thereafter, between the 30th June, 1829, and 4th October, 1832, the Bank, in virtue of the bond of 16th July, 1819, which had been ceded to them as aforesaid, recovered 1,000*ƒ.* from each of eight of the

1834.  
Aug. 28.  
D<sub>r</sub> Toit vs. Vos.

twenty-five persons bound as sureties (*waarborgen*) in that bond, thus reducing the capital of the debt to 12,000*f.*, whereon the interest remained unpaid from the 1st January, 1832. Thereafter, the plaintiff, on 24th December, 1832, as one of the co-sureties in the bond of 11th January, 1820, was called on by the Bank to pay, and did pay, the said balance of the capital, being 12,000*f.*, with interest thereon from the 1st January, 1832, and obtained cession from the Bank of the two bonds of 11th January, 1820, and 16th July, 1819. Four of the twenty-five sureties in the last-mentioned bond had become insolvent. Plaintiff in this action claimed from the defendant 923*f.*, as being a thirteenth share of 12,000*f.*; maintaining that he was entitled to demand from defendant not merely a twenty-fifth share of the balance unpaid by the principal debtor, but so much more as, in consequence of the insolvency of the four sureties, plaintiff was unable to recover from them, provided that he did not demand more than 1,000*f.* in all from defendant. The defendant tendered 480*f.*, being a twenty-fifth share of the balance of 12,000*f.*, maintaining that in consequence of the Bank having been paid 8,000*f.* from eight of the sureties, he was liable for no more; but the Court held that the defendant was liable for one twenty-fifth share of the balance of the debt, viz., 20,000*f.*, which had not been paid by the principal debtor, and was not liable to make good to any extent the deficiency occasioned to plaintiff by the insolvency of the four sureties, and gave judgment for plaintiff accordingly, for 800*f.*, with interest from 1st January, 1832, and costs.

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COLONIAL GOVERNMENT *vs.* SANDENBERG, EXECUTORS OF  
MATTHIESSEN, AND JAN W. KLERCK.

*Where a bond of suretyship for the proper discharge of duty by a Government officer ("that he shall faithfully," &c.) did not bear the date of its execution. HELD that the sureties were thereby entirely discharged from liability; it being impossible for the Court to fix any date at which liability could be held to have arisen.*

Sept. 3.  
Colonial Govern-  
ment *vs.* Sanden-  
berg, Executors  
of Matthiessen,  
and Jan W.  
Klerck.

This action was brought by Government against the executors of the late C. Matthiessen, and against W. J. Klerck, to recover from them the amount of a certain sum due by the late Van de Graaff, as Vendue-master of Stellenbosch, to Government, in respect of his said office, which sum could not be recovered by Government from his estate, which had been surrendered as insolvent,—in virtue of a