

The plaintiff, in a replying affidavit, denied the warranty and alleged that he had only warranted that the car was in good running order.

C. L. Botha, for the plaintiff: See *Drouet v. Clark* (6 C.T.R. 12) and *Olds v. Dickens* (14 C.L.J. 158).

H. F. Blaine, K.C., for the defendant: The case of *Drouet v. Clark* (*supra*) is distinguishable as the Court did not find that the warranty set up had been proved. See *Truter v. Dunn* (1905, O.R.C. at p. 116), from the report of which it appears that when a car had been guaranteed in good working order but had proved unsatisfactory, provisional sentence was refused on a cheque given in payment for it.

The defence alleges fraud and consequently the Court will order the parties to go into the principal case. See *Crews v. Zweigenhaft* (8 C.T.R. 193).

C. L. Botha, replied.

MAASDORP, C.J.: Without going too much into the evidence at this stage we do not think that this is a case for provisional sentence. The defence set up, if established, would be fatal to the plaintiff's claim and we must, therefore, refuse provisional sentence, with costs, the summons to stand as summons in the principal case.

FAWKES, J., concurred.

Plaintiff's Attorneys: *McIntyre & Watkeys*; Respondent's Attorney: *C. J. Reitz*.

37 N.L. 126. 128.
43 F.D.L. 327
57 (4) S.A. 363 (S.W.)

LOURENS v. LOURENS (BORN LABUSCHAGNE).

1914. August 22. MAASDORP, C.J. and FAWKES, J.

Husband and wife.—Forfeiture of benefits.—Principle of division.

Where a forfeiture of benefits had been decreed in an action for divorce, *Held*, that the receivers appointed by the Court to divide the estate should be guided by the following principle: Land brought in by plaintiff, and land

purchased with defendant's money to be valued separately to ascertain which was the greater for the purpose of deciding whether there should be an actual forfeiture and the movables and land acquired by the spouses jointly in the course of the marriage to be divided equally.

This was an action for divorce on the ground of adultery. The parties had been married in community. The defendant did not deny the adultery but asked for a decision of the Court as to the principle on which the joint estate of the parties should be divided.

The plaintiff had brought some fixed property into the marriage and other land had been purchased with money belonging to the defendant. There was again other land which had been purchased out of the joint estate and a considerable amount of movable property.

The Court granted a decree of divorce with forfeiture of the benefits and after appointing two receivers heard counsel in argument as to the principle on which the property in the estate should be divided.

C. A. Beck, for the plaintiff.

P. U. Fischer, for the defendant.

The Court laid down the following principle in regard to the division of the estate:—

The land brought in by the plaintiff is to be valued by itself and also the land bought with the money of the defendant to be valued by itself for the purpose of seeing which of the two is the greater and of ascertaining whether there is to be a forfeiture or not. The movables and any land acquired by the spouses jointly during the marriage are to be divided equally. .

Plaintiff's Attorneys: *Fraser & Scott*; Defendant's Attorney: *G. A. Hill*.
