

refused. The applicant accordingly prayed that the Court would intervene and order a reduction.

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 NEY-GENERAL.

*Dickson*, for the applicant, cited sects. 145 and 146 of the Gold Law, 1896, and sect. 2 of Law 7 of 1896. The law empowers the Attorney-General to fix the amount of bail, but does not exclude the jurisdiction of this Court. The maximum punishment is two and a half years' imprisonment or a fine of 600*l*.

*De Wet*, for the Attorney-General, referred to sect. 66 of the Criminal Procedure Act (*b*). The subsequent Law 7 of 1896 gives the Attorney-General still greater discretion.

MORICE, J., held that it did not clearly appear that the Attorney-General had not exercised a reasonable discretion.

The application was therefore dismissed. No order with regard to costs.

Attorneys for applicant: *Roux* and *Ballot*.

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EX PARTE S. J. AND H. C. MINNAAR.

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*Coram* :  
 ESSER, J.

ANTE-NUPTIAL CONTRACT—REGISTRATION—LAW No. 5,  
 1882, SECT. 5.

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*Where an ante-nuptial contract was entered into before a notary, who had since died, without having caused this contract to be registered, and where neither the original nor a copy of this contract could be found, the Court allowed a new notarial contract in terms of the original, and after notice published to be registered; such contract not to have effect before date of registration, and not to affect rights obtained by third parties against one or both of the spouses between the date of the marriage and the date of registration.*

THIS was an application heard before Esser, J., in chambers. The applicants entered into a marriage by ante-nuptial contract at

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Potchefstroom in 1878. The notary, *Van Eck*, before whom the ante-nuptial contract was entered into, neglected to have it registered, and had since died. No copy was made, nor was the original contract found in the protocol of the said notary. Affidavits were filed with regard to the contents of the contract by both the applicants and the father of the wife, who were all present at the execution of the contract. The applicants now prayed for leave to have a new contract, drawn up in terms of the original one, registered.

*Lohman*, for the applicants, referred in support of the application to *In re Moolman*, 1 Juta, 25; *In re Potgieter*, Cape L. J., vol. iv. p. 286; *In re Moore & Saayman*, Cape L. J., vol. xi. p. 115.  
*Cur. ad. vult.*

*Postea.* 7th April.

ESSER, J.: In this matter an order was asked empowering the parties to have a certain ante-nuptial contract, entered into by them in the year 1878, re-drawn up and registered. The original contract had been executed in proper form at Potchefstroom before the notary *Van Eck*, who is now dead, and who neglected to have this contract registered, of which no copy exists, nor is the original to be found in the protocol of the said notary.

It appears from the documents that the parties were married in August, 1878, by the Landdrost of Potchefstroom, while on the marriage certificate there is an indorsement made by the Landdrost that the marriage is entered into by ante-nuptial contract. This, in addition to the affidavits of the parties and that of the father of the wife, compels the Court to hold that the estates of the spouses on entering into the marriage have been regulated by contract. Although now, unfortunately, the terms of this contract can only be ascertained from these witnesses, there exists no reason why I should not accept this evidence and obtain from it the terms of the contract, which for the rest contains nothing unusual. All the witnesses declare that they were present at the signing of the contract, and are in truth competent witnesses as to its terms.

Taking it, therefore, that this contract did in reality exist, and in the form as nearly as possible as mentioned in the affidavits, then we have to recognize the fact that the law very clearly provides that the regulation of the property, as fixed and determined

by the ante-nuptial contract, cannot during marriage be departed from; consequently, although somewhat late, this disposition of the property must, as far as possible, be restored in its entirety. This, however, may not be done except by respecting the rights acquired by third parties, who have *bonâ fide* dealt with the spouses under the belief that community of property existed between them.

I follow in this the Cape jurisprudence, referred to by the learned counsel, more especially as I think that the soundest practice will in future be established thereby. At the same time, I consider that I must connect with it the formal provisions of our Law No. 5 of 1882 in cases of lost transfer, mortgage bonds and other deeds, for the possibility of the reviving of the original contract as soon as the new one has been executed must be prevented. The order of the Court will therefore be, that leave be granted the parties to execute a new notarial deed of ante-nuptial contract in terms of the lost contract, as set out in the petition. Such contract, together with this order, to be published in the *Gazette*, and to be registered by the Registrar of Deeds, three months after the last publication. If during this period the original contract should be found, then it is to be registered, and not the new contract. In no event will the contract be of force before the date of registration, nor will it affect rights obtained by third parties against one or both of the spouses, between the date of the marriage and the date of the registration to be effected.

Attorneys for applicants: *Roux and Ballot*.

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