ROLFES, NEBEL & CO. *v.* F. NORRIS.

Coram:
KOTZÉ, C.J.
AMES-HOFF, J.
JORIS-SEN, J.

1897
1 *November.*

PROVISIONAL SEQUESTRATION (SETTING ASIDE OF)—COSTS.

Where the applicants had consented to the setting aside of the provisional sequestration of the estate of the respondent, who had paid them in full:—Held, *that the applicants must pay all the costs, as these had been occasioned by them*

THIS was an appeal from the judgment of *Esser, J.* Rolfes, Nebel & Co. applied for the provisional sequestration of the estate of F. Norris, and a rule *nisi* was granted. Before the return day Norris paid the claim of Rolfes, Nebel & Co. in full, and they consented to the setting aside of the rule. It appeared that Norris had made an offer of 10*s.* in the pound to his creditors, and had placed a certain Bingen in possession of his movable property. He had, however, refused to call a meeting of his creditors. When the rule *nisi* was set aside, Norris asked for costs against Rolfes, Nebel & Co. This was allowed by the Judge in Chambers, and against this Rolfes, Nebel & Co. now appealed.

Wessels (with him *Jacobs*), for the appellants: We are entitled to the costs of the application for sequestration, for it was due entirely to the conduct of the respondent that the application was made. The respondent induced us to believe that he was insolvent by making the offer of 10*s.* in the pound, and placing Bingen in possession of his movable property. See *Fletcher & Co.* v. *Le Sueur*, 1 Sheil, p. 203.

Esselen, for the respondent: Norris was never insolvent. He committed no act of insolvency, and he never represented to Rolfes, Nebel & Co. that he was insolvent. The mere fact of offering his creditors 10*s.* in the pound is no proof of insolvency. The appellants did not give him any notice that they were going to make the application. He had refused to call a meeting of his creditors, and, this notwithstanding, the applicants apply for the sequestration of his estate. When served with the rule *nisi*, he paid the appellants in full, and they were obliged to consent to the setting aside of the rule. This case is similar to that of *Rolfes, Nebel & Co.* v. *Green*, decided in this Court on 18th October

1897

ROLFES, NEBEL & CO. v. F. NORRIS.

Kotzé, C.J.

last. There the Court decided that Rolfes, Nebel & Co. must pay the costs.

KOTZÉ, C. J.: I think that Rolfes, Nebel & Co. must pay all costs. They obtained the provisional sequestration of the estate of Norris for the benefit of all the creditors, but they go and accept payment in full of their claim. The application for sequestration was unnecessary, for if Rolfes, Nebel & Co. had intimated to Norris that they intended making the application, he would in all probability have paid them in full, as he has done. It is due to them that the costs have been incurred.

AMSINCK and JORISSEN, JJ., concurred.

Appellant's attorneys: *Rooth* and *Wessels*.

Respondent's attorneys: *Roux* and *Ballot*.

Coram: KOTZÉ, C.J. JORISSEN, J. MORICE, J.

AFRICAN MINING AND FINANCIAL ASSOCIATION

v.

DE CATELIN AND MULLER N.O.

1897

17 *June.*
8 *November.*

SHARES INDORSED IN BLANK—AGENCY—NEGOTIABLE DOCUMENT—ESTOPPEL.

Where 1,400 *shares in the Bonanza G. M. Co., Limited, had been indorsed in blank by S. and J., the joint agents of the plaintiff company, as required by their power of attorney, and J., without the knowledge or consent of S., had pledged these shares for his own benefit to the Banque Française de l'Afrique du Sud, of which the defendants were the managers:*—Held, *in an action for recovery of these shares, that as S. by his conduct had enabled J. to pledge the shares, and as the bank had taken them* bonâ fide *in the ordinary course of business, the plaintiff company was estopped from claiming back the shares.*

Semble, *Share certificates indorsed in blank are, according to the general custom of the Johannesburg Stock Exchange, practically negotiable instruments.*

THIS was an action for the re-delivery of 1,400 shares pledged by Judel for his own benefit to the Banque Française de l'Afrique du Sud. The facts appear fully from the judgments.