

entitled to sell the shares pledged as security. (*Cf. Van Leeuwen*, vol. 2, p. 407 *in notis: Kotzé's trans.*)

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*Ferris vs Exors.
Estate of Dow.*

Esselen, for the defendant executors, read certain affidavits sworn by the executors, from which it appeared that the sale of the shares would not injure the estate. The power to sell is a *pactum*, and the applicant has the right to sell without an order from the Court, although *Van der Linden* does say that it is advisable to obtain such order.

Leonard, in reply: No reason has been adduced for refusing the order. It can do no harm.

KOTZÉ, C.J. : The Court grants provisional sentence, and is of opinion that, without deciding the question whether it was necessary for the applicant to come to the Court, as he is now before the Court, he is entitled to an order authorising the sale. Such order is therefore granted. There will be no order with regard to the costs.

DE KORTE and MORICE, JJ., concurred.

DE JAGER *vs.* THE STANDARD BANK.

*Capacity to sue for Provisional Sentence on behalf of Bank.—
Endorsement necessary.*

Where, in a suit for provisional sentence upon a promissory note held by a Bank, the Manager alleged in the summons that the Bank was the lawful holder, and sued in his personal capacity, the Court held, upon exception, that in the absence of an endorsement to the Manager by the Bank the plaintiff must be held to have no interest in the note, and refused provisional sentence.

This was an appeal from a judgment of the Landdrost at Krugersdorp. The summons in the Court below was upon certain promissory notes made by De Jager in favour of Clarke and Matthews, and endorsed by them to the Standard Bank or order. Summons was taken out by Rainier as

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manager of the Bank at Krugersdorp, and contained an allegation that the Bank was the lawful holder. No power of attorney to sue on behalf of the Bank was attached by Rainier to the summons, and there was no endorsement by the Bank to Rainier. Judgment was given by the Landdrost in favour of the Bank for the amount of the notes against De Jager, who now appealed against this decision.

Kleijn, for appellant : Rainier cannot sue as manager of the Bank without a power of attorney, and his title to the notes in his private capacity does not appear. There is no endorsement to him upon the note.

Esselén, for respondent : The exception now made was not taken in the Court below. We do not question or deny that Rainier cannot sue for the Bank without a power or endorsement. But the exception should have been taken in the first instance. If so, we should have asked to be allowed to amend our summons.

Kleijn, in reply : *Cf. Bekker vs. Meiring (Bekker's Exor.)*, 2 *Menzies*, p. 440. Rainier is suing in his private capacity, and there is no endorsement by the Bank empowering him to sue. He has no title in the promissory notes.

KOTZÉ, C.J. : The Court approves Mr. *Kleijn's* argument. Judgment in the Court below must be set aside, with the costs, and this appeal allowed, with costs.

DE KORTE and MORICE, JJ., concurred.

KEET vs. BENJAMIN.

Claim upon Bill of Exchange.

Where, in a suit for judgment upon a Bill of Exchange which was endorsed by Webster, p.p. Walker (the maker), it appeared that the endorsement was supported by a due power of attorney from Walker to Webster, the Court gave judgment for the amount of the note with interest a tempore morae.