1891.
Feb. 13.
„ 14.
„ 16.

Otto *vs.* Viljoen and Others.

Court. I give no opinion as to the legality or otherwise of the Church Union, nor do I wish to say anything about the rights of those persons who allege that as members of a *universitas* those who have not entered the union are entitled to all the church buildings and property. These two points, which were touched upon during the argument have nothing to do with the application now before the Court. I wish, however, to add this. When I was asked to hear this application I consented to sit as sole judge, for the law permits this to be done. As I have now ascertained what the precise question is, and that the parties have agreed to have the principal case finally settled, I consider it my duty to remark that, regard being had to Law No. 3 of 1883 and Law No. 1 of 1888, one judge sitting alone is not competent to deal with the principal case, and as I cannot sit with any of my brother judges in the case, owing to all of them having excused themselves on the ground that when they were advocates at the bar they gave professional advice in the case, there seems nothing for the parties to do, in the event of their not being able to settle the matter, but to have recourse to the Volksraad, the Legislature of the land, to have it dealt with there. The application is dismissed, with costs.

Moir, N.O., *vs.* Wood.

Sequestration.—Transfer of land by insolvent after sequestration set aside.—The date of registration is the date of transfer.

Where, in a suit for the setting aside of a certain transfer of land by an insolvent, it was pleaded that transfer was passed before the date of the provisional sequestration, although the transfer was only registered after such date, the Court held *that the rule to be followed is that laid down in the case of* Harris vs. Buissinne's Trustee (2 *Menzies' Reports*), *and that the transfer must be set aside.*

1891.
Feb. 18.

Moir, N.O. *vs* Wood.

This was an application for the setting aside of a transfer of a quarter share in an undivided quarter of a farm Elands-

drift. It appeared that on October 17th, 1889, Du Preez sold the above interest to Wood, and executed transfer. On October 28th the estate of Du Preez was provisionally sequestrated. On November 1st, 1889, the transfer was registered by the Registrar of Deeds. The plea was put in, on behalf of Du Preez, that he held as trustee, and it appeared in evidence that the farm had been bought with money belonging to other parties, and that practically Du Preez held for a syndicate. This, however, did not appear either on the transfer or in the declaration of purchaser and seller. The trustee of the insolvent estate of Du Preez now applied for the setting aside of the transfer to Wood.

Curlewis, with him *Esselen*, for plaintiff: Du Preez was the owner of a quarter share in an undivided quarter of the farm Elandsdrift, at the time that his estate was sequestrated here, and while under sequestration he gave transfer to Wood. At that time he had no control over his property, and as a matter of fact it was vested in the Master. Now Wood maintains that transfer was given to him in pursuance of a contract of purchase and sale between himself and Du Preez, and that the latter was merely trustee for a syndicate of which Wood was a member. Du Preez's transfer and the declaration of buyer and seller say nothing about such trust. As fraud has not been pleaded, no evidence can be admitted to vary the written documents. It is clear that Du Preez sold to Wood, and that is all. Du Preez got transfer on purchase from Palmer on September 8th, 1883, and he sold to Wood in 1889.

Jeppe, for defendant, cited *Buchanan's Appeal Cases*, 1880–84; *Preston and Dickson* vs. *Brode's Trustees*. This case shews that as Du Preez was trustee, plaintiff is not entitled to judgment. See judgment of De Villiers, C J.

Du Preez was a trustee. In 1882 there were first three persons for whom he held, and subsequently a syndicate was formed. In 1882 there was an agreement with Du Preez, and in 1883 already he got transfer as trustee. See evidence of Du Preez. The share sold to Wood was Du Preez's own share (*i.e.*, his share in the syndicate). Du Preez then held as trustee for Wood and the other members of the syndicate. As a matter of fact, £250 was paid for the farm. Du Preez never had any intention to hold for

1891. Feb. 18.

Moir, N.O. *vs.* Wood.

himself. (*Cf. Pocock's Trustee* vs. *Pocock's Executors, Buchanan* 1869, p. 153; *cf.* § 46 of the Insolvency Law.) The date of the provisional sequestration was October 28th, 1889. The transfer to Wood shews that it was passed on October 17th, 1889, eleven days before the insolvency, although it was only registered four days after the sequestration. The legal capacity of any man to give transfer must be decided as upon the date of passing transfer, and not as at the time of registration, whenever it may happen that the Registrar chooses to register.

Curlewis, in reply: The case of *Pocock's Trustee* has nothing to do with this case; nor is the case of *Biden's Trustee* applicable. Biden was merely a broker. *Harris* vs. *Buissinne* is clearly applicable.

KOTZÉ, C.J.: The Court is of opinion that as Du Preez has sold his share in the syndicate to Wood before his sequestration, but the transfer was not registered until after the sequestration, the case of *Harris* vs. *Buissinne's Trustee* in 2 *Menzies' Reports* is applicable. Consequently the transfer must be set aside, with costs.

AMESHOFF and MORICE, JJ., concurred.

JONES, N.O. *vs.* THE EXECUTORS OF JONES.

Querela de inofficioso testamento.—Does not pass to Executors.

Where J. W. J. died, appointing his widow universal heiress of all his property, but leaving it vested in his executors, who were to pay the profits to his widow, and eighteen months afterwards his father died, leaving a will in which D. J. (J. W. J.'s brother) was appointed his executor, and thereafter D. J. sued J. W. J.'s executors for the legitimate portion which shoula have come to his father, the Court held *that the* querela de inofficioso testamento *did not pass to the executor, as the father during his lifetime had done nothing to reduce his rights into possession.*