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—  
Roberts vs.  
Nourse.

it up and sold to various parties subject to the lease. Nourse bought a piece of this ground with a house upon it for £3,500 and spent £6,000 in alterations and additions. His ground rent amounted to 10s. per month. The rent was paid up to June, 1890.

Towards the end of April, 1890, Nourse went to see Fox and tendered the rent. Fox replied, "Don't trouble about that, if we want the money we always know to whom to go for it." Nourse then said he wanted the ground freehold. Fox replied he must first consult Bezuidenhout (the original owner of the ground) before he could give any answer. Nourse repeatedly asked for an answer with regard to the freehold.

*Hollard*, for plaintiff: The *onus probandi* lies upon Nourse.

*Leonard*, for defendant, was not called upon.

KOTZÉ, C.J.: The Court does not favour forfeiture, and is of opinion that Fox acted as Robert's agent, and as such had waived the right to cancel the lease upon non-payment of the rent. Judgment must therefore be in favour of defendant, with costs.

DE KORTE and JORISSEN, JJ., concurred.

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CURTIS, N.O. vs. THE MINING COMMISSIONER OF JOHANNESBURG.

*Pegging upon stands.—Refusal to renew licence by Mining Commissioner.*

*Where, in an application for the confirmation of a rule nisi calling upon a Mining Commissioner to show cause why he should not be ordered to renew certain two prospecting licences, it was proved that applicant had pegged upon ground already granted to M. as stands, M. having been in previous possession under prospecting licences, the Court*

held that the Government had the right to turn prospecting claims into stands, and had not in the present case used such right inequitably, and set the rule *nisi* aside.

This was an application for the confirmation of a certain rule *nisi* calling upon the Mining Commissioner to show cause why he should not be ordered to renew certain two prospecting licences, or to issue diggers' licences in place thereof upon the proclaimed farm Turffontein, the property of Bezuidenhout. The ground had been granted as stands to Mundt before the pegging, and plaintiff's predecessor in title had been warned by the Mining Commissioner not to peg on that spot. Mundt originally held his ground under prospecting licences, before it was granted in stands. Mundt, who was in possession of the ground as stands, obtained leave to intervene.

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*Leonard*, with him *Curlewis*, for the applicant : As soon as a farm has been proclaimed any person has the right to take out licences to prospect. The applicant took out his licence and put in his pegs. When the licences came to be renewed the Mining Commissioner refused to do so. (*Cf.* § 21 of the Gold Law.) Under § 65 of the Gold Law the Government has the right to issue stand licences, but not upon gold-bearing ground. Nor does § 67 give the right to grant ground as stands where a precious metal is to be found. The respondent relies on § 67 of the Gold Law. The right to survey and divide into stands is given by virtue of a contract.

*Auret*, with him *Jeppe*, for Mundt, cited § 67 of the Gold Law, and maintained that the extent of the ground is not fixed. It is left to the Government to use its discretion in making general arrangements in the interest of the inhabitants of the goldfields in general. The rights of nobody have been infringed, for we had prospecting licences for the ground.

*Jeppe*, on the same side.

*Leonard*, in reply.

KOTZÉ, C.J. : I am of opinion that the rule *nisi* must be set aside. Supposing that the Mining Commissioner may be ordered under certain circumstances to renew prospecting licences, or to turn prospecting licences into diggers' licences, the present are not such circumstances. The Government

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has the right under § 67 to grant stands, provided they are not upon gold-bearing ground. In this case it is a question whether the ground is gold-bearing or not. Further, the Government has the right to give out a larger extent of ground as a stand, and under one licence. The Government has simply made use of this right, and there is nothing to show that here the Government has made an inequitable use of it. This is the more so, seeing that respondent was in possession, and still is, and the applicant was warned of the fact, and notwithstanding pegged, well knowing that the ground had been granted months before to respondent. The respondent is entitled to the costs.

JORISSEN, J., concurred.

#### HANAU AND WICKE vs. THE STANDARD BANK.

*Cession of syndicate shares with registration preferred to mortgage-bond.*

*Where, in an application to have the applicants declared owners of certain incorporeal rights, it appeared that a bank had a mortgage-bond over certain syndicate shares, and that applicants also had a cession of the same shares, without knowledge of the transaction with the bank, and had got their cession registered in the books of the syndicate, the Court held that, as applicants had acted bonâ fide, they had a preferent right.*

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„ 21.  
Hanau and  
Wicke vs. The  
Standard Bank.

The petition of Herman David, in his capacity as representative and agent of Carl Hanau and E. J. Wicke, of Johannesburg set forth :

“ 1. That an order was granted by the Special Landdrost of Johannesburg upon the *ex parte* petition of Edward Bennett Gardiner and George Hart Nitch, in their capacity as the joint managers of the Standard Bank of South Africa, Ltd., Johannesburg branch, restraining the Empress Block Syndicate, or its secretary, or any other person acting for or on behalf of the said syndicate, from delivering to E. J. Wicke and Carl Hanau any shares in the Salisbury Gold