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Johannesburg.

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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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

Mining Co., representing or arising from certain 1-200th and 1-50th shares respectively (belonging formerly to Claude Vautin) in said syndicate, stated to have been sold to the said E. J. Wicke and Carl Hanau, and further restraining the said E. J. Wicke and Carl Hanau from accepting the said shares in the Salisbury Gold Mining Co., Ltd., or, if already received, from alienating or pledging, pending action to be instituted by applicant for a declaration that he is entitled to the said shares.

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" 2. That your petitioners annex hereto a copy of the *ex parte* petition upon which the said order was issued, as also a copy of the said order marked respectively A and B.

" 3. Your petitioner, E. J. Wicke, declares that he bought from Claude Vautin a one-twentieth interest in the Empress Block Syndicate, which will appear more fully from the cession of the same annexed, marked C, and that upon the same day he had the said cession duly registered in the books of the said syndicate, as will appear from the certificate of registration endorsed upon the said cession.

" 4. Your petitioner, Herman David, declares that upon the 4th March his principal, the said Carl Hanau, bought from the said Claude Vautin a one-fiftieth share in the said Empress Block Syndicate, as will more clearly appear from the cession annexed, marked D, and that on the same day he had the said cession duly registered in the books of the said syndicate, as will appear from the certificate of registration endorsed upon the said cession.

" 5. That neither your petitioner, the said E. J. Wicke, nor your petitioner, the said Herman David's principal (Carl Hanau), at the time of the purchases made with them respectively were aware of the fact that the said Claude Vautin had pledged his interest in the said syndicate with the said bank, as alleged in the petition of the said managers, nor did they know anything of the claim made by the bank until very recently, and long after their purchases had been made and closed, and the cessions duly drawn and registered.

" 6. That upon reference to the affidavit of John Jolly, Secretary of the said syndicate, that the bank gave the said syndicate no notice of their right of detention upon which they based their claim until the 3rd April, *i.e.*, until after the registration of the said cessions in the books of the syndicate.

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“ 7. That since the date of the aforesaid sale calls have been made by the said syndicate upon its members, and your petitioners have, from time to time, paid the calls made upon them.

“ 8. That the certificates for the shares in the Salisbury Co. to which your petitioners are entitled in virtue of the cessions made to them by the said Claude Vautin as aforesaid, have been made out in the names of your petitioners, the said E. J. Wicke and the said Carl Hanau.

“ 9. That no formal certificates of shares were ever issued by the said syndicate to any of its members.

“ 10. That your petitioners have been advised that the right of detention upon which the said Bank bases its claim is of no value and unlawful against the rights of your petitioners.

“ Wherefore,” etc., etc., etc.

ANNEXURE A.

“ The petition of E. B. Gardiner and G. H. Nitch, in their capacity as joint managers of the Standard Bank, Johannesburg Branch, set forth

“ 1. That in December, 1889, the Standard Bank was a creditor of Claude Vautin for a large sum of money, about £24,836, and the said Vautin is still indebted in about the sum of £16,100.

“ 2. That the said Bank was the holder of a mortgage-bond executed by the said C. Vautin in its favour, and was under the said bond entitled to be the holder, as security for its claim, of all shares or certificates of title to shares, or interests in ground or other property which were deposited at the time of the bond being signed, or might be deposited at any subsequent time by the said Vautin with the Bank.

“ 3. That *inter alia* the said C. Vautin became entitled to 1-20th share in the Empress Block Syndicate.

“ 4. That on December 7th, 1889, the said C. Vautin endorsed the said certificate of September 7th, 1889, in blank, and handed it over to the said Bank as security for his debt to the said Bank, and that in consequence the said Bank is entitled to the full profit arising from the said 1-20th share.

“ 5. That the Empress Block Syndicate transferred its property to the Salisbury Gold Mining Co. in exchange for 110,000 shares in the said company.

" 6. That your petitioners believe that 1-20th share is represented by about 5000 shares in the Salisbury Co.

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" 7. That upon application to the secretary of the said syndicate your petitioners were informed that notwithstanding the transfer and delivery of the said certificate of September 7th, 1889, by the said C. Vautin to the said Bank, the said C. Vautin had sold 1-40th share in the said syndicate to W. P. Taylor on the 25th day of November, 1889.

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" 8. That upon January 7th, 1890, the said C. Vautin intended to transfer 1-200th share to E. J. Wicke, and that on March 4th, 1890, he intended to transfer 1-50th share in the said syndicate to Carl Hanau.

" 9. That your petitioners are advised that the two latter transactions purporting to be transfers as aforesaid are null and void, being entered into by the said Vautin in fraud of the rights of the Bank after delivery and cession as aforesaid.

" 10. That there is danger that unless the said syndicate be restrained from recognising the said E. J. Wicke and the said C. Hanau as lawful holders of the 1-200th and 1-50th interests as aforesaid, it may transfer and deliver them that portion of the shares in the Salisbury Company corresponding to the aforesaid interests in the syndicate, and that the said Bank shall be deprived of its rights and recourse.

" 11. The said Bank is prepared to institute an action immediately, if necessary, to have itself declared entitled to the Salisbury shares corresponding to the interests supposed to have been transferred to the said Wicke and Hanau.

" Wherefore," etc., etc.

Auret, with him *Esselen*, for applicant: Referred to *Sande, De Act. Cess.* chap. 12.

Leonard, with him *Burgers*, for respondent, cited *Buchanan*, 1876, *Mills vs. Benjamin's Trustee*; *Burge*, vol 3, pp. 547, 548; *Voet* 18. 4. 15, *in med.* and 18. 4. 17. Thus notice to the debtor is not necessary (*Sande De Act. Cess.* chap. 2. 1. § 9-10). In this case there is only right of action, or incorporeal right, and a simple cession is sufficient. The transfer was complete, and once made Vautin had nothing more to cede or transfer to Hanau and Wicke.

Burgers, on the same side: Registration cannot alter the state of the case. Registration in the books of a syndicate

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cannot be notice to the whole world, as in the case of the transfer of property.

Auret, in reply: (*Cf. Law Journal*, vol. i., p. 265.) This is simply the case of a share in a partnership or syndicate being passed from one person to another. By registration the syndicate accepted Hanau and Wicke as partners, and not the Bank. Many persons can be, and do, become partners against their will.

Cur. adv. vult.

Posteà, August 21st, 1891.

The Court (KOTZÉ, C.J., and JORISSEN, J.) held that, as Hanau and Wicke have acted *bonâ fide*, gave notice to the secretary and registered their cession in the books of the syndicate, they must have the preference—more especially as the Standard Bank merely got its mortgage in pledge or security. The Court agrees with *Sande* on the point, and differs from *Voet* 18, 4, 17. (*cf. Voet* 18. 4. 11).

JORISSEN, J., concurred.

Ex parte HULL.

Search warrants.—Invalidity of.—§ 58 of the Criminal Procedure.

Where the Assistant Landdrost at Johannesburg had, in connection with a criminal prosecution, issued a search warrant empowering the police to inspect certain documents in the possession of third parties, and an order was applied for to the High Court restraining the Assistant Landdrost or the Chief Detective or any of his subordinates from making any use of such documents, and ordering them to be returned, the Court granted a rule nisi calling upon the said parties to shew cause why the said order should not be