

1891.  
Jan. 19.  
Feb. 2.  
Johannesburg  
Waterworks  
Co., Ltd. *vs.*  
Hollard.

*Condoo vs. Chunder Canto Mokerjee* (L.R., 2 App. Ca., 186), where it was held that the English laws of maintenance and champerty do not as such apply to India, and that a reasonable undertaking to find the necessary funds in order to prosecute an action in consideration of obtaining a share in the property recovered thereby is not *per se* illegal. Owing to the view which I take of this case it will not be necessary to inquire into the finding of the learned Judge below, that Hollard acted throughout as principal and not as agent in the matter. I merely desire to add that not only the committee (consisting of Loewenthal and Joel), but also Mr. Lance, temporary chairman of the company, and the legal adviser of the company, were acquainted with the agreement between Hollard and the committee, and at the time raised no objection against the legality or validity thereof. I am, therefore, of opinion that the appeal must be dismissed, with costs.

DE KORTE, AMESHOFF, and JORISSEN, JJ., concurred.

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FERRIS *vs.* THE EXECUTORS OF THE ESTATE OF DOW.

*Pledge with pactum de vendendo.*

*Where, in an application for provisional sentence upon a promissory note for the due discharge of which certain shares had been pledged, an Order of the Court was asked for the sale of the shares, the Court held that the plaintiff was entitled to the Order, but did not decide the question whether the plaintiff could have sold without coming to the Court.*

1891  
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Ferris *vs.* Exors  
Estate of Dow

This was a suit for provisional sentence upon a promissory note made by Dow in consideration of money received, for the payment of which certain Nigel shares had been pledged to the Standard Bank as security, with power to sell. Dow, the maker, had died, and now the Bank came to the Court for an order declaring it entitled to sell the shares.

*Leonard*, with him *Curleris*, for plaintiff: applied for provisional sentence, and for an order declaring the Bank

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

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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.

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#### 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

1891.  
Feb. 5.

*De Jager vs. the*  
Standard Bank