Registrar refuses to accept her signature, unassisted by her husband, without an order of Court. She now asks for an order authorising the Registrar to accept her signature for the purposes of these transfers.

The transactions into which the applicant entered, have nothing whatever to do with her husband, and are not likely to cause him any prejudice. She has bought these lots with monies derived exclusively from the business carried on by herself, and she has now sold them at an enhanced value, and she says she has no means of paying certain sums, which are due immediately, unless she passes transfer and receives the purchase price from the purchasers. The passage quoted by Mr. *MacWilliam* from Huber, seems very much in point in this particular case and seems sufficient authority for the applicant's contention. Under the circumstances, I think the Court is justified in coming to the assistance of the applicant and I shall grant an order authorising the Rand Township's Registrar to pass transfer of the lots from the Municipal Council of Johannesburg into the joint names of the applicant and Bekkers, and thereafter to give transfer of the applicant's right, title and interest in respect of the lots, to the purchasers.

Applicant's Attorneys: *Saner & Saner.*

[G. W.]

LAGESEN v. ELECTRIC LAMPS REGENERATORS LIMITED.

1914. *July* 28. CURLEWIS, J.

Practice.—Security for claim in reconvention.—Application.—Promptness.—Waiver.

Though it is desirable that an application by a defendant for security for a claim in reconvention should be made promptly, promptness is not essential (*Oaten* v. *Bentwich and Lichtenstein*, 1903 T.H. 72, and *Hollander* v. *Leo*, 1909 T.H. 127, not followed).

The fact that a defendant did not demand security for a claim in reconvention at the same time that he demanded security for costs, *Held*, not to debar him from applying for the former security, in the absence of evidence that he had waived such right.

Application for payment of £300 for security for a claim in reconvention. The respondent company, a *peregrinus*, instituted an action against the applicant for breach of agreement, and the applicant counterclaimed for repayment of a sum of £250, and £50 damages.

It appeared that on April 22nd, 1913, in reply to the plaintiff's (respondent's) summons, the defendant (applicant), demanded security for costs; on August 22nd, 1913, it was agreed that the security be fixed at £300, and on March 30th, 1914, that sum was paid to the Registrar as security for the costs of the defendant. On April 3rd, 1914, the defendant claimed security for a claim in reconvention. The plaintiff's declaration was filed on July 17th, 1914, and the pleadings had not been closed.

S. S. Taylor, for the applicant: I move for security for the claim in reconvention. The law is clear that a defendant may demand from a foreign plaintiff security not only for his costs, but also for his claim in reconvention; see *Prentice and Mackie* v. *Bell's Assignee* (1906, T.H. 29). In *Freer* v. *Oesterman* (18 C.T.R. 662), it was held that a *peregrinus* must give security for costs even though *prima facie* his suit is likely to be successful.

L. Greenberg, for the respondents: I do not dispute the general rule that a *peregrinus* plaintiff must give security for a claim in reconvention, but I oppose the application on two grounds. Firstly, the application is too late. An application for security for a counterclaim and for security for costs are of the same nature and must be treated on the same basis (Van Leeuwen, *R. D. Law*, vol. 2, 5, 17, 9). It is the settled practice that an application for security for costs must be made promptly (*Oaten* v. *Bentwich and Lichtenstein*, 1903, T.H. 72, and *Hollander* v. *Leo*, 1909, T.H. 127); Merula (*Manier van Proceduren*, 4, 41, 1) and Van der Linden (*Jud. Prac.*, 1, 2, 4 (4)), say before *litis contestatio*. The applicant already in April, 1913, applied for security for costs, and he should then have applied for security for his counterclaim. We are prejudiced by his late claim. Secondly, the claim in reconvention is not *bona fide*, and is not likely to succeed, and therefore the application should be refused; see *Gaupoulos* v. *Harris and Dickson* (16 C.T.R. 635). Even if the application is granted, costs should be costs in the cause (*Schunke* v. *Taylor*, 8 S.C. 104).

Taylor, in reply: The cases of *Oaten* v. *Bentwich and Lichtenstein* and *Hollander* v. *Leo*, were merely decided on a dictum of Van Zijl (*Judicial Practice*, 2nd ed., 774), which is not sufficient authority. I am prepared to accept security for £250 only.

CURLEWIS, J.: Mr. *Greenberg* admits that as a matter of law the applicant is entitled to demand security for his claim in reconvention. He opposes the application, however, on two grounds. The first ground is that the application has been made too late, in that the applicant has already applied to the respondents, and obtained from them, security for his costs. There is very great force in the contention that he should have at the same time demanded security for his claim in reconvention. As regards the question of promptness required in making such an application, Mr. *Greenberg* referred me to the two cases of *Oaten* v. *Bentwich and Lichtenstein* (1903, T.H. 72) and *Hollander* v. *Leo* (1909, T.H. 127). In the latter case BRISTOWE, J., said: "It is settled law that an application for security for costs should be made as promptly as possible after knowledge that the party suing is a *peregrinus* has reached the defendant." He seems to have taken it as settled law on the authority of *Oaten's case*.

In *Oaten's* case, MASON, J., expressed himself as holding the same view as Van Zijl (*Judicial Practice*, 2nd ed., p. 774), namely, that an application for security for costs should be made with promptness, and dismissed the application owing to the delay on the part of the applicant. Van Zijl apparently does not refer to any decided cases or to any Roman-Dutch authority, nor has counsel referred me to any such authority for the principle that a person will lose his right to obtain security for costs if he does not apply for the same promptly. Though there is much to be said for the suggestion that a defendant must demand security for his costs promptly, I am not disposed to hold that because the applicant did not demand security for his claim in reconvention, at the same time as he demanded security for his costs, he is thereby debarred from making the present application. If the applicant has a right to demand security for his claim in reconvention, I do not see how a delay on his part can deprive him of his right, unless the circumstances are such that the Court comes to the conclusion that he has waived that right. The applicant states in his

affidavit that his mind was only directed to his right to security regarding the counterclaim after the security for costs had been lodged and all friendly negotiations had terminated. (His Lordship considered the facts and came to the conclusion that the applicant had not waived his right).

Mr. *Greenberg's* second ground of opposition is that the claim in reconvention is not *bona fide*, and is not likely to succeed. There is much to be said for this contention too.

(His Lordship considered the merits of the counterclaim, and proceeded). I am not prepared to say that the counterclaim is not *bona fide*. The applicant is therefore entitled to ask for security for his counterclaim, and as Mr. *Taylor* asks for security for £250 only, I shall order security for that amount to be given.

As to the costs of this application, Mr. *Taylor* asks for the costs, but if ever there was a case where costs should be costs in the cause, this is one, and I shall make an order accordingly.

Applicant's Attorneys: *Steytler, Grimmer & Murray;* Respondents' Attorneys: *Davis & Allingham.*

[G. W.]

COHEN'S TRUSTEE v. RIFKIND AND CUMES.

1914. *August* 6, 12. MASON, J.

Insolvency.—Law 13 *of* 1895, *sec.* 59.—*Trustee.*—Locus standi.

Landlord and tenant.—Insolvency of tenant.—Rent.—Payment in advance.—Cancellation of lease.—Damages.—Proof in insolvency.—Waiver of proof.

A trustee of an insolvent estate, directed by the creditors to take legal proceedings, is a "person interested" within the meaning of sec. 59 of Law 13 of 1895.

Where a tenant has paid rent in advance, and thereafter, during the term of the lease, the landlord cancels the lease for just cause or the tenant quits the leased premises without just cause, the tenant is entitled to recover from the landlord moneys the latter may have received from reletting the premises; the landlord can claim damages only from the tenant for breach of contract, and not rent for the unexpired period of the lease.

A tenant became insolvent during the term of the lease, and the landlord proved in the insolvency for rent for a period prior and subsequent to the insolvency.