

applicant may consider desirable in the premises. (4) That the said trustee may require the inclusion of the name of the applicant amongst those to be examined, and may himself attend such examination for the purpose of questioning the applicant. (5) That the applicant shall be entitled to his costs against the estate, subject to the following deductions: (a) Any charges in respect of the letter of the applicant's solicitors of the 2nd April, 1914, and the respondent's reply of the 16th April. (b) One-twentieth of the charges for drawing and copying affidavits used by the applicant in respect of his application. (6) No order is made as to the costs of the respondent.

Applicant's Attorneys: *Marks & Holland*; Respondent's Attorney: *Edward Nathan*.

[G. H.]

EX PARTE DELOUCHE.

1914. July 28. CURLEWIS, J.

*Married woman.—Public trader.—Immovable property.—
Leave to alienate.*

A married woman, who is a public trader, and who has lived apart from her husband for twenty years, *Held*, entitled in a case of urgency, to the assistance of the Court in alienating immovable property purchased by her in the course of her trade.

Application for an order authorising the applicant, a married woman, to accept transfer from the Municipal Council of Johannesburg into the joint names of herself and William John Bekkers, of certain six freehold lots in Johannesburg, and to give transfer of all her right, title and interest in respect of the lots to certain persons to whom she had sold them.

The petition alleged that the applicant was married to a certain Jean Baptiste Delouche at Ostend in Belgium, on September 15th, 1883. That she was uncertain whether the marriage was in or out of community of property. That since 1893 she had carried on business entirely on her own account, and without any monetary

help or assistance from her husband. That from 1893 to 1903 she held a liquor licence in her own name and carried on business in Southampton, England. That she arrived in Johannesburg on February 28, 1904, and on March 10th, 1904, she purchased and obtained the transfer, into her own name, of the liquor licence in respect of certain licensed premises in Johannesburg and was still carrying on the business of bar-keeper, café and restaurant-keeper in her own name. That she had therefore carried on for a period of over twenty years and was still carrying on, business in her own name and entirely on her own account and benefit and without the least assistance of her husband. That the latter, who was living in Liege, in Belgium, was over seventy-two years of age and was suffering from a weak mind and was therefore incapable of transacting business. That on July 7th, 1910, applicant and the said Bekkers entered into deeds of sale with the Municipal Council of Johannesburg whereby they purchased the said six freehold lots for the sum of £2,275. That the properties were purchased exclusively out of the monies made from the business carried on by applicant and that her husband had in no way contributed to the purchase nor was he in any way interested therein. That applicant and the said Bekkers had paid the sum of £1,251 5s. on account of the purchase price and were therefore still indebted to the Municipal Council of Johannesburg in the sum of £1,024 15s. That on June 30th, 1914, five of the said lots were sold by applicant and the said Bekkers, and that the remaining lot was at present retained by them. That the purchasers claimed immediate transfer of their respective properties and had guaranteed payment of the purchase prices against registration of transfer into their names. That the said sale was an advantageous one and very much to the benefit of applicant as the profit earned thereon amounted to almost £400 per lot. That applicant was anxious to obtain immediate transfer of the lots into her own name and to simultaneously effect transfer thereof into the names of the respective purchasers. That the Rand Township's Registrar refused to accept applicant's signature to the power of attorney authorising her solicitors to pass transfer into the names of the purchasers without an order of Court. That the applicant had not, at the present time the available funds to meet certain instalments due to the Johannesburg Municipality unless transfer of the lots to the purchasers thereof could be effected without delay.

Bekkers; the co-owner, joined in the application.

The Rand Township's Registrar stated in a report that section 7 (3) of the Regulations promulgated under section 59 of Act No. 25 of 1909, Transvaal (Government Notice No. 999 of 1909), required that a married woman must be assisted by her husband in executing deeds or powers of attorney unless the *jus mariti* had been renounced under an antenuptial contract registered in the Deeds Office, or unless the assistance of the husband was on other grounds unnecessary.

R. F. MacWilliam, for the applicant: A married woman has been allowed to pass transfer where her husband could not be found; *Ferreira v. Registrar of Deeds* (5 S.C. 387), and where her husband was paralyzed and living apart from her; *Van Blerk v. Estate Auret and van Blerk* (16 C.T.R. 326). In *Ex parte Bouver* (1902, T.H. 103), relief was refused where the husband had been absent for two years and his whereabouts were not definitely ascertained and the co-owners were not before the Court. Here the applicant is a public trader, she and her husband have been living apart for twenty years, and the co-owner joins in the application.

Voet (23, 2, 44), says a woman who is a public trader may hypothecate her immovable property for the purposes of her trade, but Wesel, *Tract. de connub. societate* (2, 3, 29), *et seq.*, says that though she may hypothecate her immovable property she cannot alienate the same, because that is not for the purposes of her trade. Huber, *Heedendaegse Rechtsgeleertheit* (1, 10, 19), however, is very explicit, for he says: "*Soo de man verre af is, en de saeke haest eischt, soo kan de vrouw den rechter versoeken, dat die het verhandelde in afvesen van haer man, voor goodt keure.*" These requisites are both present here.

CURLEWIS, J.: From the petition it appears that the applicant has lived apart from her husband since 1893. She does not know whether the marriage, which took place in Belgium in 1883, was in community of property or not. Since 1893 she lived at Southampton, in England, where she carried on a trade on her own account, and since 1904 she has lived in Johannesburg where she has likewise carried on a trade on her own account. Her husband is in Belgium, he is over seventy-two years of age, and he is of weak mind. The applicant, together with one Bekkers, has purchased certain freehold lots from the Municipal Council of Johannesburg, and they have resold these lots to certain purchasers, but are unable to pass transfer to the purchasers because the Rand Township's

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.