

law it pleases to protect the administration from liability, but the experience of the applicant who loses a large sum of money through no fault of his own will hardly serve to encourage others to deposit their hard earned savings in the Post Office Savings Bank.

The application must be dismissed. Although this is a hard case, the applicant must pay the costs.

Plaintiff's Attorneys: *Mulligan & Routledge*; Defendant's Attorneys: *Van Hulsteyn, Feltham & Ford*.

[G. H.]

HOLE v. HOLE.

1914. February 3. GREGOROWSKI, J.

Husband and Wife.—Divorce.—Malicious Desertion.—Restitution of conjugal rights outside jurisdiction.

A husband domiciled on the Witwatersrand was now residing in England, where he had deserted his wife. The latter, who was desirous of going to England, now applied for leave to enable the return to the order for restitution to be made there. *Held*, refusing the application, that only under special circumstances as *e.g.*, in *Rooth v. Rooth* (1911 T.P.D. 47) would the return to such an order be permitted outside the jurisdiction.

Application for leave to enable the return to an order for restitution of conjugal rights granted by this Court to be made in England.

Plaintiff who had lived in South Africa most of her life had obtained an order for restitution here on the ground of defendant's malicious desertion. Defendant was an Englishman, but was domiciled in Johannesburg. The desertion took place in England whilst the parties were on a trip abroad.

Plaintiff's reason for the application was that she had "urgent need to go to England." No other reason was stated.

J. T. Barry, for the plaintiff: In *Rooth v. Rooth* (1911, T.P.D. 47) a defendant was ordered to return to his wife "at Pretoria or elsewhere."

GREGOROWSKI, J.: The parties who were domiciled here were married in 1909. Whilst on a trip abroad defendant deserted plaintiff in England. The action for restitution was brought here,

and the Court is now asked to permit a return to the order for restitution to be made in England.

Apart from special circumstances conjugal rights should be restored within the jurisdiction. If that is not done the Court ceases to have control of the proceedings. In *Rooth v. Rooth* (*supra*) such special circumstances were [apparently] held to exist. Plaintiff's statement that she has "urgent need to go to England," is not a special circumstance, and there is no evidence of any other.

The application is therefore refused.

Appellant's Attorney: *G. W. J. Macfarlane.*

[G. H.]

ELEPHANT TRADING COMPANY v. SMUKLER
AND TOSEWSKY.

1914. March, 5. WARD, J.

Practice.—Insolvency.—Petition for Sequestration.—Necessary Allegations.—Reference to order of Court not embodied.

A petition for compulsory sequestration dismissed, as it did not contain an allegation that the applicants were creditors of the respondents for £100, as required by sec. 7 of Law 13 of 1895.

Held, further, that reference could not be made to an order of court, not embodied in the petition, in order to supply the missing allegation.

Return day of a rule *nisi*, granted by WARD, J., on March 2nd, calling on the respondents, Aaron Smukler and David Tosewsky, to show cause why their private estates should not be finally sequestrated. A final order of sequestration had been granted against the partnership estate of the respondents by this Court on February 17th, 1914. The petition on which the provisional order of sequestration was granted in the present application contained no allegation that the applicants were creditors of the respondents. The relevant portions of the petition were as follows:—

Paragraph 1 set out who the applicants were, and paragraph 2 the respondents. Par. 3 was as follows:— "That the respondents' partnership estate was provisionally sequestrated on the 27th day of January, 1914, and a final order granted on the 17th day of February, 1914." Par. 4 set out the liabilities of the respondents. Par. 5 was as follows:—"That your petitioners have discovered from the allegations set out in the annexure hereto marked "A "