

and her solicitors were to have enquired what the reason was and were to have told her, but they never did tell her. Such being the state of mind of the plaintiff and such being the circumstances, she was in my opinion required to disclose what had occurred, leaving the defendant company to make its own inquiries. Until inquiry had been made, or an explanation given, the ordinary individual ought to be and would be conscious that the cancellation of the policy was a circumstance adverse to the risk and one which should be disclosed.

It was suggested that the lowness of the rate of the premium might have been the reason for the cancellation of the policy. It was admitted that 10s. per £100 was a very low rate for a produce business, but there is no evidence that this was the reason for the cancellation, and there was no reason for attributing the cancellation to this cause.

What is material to disclose, does not depend upon what the insured even *bona fide* thinks is material, but upon what is in fact material under the particular circumstances, and it seems to me that the unexplained cancellation of this previous policy is a material circumstance which should have been disclosed, and, as there was no disclosure made—as proved by the evidence given for the company which I accept, I come to the conclusion that the policy cannot be enforced, and that there must be judgment for the defendant company, with costs.

Plaintiff's Attorney: *E. Gluckmann*; Defendants' Attorney: *G. W. J. Macfarlane*.

[G. H.]

EX PARTE TRANSVAAL VOLUNTEERS' SUSTENTATION
FUND, TRUSTEES OF

1914. October 22. WARD, J.

Trust.—Failure of objects.—Addition to objects.—Cy pres doctrine.

Where the objects of a trust fund were to afford relief and sustenance to members of the Volunteer or Irregular Forces of the Province, and such forces ceased to exist by the act of Legislature and were replaced by the Defence Forces, and the trust deed empowered the trustees to apply to the Court, in case the objects of the trust became impossible of execution, for leave to vary or alter

EX PARTE TRANSVAAL VOLUNTEERS'
SUSTENTATION FUND, TRUSTEES OF.

the same for some other beneficial public object within the Province, the Court, under the *cy pres* doctrine, added to the objects the power to afford similar relief to members of the Defence Forces.

Application for an order that certain objects should be added to a deed of trust, and that the property of the fund might thenceforth be devoted to the relief of persons falling within such objects as well as the original objects of the fund.

In terms of the trust deed of the fund the trustees were authorised to expend money as follows:

I. (a). The sustenance, relief or medical attention and advice of those of the Volunteer, Militia or Regular Forces who have served during the suppression of the Native Rebellion in Natal.

(b). To provide temporary succour and relief to relatives of men having died or become wholly or partially, permanently or temporarily, incapacitated whilst in the service of the Natal Field Force and who may have been or are dependent on such men for their maintenance or support.

II. Thereafter, to expend and devote the money of the fund for the benefit and sustenance of active members for the time being of the Volunteer, or the Irregular Forces of the Transvaal Colony under certain misfortunes or circumstances in time of Peace, War, or Rebellion.

Clause XIX of the trust deed was as follows: In case the original objects of this trust become in the opinion of the trustees to any extent impossible of execution, or in case the machinery provided for the management of the affairs of the trust should be incapable of acting in the manner as herein provided owing to any cause or causes, then the remaining trustees or any person interested may apply to the Supreme Court of the Transvaal or any Superior Court of this country for leave to vary, or enlarge, alter or modify the scope and objects of this trust so as to employ the property, funds and assets of the fund in some other beneficial public object within the Transvaal and to appoint a sufficient number of persons of good repute to act as trustees, and such Court shall be entitled to make such order on such application as it may think fit and to appoint such trustees, and upon such order being granted the trustees shall proceed to carry out the order of such Court and to continue to administer the fund for the new or modified objects and in the manner desired by the donors or ordered by the Court.

The petition of the Chairman of the trustees stated that the Volunteer Forces of the Transvaal ceased to exist as such upon the

formation of the Defence Forces of the Union, those members of the previously existing Volunteer Regiments who desired to continue service having joined the Active Citizen Defence Force of the Union formed under Act 13 of 1912, and the names of the Volunteer Regiments which survived were now applied to Regiments of the Defence Force. It was submitted that the term "Irregular Forces of the Transvaal Colony" was inapplicable to any branch of the Defence Force, and that if the objects of the fund were limited to those stated in the deed of trust, the trustees felt that the usefulness of the fund would be limited in a manner not originally intended.

The applicants prayed that the objects should be enlarged by adding the following paragraph to Clause II of the deed: "To afford relief at their (*i.e.*, the trustees') discretion in cases arising out of injuries sustained by members of the Defence Force of the Transvaal Province whether compulsory or Volunteer, or to dependent relatives on the death of such members whether in the actual execution of their duties or not; whether in camp, at manœuvres or in warfare; or by any civilian or person or member of Ambulance Corps who takes part in the suppression of rebellion, riot, strikes, or unrest, however arising, in the Union of South Africa, or who sustains injuries, or to dependent relatives in the case of the death of such person while assisting any one wounded or taking part in such events."

J. van Hoytema, for the applicants: The original objects of the trust are impossible of execution, and the proposed objects come within Clause XIX. See *In re Dutch Reformed Church, Wynberg* (13 S.C. 5). Where a literal execution of a trust becomes impracticable, the court will execute as nearly as it can, according to the original purpose, or *cy pres* (Story, *Equity Jurisprudence*, sec. 1169).

WARD, J.: It seems to me that the proposed objects come within the *cy pres* doctrine, and I shall grant an order that the paragraph asked for be added to the deed of trust, and that the property of the fund may henceforth be devoted to the relief of persons falling within such objects, as well as the original objects of the fund.

Applicants' Attorneys: *Van Hulsteyn, Feltham & Ford.*

[G.W.]