1914. *October* 29. GREGOROWSKI, J.

Practice.—Pauper suit.—Peregrini.—Rule 86.—*Security for costs.*

The rules of Court with regard to pauper suits apply as well to *peregrini* as to *incolae.*

The object of affidavits by householders is to secure the best evidence as to means.

Where such evidence is unobtainable owing to the fact that applicants were strangers, unknown to others, and unable to speak the language of the country, the Court accepted the evidence of their Consul-General and his secretary in their official capacity.

Leave to sue *in forma pauperis* dispenses with the obligation to find security for costs.

Application for confirmation of a rule for leave to sue *in formâ pauperis* in an action for damages for breach of contract.

The facts appear from the judgment.

R. Honey, for the applicants, moved.

L. Greenberg, for the respondent: First, the application is not in order; there are no affidavits by householders. Second, the applicants are *peregrini,* and therefore must find security for costs on both claim and counterclaim. Third, the Court must have jurisdiction; see *Ex parte Standring* (1906, K.D.C. 169); *Ex parte Kaiser* (1902, T.H. 165). Fourth, applicants are not paupers, as they have earning capacity; see *Shakofsco* v. *Van Noorden* (8 S.C. 180).

Honey: It is not necessary to have the affidavits of householders where applicants are utter strangers, see Van Zijl's *Jud. Practice* (2nd ed., p. 338).

On the question of security of costs, the argument for applicants comes to this that a pauper *peregrinus* has no right to sue. An applicant is not debarred from the benefits of Rule 86 by reason only of being an alien. See *per* HOPLEY, J., in *Ex parte Kuttenkeuler* (1911, C.P.D. 8).

On the question of means, see *Schneegans* v. *Schneegans* (B. 1876, p. 9). On the merits see *Sobotker* v. *R.C. Mission* (1902, T.H. 60).

Greenberg, in reply: There is no authority cited for the passage in Van Zijl. The law insists on affidavits by householders to avoid hearsay evidence.

GREGOROWSKI, J.: In this matter both the applicants are *peregrini* and probably also the respondent, who is a circus proprietor, moving about from place to place in South Africa. A

contract was entered into between the parties in Paris, under which applicants engaged to perform in respondent's circus in South Africa. Applicants claim that the contract has been wrongfully terminated. The defence is that applicants and not respondent have broken the contract. Both parties claim damages. Applicants commenced their action in the ordinary way, when respondent raised the point that, as they were foreigners, they must find security for costs. The applicants being unable to comply, their only course was to come to Court for leave to sue *in forma pauperis*.

It was admitted that suing in this way was a privilege within the Court's discretion, subject to the rules of Court, but it was objected first that the affidavits as to applicants' means were not in order, as they were not sworn to by householders. The fact was that the affidavits were made by the Consul-General for France and his secretary in their official capacity, and they stated that they were well acquainted with applicants' position. Were applicants to be debarred from the benefit of the rule because they were strangers in a strange land, unknown to others, and unable to speak the language of the country? I think not. The object of the rule is to get the best evidence, but if such evidence is not obtainable, then surely the evidence of persons in the position of the Consul-General is good enough. The second objection taken was that immediately leave to sue *in forma pauperis* was granted, applicants would have to find security for the counter-claim. I cannot assent to that proposition as in my opinion leave to sue as a pauper dispenses with the obligation to find security. Then it was objected that the Court had no jurisdiction. Now it was perfectly true that the parties were all foreigners, but the defendant was here, and therefore within the Court's jurisdiction, even if he were an alien enemy. Moreover, the fact that the contract was executed in South Africa, was to be performed here, and was broken here, was in itself sufficient to give the Court jurisdiction. Therefore that objection failed too. Lastly, on the question of applicants' means, I am satisfied, on a review of the affidavits, that the weight of the evidence is in favour of the applicants. The rule is therefore confirmed, costs to be costs in the cause.

Applicants' Attorney: *F. C. Dumat;* Respondent's Attorney: *J. D. Berrangé.*

[G. H.]