

1914. June 18, July 7, November 5. GREGOROWSKI, J.,  
BRISTOWE, J.

*Husband and wife.—Restitution of conjugal rights.—Plaintiff outside jurisdiction.—Funds to come within jurisdiction.*

Where a wife, resident outside the jurisdiction, obtained an order against her husband to restore conjugal rights to her, and she had not the necessary funds to return to the jurisdiction so as to enable the defendant to comply with the order, the Court ordered the defendant to provide her with such funds, and on his failing to do so or to restore conjugal rights outside the jurisdiction, granted a decree of divorce.

Action for restitution of conjugal rights, failing which for divorce on the ground of malicious desertion.

The evidence of the plaintiff, the wife, was taken on commission in England. Her evidence was to the effect that while she and the defendant were in England in November, 1912, he deserted her and returned to Johannesburg where he was at the date of action. The defendant was in default.

G. Wille, for the plaintiff, asked for an order in the terms laid down in *Rooth v. Rooth* (1911, T.P.D. 47).

GREGOROWSKI, J.: I shall order the defendant to return to or receive the plaintiff on or before September 11th, 1914, at Johannesburg or elsewhere, or at Johannesburg between September 11th, 1914, and October 23rd, 1914, failing which to show cause on November 5th, 1914, why a decree of divorce shall not be granted, with a division of the joint estate and costs. In *Rooth's* case the plaintiff had to return to South Africa to enable the defendant to restore conjugal rights, so here, if the defendant does not restore conjugal rights before September 11th, 1914, the plaintiff will have to return to Johannesburg.

*Postea* (July 7th, 1914).

A petition was filed on behalf of the plaintiff to the effect that she was entirely without funds, that she had recently been very seriously ill and owing to the state of her health had been unable to earn a living, and therefore it would be impossible for her to journey to Johannesburg so as to be in that town between September 11th, 1914 and October 23rd, 1914, in order to fulfil the terms of the Order of Court, unless the defendant provided her with the necessary funds to enable her to undertake the said journey. She estimated that the costs in connection with such journey would

amount to £65. She accordingly prayed for an order against the defendant, in the event of his desiring to receive her at Johannesburg between the said dates, to provide her with the said sum, or such other sum as to the Court might seem meet.

Notice of the application was given to the defendant.

*Wille*, for the applicant: It is the duty of the defendant to restore conjugal rights (*Harrop v. Harrop*, 19 E.D.C. 341), and he must accordingly take all reasonable measures to render restitution possible.

GREGOROWSKI, J., granted an order in the following terms: "That the respondent in the event of his desiring to receive the applicant at Johannesburg between the 11th day of September, 1914, and the 23rd day of October, 1914, in terms of the order granted by this Honourable Court on the 18th day of June, 1914, shall provide the applicant with the necessary funds, amounting to £65, to enable the applicant to journey to Johannesburg in order to comply with the terms of the said Order of Court, and that should the respondent intend providing such funds and desire to receive the applicant as aforementioned, then he shall notify the Registrar of this Honourable Court to that effect before the 29th day of July, 1914, and pay that official the said amount on behalf of the applicant before such date."

*Postea* (November 5th, 1914).

An affidavit was filed by the plaintiff that the defendant had not returned to or received her on or before September 11th, 1914, at Johannesburg or elsewhere. That she annexed a letter from the Registrar of this Honourable Court, dated August 12th, 1914, stating that he had received no notification from the defendant that he desired to receive the plaintiff, and that he had not lodged with him the amount of £65. That she had no funds, nor had the defendant supplied her with the necessary funds, to enable her to journey to Johannesburg so as to be in that town between September 11th, 1914, and October 23rd, 1914.

The defendant was in default.

*Wille*, for the plaintiff.

BRISTOWE, J., made the order final.

Plaintiff's Attorneys: *Baumann & Gilfillan*.

[G.H.]