

deemed better for the estate to raise the money now asked for by way of mortgage of such income the Court can authorise the Registrar accordingly. But as I can find no power to encumber or jeopardise the other assets of the trust, there may not be any general clause in the bond, and no liability put upon the permanent assets.

There will be an order therefore authorising the trustee to raise £1,500 by way of mortgage on such portions of the trust property as have not been added permanently to capital, for the purpose of maintaining Ziman, and authorising the Rand Townships Registrar or other proper registering officer to pass such mortgage provided it contains no charge upon any portion of the permanent capital of the trust; an affidavit to be filed with the Registrar of the Court that the specific property intended to be affected has been produced by the income of the trust, and has not been permanently added to the capital. Costs to come out of the income of the trust.

Applicant's Attorneys: *Gregorowski, Scheuerman & Knox-Davies.*

[G.H.]

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### FEDDER v. McCREADIE.

1914. November 26. BRISTOWE, J.

*Practice.—Pauper suit.—Assets recently in possession.—Onus of proof as to means.*

Leave to proceed *in formâ pauperis* refused an applicant proved to have been in possession of considerable funds within a month or two of his application, and who could give no satisfactory explanation of their disappearance.

Application for leave to defend an action for specific performance of a contract of sale, in *formâ pauperis*. The defence was that the contract was entered into whilst applicant was in a condition of intoxication. It was admitted by applicant that on the 28th July last he was in possession of a sum of £2,500, and on the 15th October, of a sum of £200. Bank statements were put in, showing that the £2,500 had been spent, but, except as to £585 of

it, it was not shown how or for what purposes. No explanation was given as to what had become of the £200; the bank statements failed to show that it had been paid in, though payments in were shown up to the 8th October.

It was admitted that applicant had been drinking heavily for a considerable period.

*G. Stent*, for the applicant, moved.

*H. H. Morris*, for the respondent: No satisfactory explanation has been given of the disappearance of these large sums; see *Salmon v. Benny* (1903, T.H. 403). Applicant is not a pauper; see *Wroth v. Harmer* (1907, E.D.C. 118).

*Stent*, in reply: It is shown how the £2,500 has been spent.

*BRISTOWE*, J. (after stating the facts, proceeded): The case of *Salmon v. Benny* (*supra*), is not on all fours, because there the pauper became possessed of means after leave had been granted. *Wroth v. Harmer* (*supra*), however, is very much in point. The applicant in that case had been in possession of considerable money and jewellery within two years of the application, and she was able to earn a living. The Court refused leave. It is not clear which of these circumstances specially weighed with the Court, but probably it was influenced by both.

In the present case the applicant is shown to have been in possession of a considerable sum of money within a month or two of his application. In such a case the Court will require very definite proof as to where it has gone, and why it has gone. Assuming even a *bonâ fide* disappearance of the £2,500, there is not a word of explanation as to the £200. The onus is upon the applicant to make that explanation, and as he has not done so to the satisfaction of the Court the application must be dismissed, with costs.

Applicant's Attorney: *J. Berrangé*; Respondent's Attorney: *M. Cohn*.

[G.H.]

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