the liability of the defendants under the contract is joint or several.

Plaintiff's Attorneys: *Hayman & Godfrey*; Trustee's Attorneys: *Lance & Hoyle.*

[G. W.]

LONGE v. LAGESON.

1914. *April* 14. WARD, J.

Practice.—Commission de bene esse.—*Plaintiff.—Convenience.*

Application to have the evidence of the plaintiff, who was in England, taken on commission, on the ground that he would be inconvenienced in coming here for the trial, refused, as his evidence was material and he was a man of means.

Application to have the evidence of the applicant taken on commission in England. The applicant was plaintiff in an action against the respondent pending in this Court, and alleged that it would be very inconvenient for him to come to Johannesburg to give evidence at the trial; he was a man of means.

B. Auret, for the applicant, moved.

R. Feetham, for the respondent: I oppose on the ground that the plaintiff is a very material witness and it is highly desirable that he should be before the court to give his evidence. The case turns on conversations which took place between the plaintiff and the defendant.

Auret, in reply: The plaintiff is domiciled in England, and it would be very inconvenient as well as expensive for him to come to South Africa in order to give evidence. Further, he will be the sufferer by not coming to this Court.

[WARD, J.: I have known cases where the plaintiff has been shrewd in not coming before the court.]

Auret: The authorities are not of very much assistance, but the rule of court leaves it entirely within the discretion of the Court whether a commission should be granted or not. I submit the balance of convenience is in favour of the commission being granted.

WARD, J.: It has been urged that the applicant will be put to great expense and inconvenience if this commission is not granted. I do not know the nature of the loss and inconvenience which would be suffered by him, but there is no doubt that the respondent would be similarly prejudiced if he were put to the necessity of going to England in order to be present at the cross-examination of the applicant. It is clear that the action depends upon certain conversations which took place between the parties, and therefore it would be most convenient for the Court if the applicant came here to give his evidence. The applicant is, moreover a man of means, and, in all the circumstances, I think the application for a commission must be refused.

Auret: I submit that costs should be costs in the cause.

WARD, J.: I do not think so. If you had succeeded costs would have been costs in the cause; as it is, you must pay them.

Applicant's Attorney: *B. H. Davis*; Respondent's Attorneys: *Steytler, Grimmer & Murray*.

[G. W.]

ROSE v. KEMP.

1914. *March* 25; *April* 9. WARD, J.

Insolvency.—Discharge of provisional order of sequestration.—Agreement thereon to transfer assets from insolvent to a creditor. — Construction. — Cession. — Provisional trustee. — Measure of remuneration.—Law 13 *of* 1895, *sec.* 105.

An insolvent, under a provisional order of sequestration, agreed with plaintiff (a preferent creditor) with his concurrent creditors, and with defendant, his provisional trustee, that for certain considerations the provisional order should be discharged, and that thereon the insolvent should transfer to plaintiff his business and assets, to the possession of which plaintiff was then to be entitled, and that plaintiff should pay the costs of the sequestration, of the discharge thereof and the remuneration of the trustee. Defendant signed the agreement "merely as consenting thereto in his capacity as provisional trustee," and all the parties bound themselves for the due performance of the agreement. The provisional order was discharged, and the unrealised assets (the whole of which were movables) were handed over to plaintiff by defendant, with the exception