

VILJOEN v. VILJOEN.

1910. September 15. MAASDORP, C.J.

Husband and wife.—Restitution of conjugal rights.—Absence of husband for ten years.—No evidence of malicious desertion.—Leave to sue.

Where H had disappeared ten years ago to fight for the Boer forces, and had not been heard of since, leave was granted to sue for restitution of conjugal rights and in the alternative to add a claim for leave to liquidate the joint estate.

The applicant had married respondent, her second husband, in 1891, and had lived since their marriage on a farm in the Winburg district, and the children of the marriage had been born there. Just prior to the war they had moved to Johannesburg to make some money to restock their farm, and the respondent had there joined the Boer forces and had never been heard of since.

Fichardt, for the applicant : The respondent wishes to sell a farm which was acquired by her through her first marriage, and which forms part of the joint estate, with a view to maintaining herself and her children. There appear to be two courses open to her, namely, (1) to have the property liquidated and to give security *de restituendo*, or (2) to bring an action for divorce on the ground of malicious desertion. There is no evidence that respondent wilfully deserted applicant. The presumption is that he is dead.

Leave was granted to sue the respondent by edictal citation for restitution of conjugal rights, service to be by one publication in the *Official Gazette* of the Orange Free State Province and three publications in the *Volkstem*, the intendit and notice of

trial to be served with the edict. Leave was also granted to add an alternative claim for leave to liquidate the estate under security *de restituendo*.

Applicant's Attorneys: *Gordon Fraser & McHardy*.

