

EX PARTE TAYLER (BORN RORKE).

1910. December 24. MAASDORP, C.J.

Death.—Presumption of.—Liquidation of estate.

Where H had been a passenger by a steamship which had sailed in July, 1909, from Durban for England and had not been heard of since, notwithstanding an exhaustive search, leave was granted to presume H's death, and a rule *nisi* issued calling upon all interested persons to show cause why H's will, under which W had been appointed sole heir and executrix, should not be lodged with and accepted by the Master.

This case was heard in Chambers. The applicant's husband, to whom she had been married out of community, had sailed by *S.S. Waratah* in July, 1909, with two daughters from Durban for England. The vessel had not been heard of or reported at any place or port since that date, and notwithstanding exhaustive and careful search on the high seas no trace of her had been found. Applicant's husband had left a will dated the 22nd December, 1899, by which he had appointed applicant his sole heir and sole executrix. Applicant asked for leave to liquidate the estate.

P. U. Fischer, for the applicant: An order was recently granted by the Witwatersrand Division of the Supreme Court to the executor of another passenger on the same vessel under similar circumstances.

The Court ordered: "(1) That the death of the petitioner's husband be presumed, and (2) that a rule *nisi* do issue calling upon all persons interested to show cause if any to this Court on the 16th January, 1911, why the will of the said John Frederick Jenner Tayler, dated the 22nd December, 1899, should

not be lodged with the Master of this Court under secs. 6 and 10 of Ordinance 18 of 1905 and accepted by him."

The sections referred to read as follows:—

(6) Every person other than the Master, who shall at the time of the death of the maker thereof have in his possession any document purporting to be the last will of any other person or into whose possession any such document shall come after the death of the maker thereof, shall forthwith deliver or transmit every such document to the Master when such person shall reside in the district of Bloemfontein, and when such possessor shall reside in any other district of the colony then to the magistrate of the district in which he shall reside or be at the time, and if to the magistrate shall also deliver or transmit to him a duplicate or true copy thereof, and every such magistrate shall cause such duplicate or copy to be examined and compared with the original and if need be corrected and shall authenticate such duplicate or copy with his signature and shall file and register the same, and every such magistrate shall forthwith transmit the original document to the Master: Provided always that if such magistrate shall not be the magistrate of the district in which such deceased person ordinarily resided at the time of his death he shall transmit the duplicate or copy of such will authenticated as aforesaid to the magistrate of such last-mentioned district and such last-mentioned magistrate shall register and file the same.

Every notary public shall, when called upon by the Master to do so, transmit the original minute of any will passed before him to the Master.

Any person failing to comply with the provisions of this section shall be liable to a fine not exceeding twenty pounds and in default of payment to imprisonment with or without hard labour for any period not exceeding three months.

(10) Every document being or purporting to be the will of any person which shall have been deposited with or transmitted to the Master in manner hereinbefore provided shall after the death of the maker thereof be registered by the Master in the Register of Estates, for which purpose the Master is hereby required to open every such document which may be sealed up; provided always that notwithstanding any such registration all such questions as to the validity and legal effect of every such document shall be reserved and remain for the decision of the High Court; and provided that where such document has been deposited with the Master previous to the death of the maker thereof the Master shall cause the duplicate or copy deposited with the said document to be examined and compared with the original and if need be corrected and shall authenticate such duplicate or copy with

his signature and shall transmit the same to the magistrate of the district in which the deceased ordinarily resided at the time of his death if such district is not the district of Bloemfontein and the said magistrate shall cause the same to be registered and filed.

Applicant's Attorney: *G. A. Hill.*
