Insurance in the passage to which I have referred. And my attention has not been called to, and I have not found any case in which, on a clause worded as this one is, a contrary decision has been arrived at. The third question must, therefore, in my opinion, he answered negatively.

Plaintiff's Attorneys: *Marks, Saltman & Gluckmann;* Defendant's Attorneys: *Gedye & Hands.*

[G. H.]

EX PARTE GARRUN'S TRUSTEE.

1915. *October* 7. MASON, J.

Insolvency. — Foreign Trustee.—Recognition. — Jurisdiction of Witwatersrand Local Division.—Act 7 of 1907, *sec.* 3.

The Witwatersrand Local Division has no jurisdiction to order the recognition of a foreign trustee in terms of sec. 3 of Act 7 of 1907, but where there is great urgency such an order may be made by the presiding Judge in his capacity as a Judge of the Supreme Court, Transvaal Provincial Division.

Application for an order recognising the appointment of the applicant as the sole trustee in the insolvent estate of one Garrun. The estate had been sequestrated in the Orange Free State, where the applicant had been duly appointed. The application was made in order that the applicant might make a further application of an urgent nature for an interdict, pending action, to restrain the transfer of certain property alleged to be an asset of the estate.

G. A. Mulligan, for the applicant, moved.

[MASON, J.: This Court has no jurisdiction to entertain such an application.]

In view of the great urgency of the application which follows this, I ask your Lordship to make an order, sitting as a Judge of the Supreme Court, Transvaal Provincial Division, in Chambers, as was done in *Ex parte Lange and Veltman* (1911, W.L.D. 150).

MASON, J.: It is quite clear that the Witwatersrand Local Division has no jurisdiction to make an order in terms of section 3 of Act 7 of 1907, and the case which has been quoted to me is a deci-

sion to that effect. In ordinary circumstances an application of this sort, if made to this Court, would have to be refused, and, I think, the attorney would have to pay the costs *de bonis propriis*; but as this case is one of great urgency, and irreparable damage might result if the applicant were made to go to Pretoria with his application, I shall make the order as a Judge of the Transvaal Provincial Division, in Chambers.

Applicant's Attorneys: *Steytler, Grimmer & Murray.*

[P. M.]

WEBSTER v. VARLEY.

1915. *October* 7. MASON, J.

Debtor and creditor.—Right to claim forfeiture.—Waiver.

A creditor who claims a right to cancel a contract by reason of non-payment of instalments due thereunder is held to have waived his right to cancel if after the right has accrued he takes judgment for the amount due; and it is immaterial that at the date of the issue of summons the right had not yet accrued. The obtaining of judgment is consistent only with the continuance of the contract, in the absence of express stipulation to the contrary.

Application for an order cancelling a deed of sale. The deed provided for the payment of the purchase-price by monthly instalments, and it was stipulated that if the instalments fell three months in arrear the seller had the right to cancel. On the 7th September the instalments had fallen three months in arrear, but on the 13th August, before the right to cancel accrued, the applicant issued summons against the respondent for the sum then owing. Judgment was given against the respondent on the 9th September, and a writ of execution was taken out by the applicant two days later, and a return of *nulla bona* made. Notice of cancellation was only given on September 13th. A tender of the sum due was refused.

C. T. Blakeway, for the applicant, moved.

[MASON, J.: On the day you took judgment against the respondent your right to cancel had accrued. There was nothing to compel you to take judgment. If I grant your application now, you