Mrs. Hogan's application is therefore granted with resident magistrate's Court costs against Kantor, he to be entitled to set them off against his judgment.

The resident magistrate's Court judgment is made a judgment of this Court without costs (as agreed at the hearing). As to execution against the lease and the hire-purchase agreement the Sheriff is ordered to attach and sell the former upon prior consent of the lessor, and the latter upon prior consent of the owner of the furniture, or otherwise subject to the purchaser at the sale paying the full balance of the purchase-price under the hire-purchase agreement. The judgment creditor is entitled to the costs of execution and sale by the Sheriff.

Attorney for Mrs. Hogan: *G. O. Veit*; Attorneys for the Messenger and Kantor: *Marks, Saltman & Gluckmann.*

[G. H.].

JEWISH PUBLISHING SYNDICATE v. POLSKY.

1915. *November* 26. WARD, J.

Registration of businesses.—Act No. 36 *of* 1909, *sec.* 4 (1).—*Advertisement of transfer or abandonment.—Meaning of "newspaper."*

Section 4 (1) of Act 36 of 1909 provides that notice of a proposed transfer, sale or abandonment of a business shall be advertised in three consecutive ordinary issues of the *Gazette* and "once in each week for three consecutive weeks in a newspaper circulating in every district wherein the business premises are situate."

Held, that the Legislature did not intend to restrict the meaning of the word "newspaper" any further than the sub-section indicates, and that, consequently, a newspaper printed in any language is a newspaper within the meaning of the sub-section.

Semble, where a debtor desiring to transfer his business purposely advertises his intention in a newspaper of such circulation and printed in such a language that his creditors are not likely to see the advertisements, he may be held to have failed to comply with the provisions of the sub-section.

Special case stated under Rule 46.

Plaintiff was the owner of a weekly newspaper printed in the Yiddish language, and published weekly in Johannesburg, where

it principally circulated. Defendant, on the representation by plaintiff, that its paper was a newspaper within the meaning of Act 36 of 1909, sec. 4 (1), advertised in plaintiff's paper, in accordance with this sub-section, the transfer of a Johannesburg business. Defendant now denied liability for the cost (£1 2s. 6d.), of the advertisements, on the ground that plaintiff's paper was not a "newspaper" within the meaning of the sub-section, and that, consequently, the advertisements had been of no value to him.

H. Kent, for plaintiff: The only question for the Court is whether or not a paper printed in the Yiddish language is a newspaper within the meaning of the sub-section.

[WARD, J.: If there was any misrepresentation on the part of the plaintiff, was it not a misrepresentation of law rather than fact? And, if so, can the defendant take advantage of it?]

I do not take that point. The parties are anxious to have a decision on the other point. The reason why the case is brought in this Court is that a magistrate has held that plaintiff's paper is not a newspaper within the meaning of the Act, and an appeal brought against this decision went off on another point. There was, however, an *obiter dictum* by the Provincial Division to the effect that the magistrate's reason for giving judgment against the present plaintiff could not be sustained. See the judgment of DE VILLIERS, J.P., in *Sandler & Grenitz* v. *Morgan* (T.P.D., August 23, 1915), *in finem*.

[He was stopped.]

P. Millin, for defendant: I admit that if the ordinary meaning of the word is given to "newspaper" in the sub-section, plaintiff's paper is a newspaper, and defendant must fail. But if the sub-section is read with sec. 11 (2) of the Act, and regard is had to the mischief the Act was intended to remedy, the word "newspaper" cannot be given its ordinary meaning without bringing about an absurd and inept result. I submit that the Legislature contemplated a newspaper accessible to every citizen of the Union, and not a newspaper in an obscure language, and read necessarily by only a small section of the population. What notice can the generality of a man's creditors get from such publication as this? For the mischief the Act was intended to remedy, see *Wong Sun Chong and Others* v. *Myer and Co.* (1913, T.P.D. 76), and the remarks of WESSELS, J., at p. 79. For the canons of interpretation to be applied in a case of this kind, see *Venter* v. *Rex* (1907, T.S. 910); Maxwell on the *Interpretation of Statutes*, at pp. 30, 31,

380, 381; *Hawkins* v. *Gathercole* (6 De G., M. and G. 1); *Eastman* v. *Comptroller of Patents* ([1898] A.C. 576).

Kent replied.

WARD, J.: The first point that arises in this case is whether, if there has been a misrepresentation on the part of the plaintiff, it was not a misrepresentation merely as to a point of law. Would a misrepresentation of that kind release the defendant from the obligation of paying for the advertisements published by the plaintiff on his behalf? That point has not been argued before me, and I don't wish to base my decision on it. But it certainly seems to me that a misrepresentation of this kind gives no right of redress. There is no allegation by the defendant that the plaintiff fraudulently took advantage of him. It seems to have been, at the most, merely a friendly representation by one layman to another that the law was what it was not, and I am satisfied that even if the plaintiff's paper is not a newspaper within the meaning of the Act, he is entitled to succeed.

The point, however, on which the parties wish to have the case decided is whether or not the plaintiff's paper, being a paper printed in the Yiddish language, is a newspaper within the meaning of sub-section 1 of sec. 4 of the Registration of Businesses Act. Now that is a question which I can decide only with reference to this particular case. I can lay down no general rule as to what newspapers are such newspapers as are contemplated by the Act. There is no definition of the word in the Act, and it is said that I can give it a definition, and that unless I give it a restricted definition so as to exclude the paper here in question the result would be an absurdity. Two propositions of law are laid before me. Firstly, that a statute must be construed in accordance with the ordinary meaning of the terms used. Secondly, that the Court is entitled to give to words in a statute such meanings as will make the statute effective and not ridiculous. In my opinion, a Court is not entitled, in interpreting a statute, to go outside the statute itself to give meanings to the words used in it. The criticism the Court is entitled to bring to bear is confined to internal criticism. It can consider the language, the scope, and the intention of the statute, but it is not entitled to consider, for example, a report of the debates of the Legislature on the measure in question. The intention of the Legislature in passing this statute was clearly that people should be prevented from fraudulently alienating their

businesses. And it is urged by Mr. *Millin*, in his able argument, that unless I give a restricted meaning to the word "newspaper," that intention would be set at naught, and the Act become an absurdity. I think it must have been clear to the Legislature that in using the word "newspaper" it was using a word of very wide meaning; and if the Legislature had intended to restrict its meaning it seems to me it would have done so. As a matter of fact, the Legislature did restrict the meaning to a considerable extent by providing that the newspaper was to be a newspaper in which it was possible to publish an advertisement once a week for three consecutive weeks, and which circulated in every district in which the business was situate. It is said that I must restrict the meaning further by holding that the newspaper must be printed in an official language of the Union. I can find no justification for that, and I cannot see that even if the advertisement were published in a newspaper in an official language that would ensure that every creditor would read it. I am not at all sure that if a paper like this one had been present to the mind of the Legislature, it would have seen fit to exclude it. Of course, it is possible that there may be a case where a debtor purposely advertises in a paper of small circulation and printed in an obscure language with a view to evading the Act and defrauding his creditors. It may be in such a case that a paper like the paper here in question might be held not to be a newspaper within the meaning of the Act. I say nothing about such a case. In the present case there is nothing whatever to show that the publication was made in fraud of creditors, or that, as a matter of fact, all of them did not see the advertisement. As far as I know, this paper may have been the very best medium of reaching the creditors in this particular case. There must accordingly be judgment for the plaintiff, with costs.

Plaintiff's Attorneys: *Marks, Saltman & Gluckmann*; Defendant's Attorneys: *Kessel & Susser.*

[G. H.].