

There must, therefore, be judgment for the plaintiff cancelling the cessions of the seven mortgage bonds in question, so far as may be necessary to pay all the creditors the full amount due to them, and also, of course, the costs of the action. That amount is not, of course, ascertainable at once, and the only proper security for the carrying out of the judgment is to take them out of the possession of the defendant.

The judgment will, therefore, be for the plaintiff:

(1) Cancelling the cessions of the bonds by the insolvent and directing delivery thereof to the trustee;

(2) Adjudging the defendant to pay the costs; and

(3) Directing the trustee to realise so much on the said bonds as may be necessary to pay all the creditors in full the costs of sequestration and his costs of the action, any unrealised bonds to be ceded back and any unused balance to be handed over to the defendant.

Plaintiff's Attorneys: *Tindall & Mortimer*; Defendant's Attorneys: *Pienaar & Niemeyer*.

[J. M. M.]

EX PARTE DICKS.

1915. October 11, 18. DE VILLIERS, J.P., WESSELS and
BRISTOWE, JJ.

*Husband and wife.—Marriage of minor without parents' consent.—
Exclusion of community of property.*

Where a marriage had been contracted in community of property with a minor without her parents' consent, which was, however, subsequently given, the Court, on the application by the spouses for leave to enter into an antenuptial contract, declared—such being to the minor's benefit—that the marriage was one out of community of property, in which the marital power was excluded, and that the husband could derive no benefit from the marriage. *Mostert's Trustee v. Mostert* (4 S.C. 35), followed.

Application for leave to enter into an antenuptial contract, referred to the full Court by CURLEWIS, J., on September 28th.

The petition set forth that the applicants, Douglas Joseph Dicks and Emma Winifred Dicks (born Laver) were married on 18th March, 1915, by the magistrate, Johannesburg. The attached

marriage certificate showed that the marriage was without antenuptial contract, and that the second applicant was of age; in fact, however, she only came of age in August, 1915. The consent of her father to the marriage was not obtained in March, 1915, but was subsequently given. The applicants asked for a declaration that they were married out of community of property, and for leave to enter into and register an antenuptial contract, which, *inter alia*, reserved to each the free right of testamentary disposition. The second applicant expected to acquire certain property by inheritance within the near future.

C. E. Barry, for the applicants: The marriage of a minor without the guardian's consent is valid until set aside: *Greenshields v. Willenburg* (19 C.T.R. 337); *Willenburg v. Willenburg* (26 S.C. 447); *Mostert v. The Master* (1878, Buch. 83); Placaat of 1540, sec. 16 (*Maasdorp's Institutes*, Vol. I, p. 287). See also Marriage Order in Council, 1838, secs. 10, 17, and Law 3 of 1871, sec. 4 (1). The Placaat shows that the subsequent consent of the guardian ratifies the marriage, but cannot give the other party the right to take any benefit from the minor by gift, testament, or otherwise.

[DE VILLIERS, J.P.: That being so, the draft antenuptial contract should not give the wife unrestricted freedom of testamentary disposition.]

The usual order is merely to declare that community of property is excluded, and to inform the Registrar of Deeds thereof: *vide Mostert's Trustee v. Mostert* (4 S.C. 35)

Such marriage is deemed to be out of community unless community is to the benefit of the minor. Grotius' *Introduction*, 1, 8, 3; 2, 5, 8; 2, 11, 8; 2, 2, 7; Van der Keessel, *Th. Sel.*, 217, 218; Van der Linden, p. 20; Voet, 23, 2, 20, 89. Kotzé's Van Leeuwen, I., 107. *Haupt v. Haupt* (14 S.C. 39).

Cur. adv. vult.

Postea (October 18).

DE VILLIERS, J.P.: In this matter the Court reserved judgment in order to consider what form its order should take. We have come to the conclusion that the order to be made should be as follows: The Court declares that the parties are married out of community of property, that the marital power of the husband is excluded, and that the husband can derive no benefit from the marriage with his wife. The order of Court to be filed with the

Registrar of Deeds. This follows the order which was made in *Mostert's* case.

Applicant's Attorneys: *Tindall & Mortimer*.

[J. M. M.]

STEYN & OTHERS v. POTCHEFSTROOM CO-OPERATIEVE LANDBOUW VEREENIGING.

1915. October 21. CURLEWIS, J.

Co-operative Society.—Liquidation.—Appointment of liquidators.

It is undesirable that any official of a Co-operative Society, which has been placed in liquidation in consequence of mismanagement, should be appointed liquidator.

When, however, the secretary of a society appointed subsequent to the occurrence of such mismanagement, had effected improvement in the conduct of its affairs, and was recommended by the principal creditor for appointment as liquidator, the Court appointed him jointly with a person unconnected with the Society.

Application for an order placing the respondent society in liquidation, and appointing liquidators.

The application was first made in 1914, and on 30th September, 1914, was directed to stand over pending the publication of an audit of the affairs of the Society, which was now furnished. The petition set forth the financial position of the Society, and the applicants, who were contributories, asked that the Society be placed in liquidation, and that Messrs. Romyn and Brugmann, of Pretoria, be appointed liquidators. The Society had at a meeting adopted a resolution to go into liquidation.

An affidavit was filed by the Directors of the Society raising no objection to the liquidation, but setting forth that it was desirable that Mr. J. P. Kruger, the Secretary of the Society, should be appointed as sole liquidator. A supporting affidavit by the Standard Bank, the only large creditor, was also filed. Both affidavits asked that failing the appointment of Kruger the election of a liquidator be left to the creditors.

B. A. Tindall, for the applicants, moved. The Court has adopted the rule that it is undesirable to appoint as liquidator any person