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

previously connected with the Society liquidated: *vide In re Zoutpansbery Landbouw Vereeniging* (1913, T.P.D., not reported); *In re Pretoria Ko-operatieve Vereniging* (1913, T.P.D., not reported). The applicants, however, agree to the appointment of Kruger as co-liquidator with either of their nominees.

A. Davis, for the respondent Society: Kruger was appointed Secretary after the occurrence of the deficit resulting in the present liquidation proceedings, and has, according to the auditors' report, effected an improvement in the condition of affairs: the rule referred to does not apply to such a case. The Court should leave the appointment of liquidators to the creditors and contributories: *vide* Act 17 of 1908, sec. 24 (3).

Tindall, in reply: The established practice is for the Court itself to appoint liquidators: *Ex parte Transvaal Co-operative Dairy* (1910, T.P.D. 1006).

CURLEWIS, J.: This application first came before the Court a year ago, and was ordered to stand over pending a report by the auditors of the Society. Since then, apparently, the allegation made by the petitioners, that it was desirable to place the Society in liquidation, has been fully justified. Things have gone from bad to worse, and the directors themselves realised that it was undesirable to carry on the Society, and a resolution has been taken by the Society that it should go into liquidation. The only question left for decision by the Court is the appointment of liquidators. In the petition the applicants suggested that Messrs. Romyn and Brugmann should be appointed liquidators. The directors of the Society, and the Standard Bank—which is a creditor for a large amount, and practically the only creditor—opposed the liquidation at that time; but since the directors have agreed to the liquidation they have suggested that these gentlemen should not be appointed liquidators, but that Mr. Kruger, who is the secretary of the Society, should be appointed. Mr. *Tindall*, this morning, offered to agree to the appointment of Mr. Kruger, together with Mr. Romyn, as co-liquidators, but that offer was not acceptable to the respondents, and the question as to who should be appointed has been fully argued. Mr. *Tindall* has urged very strongly that it is undesirable that any official of the Society—either a director, or the secretary or manager—should be appointed liquidator. Generally speaking, where a Society of this kind has been a failure, and allegations are made as to gross mismanagement of the Society by the direc-

tors, its manager or secretary, which induced or caused the failure, it is highly undesirable, in my opinion, that any person connected with the Society should be appointed as liquidator. It seems to me always desirable in such cases to appoint entirely disinterested persons, quite unconnected with the Society, to inquire into its affairs, not persons who may be restricted by feelings of consideration for the directors, with whom they may be on an intimate footing, or other considerations of that nature in investigating the affairs of the Society and taking proper steps against those who may have been responsible for the failure of the Society or for any irregularities in connection with its affairs. A liquidator becomes an officer of the Court, and is responsible to the Court for all his actions, and the Court is not likely to appoint any person in whom it does not repose confidence as a person who is fit and proper to perform the duties of liquidator. Mr. *Tindall* has contended that Mr. Kruger should not be appointed, but that Mr. Romyn and Mr. Brugmann should be appointed sole liquidators, because Mr. Kruger is the secretary of the Society. Had he been the secretary during the time prior to 1913, when the huge deficit occurred, I would have had no hesitation in rejecting him as liquidator, notwithstanding the support which he has obtained from the Standard Bank, as the largest and practically the only creditor. I cannot conceive why any creditor, and especially one like the Standard Bank, should object to an impartial person being appointed as liquidator to investigate the affairs of the Society. But, unfortunately, the Standard Bank is not before the Court, and although Mr. *Tindall* has offered to accept as co-liquidator any other person unconnected with the affairs of the Society who is acceptable to the Court, it is not possible for the Court, inasmuch as the Standard Bank is not represented here to-day to act on that suggestion. Mr. *Davis* has pointed out, I think fairly, that although Mr. Kruger is the present secretary of the Society he was not its secretary when its affairs were so managed as to cause the Society to be plunged heavily into debt to the extent of about £18,000. He succeeded the then secretary and manager, and was appointed towards the end of 1913. According to the report of Mr. Perryman, who was appointed to investigate the affairs of the Society, it seems that since Mr. Kruger has been the secretary the affairs of the Society have been conducted in a much more satisfactory manner. Various matters are pointed out in the report in regard to which Mr. Kruger has introduced improvements in the adminis-

tration of the Society, and apparently everything that he has done has been consistent with the best management of the Society and in its interests. Inasmuch as Mr. Kruger is supported by a creditor like the Standard Bank, and inasmuch as there is no allegation that he is in any way connected with the mismanagement of the Society which caused its failure, there is not sufficient reason for the Court to refuse to appoint him merely on the ground that he is an offiical of the Society. If it appeared that he was in any way responsible for the failure of the Society it would have been different; but so far from that being the case, he seems to have improved the position of the Society as far as was in his power. I have been referred to various applications connected with similar societies—for instance, the Zoutpansberg Landbouw Vereeniging, and the Pretoria Ko-operatieve Vereeniging. In both these matters the Court apparently refused to appoint persons who were connected with the society. In the one case, Mr. Schoeman, the secretary of the society, was suggested by the directors; but on a report from the Master that the Land Bank, which was the largest creditor, objected that no one connected with the Society should be appointed liquidator, the Court appointed somebody else. In the case of the Pretoria Ko-operatieve Vereeniging, it was suggested that the chairman, Mr. Deventer, and another gentleman should be appointed. Objection was taken by certain members of the Society, and the Court refused to appoint Mr. Deventer. It seems to me that that is the proper view to take of the appointment of liquidators. The liquidator should be a person not connected with the management of the affairs of the Society in the past. But, as I have pointed out, Mr. Kruger's case is somewhat different, and as Mr. *Tindall's* clients have not urged any facts or reasons showing that he is not a fit and proper person to be appointed—and apparently he was acceptable to them as co-liquidator in conjunction with Mr. Romyn—I see no sufficient reason why I should not give heed to the recommendation of the largest creditor, and appoint Mr. Kruger as co-liquidator. If there are any acts or irregularities committed by the directors in connection with the management of the Society to be investigated, the presence of Mr. Romyn as co-liquidator is, I think, sufficient guarantee to the Court that full investigation will be made if, in his opinion, it is necessary. I therefore think under the circumstances it will not be necessary for me to appoint both Mr. Romyn and Mr. Brugmann, but that I should appoint Mr. Romyn, as a person not interested in the

affairs of the Society, and also Mr. J. P. Kruger, as co-liquidators. The order I shall make is that the Society is placed in liquidation, and Messrs. Romyn and Kruger appointed liquidators, with the powers defined in the Companies Act, 1909, sec. 127, except those in paras. (*g*) and (*h*), the winding-up of the Society to be with all the powers and subject to all the provisions of the Companies Act, 1909, in the same manner as if the winding-up had been under that Act. The liquidators to give security to the satisfaction of the Master.

With reference to Mr. *Davis'* contention that the Court should not appoint liquidators, but should allow the creditors and contributories to appoint liquidators as provided by the Companies Act, I see no reason to depart from the procedure which has been followed since 1910, in the case quoted by Mr. *Tindall—Ex parte Transvaal Co-operative Dairy* (1910, T.P. 1006)—and the various subsequent cases. On more than one occasion the Court has referred the matter to the Master for his report on the practice, and for his suggestions as to the appointment of liquidators, and in all the cases to which my attention has been called the Court has appointed liquidators, and not left it to the contributories and creditors to appoint them. I, therefore, see no reason to depart from the course which has been adopted in other cases. The costs of the application will come out of the estate.

Applicant's Attorneys: *Rooth & Wessels;* Respondent's Attorneys: *Pienaar & Niemeyer.*

[J. M. M.]

MONTAGU WINE CO., LTD., v. RABIE.

1915. *September* 30, *November* 1. DE VILLIERS, J.P., BRISTOWE and GREGOROWSKI, JJ.

Prescription. — Debt incurred when debtor a peregrinus. *— Commencement of prescription.—Act* 26 *of* 1908, *sec.* 11 (2).

Laws of prescription are laws of procedure and are governed by the *lex fori.*

Sec. 11 (2) of Act 26 of 1908 provides that if a debtor be absent from the Province when a right of action accrued against him prescription shall not begin to run until he has returned to the Province. *Held,* that where an *incola* has