1880. Feb. 20. — Ahnelt *vs.* Viscountess de Montmort.

raising this defence by way of exception, ought to have raised it by way of plea. I do not see how the Court can uphold this exception. Then there is another exception as to the privity of contract, which may fairly be held to be an exception to the second count. It is however raised as an exception to the whole declaration. This exception must also be overruled.

Exceptions overruled, costs to be costs in the cause.

[Plaintiff's Attorney, C. C. DE VILLIERS.
Defendant's Attorneys, FAIRBRIDGE, ARDERNE & SCANLEN.]

COETZEE *vs.* TIRAN.

The signature of a third party at the back of a promissory note creates no liquid liability.

Norton vs. *Satchwell* (1 Menz., p. 77) followed.

1880. Feb. 28. — Coetzee *vs.* Tiran.

Provisional sentence was claimed against defendant on the following promissory note.

RUIGTE FONTEIN,

£144. 0. 0. 16*th January*, 1878.

On the 16th day of April next, I, the undersigned Horace Walter Parminter, residing at Bredasdorp, in the district of Caledon, promise to pay to Mr. Martin Jacobus Coetzee, of Ruigte Fontein, in the district of Albert, or order, the sum of one hundred and forty four pounds sterling for value received, payable at the Oriental Bank, Steynsburg.

(Signed) HORACE W. PARMINTER,
Bredasdorp.

No endorsement on the note had been made by plaintiff but the signature of defendant was written on the back of the note.

Gregorowski, for plaintiff, prayed for provisional sentence upon the note against the defendant as endorser of it. *Van der Keessel* (*Thes.* 527) showed that plaintiff was entitled to such sentence.

Leonard, for defendant. Defendant is not liable as endorser. The point now sought to be raised has been

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already decided by the decision given in the case of *Norton* vs. *Satchwell*, 1 Menz., p. 77.

DE VILLIERS, C.J.:—Provisional sentence is sought against the defendant upon his indorsement of a promissory note of which he has never been the holder. According to *Heinneccius* (de Camb. c. 3, §§ 26–29), such an endorsement creates an obligation of suretyship, and was known in the Dutch law (as it still is in France) as *aval*. The holder had his summary remedy against the guarantor *jure cambiali*, but the practice of giving provisional sentence against such endorsers has never been followed in this Court. In the case of *Norton* vs. *Satchwell* (1 Menz., 77) it was expressly decided that whatever rights the holder might have in the principal case he could not sue such an endorser by provisional summons, and by that decision we are bound. In the present case it is not alleged in the summons that the maker has ever been excussed, and this is an additional reason why provisional sentence should be refused.

DWYER, J., concurred.

[Plaintiff's Attorneys, FAIRBRIDGE, ARDERNE & SCANLEN.]

DE VRIES *vs.* ALEXANDER.

Ordinance of Charles V., of the year 1515.—*Ordinance of the year* 1658.—*Inability of lessee of country lands to sublet.*

By the law of this Colony a lessee of country lands (prædia rustica) *cannot sublet, or make over his lease, to a third party without the consent of the landlord.*

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De Vries *vs.*
Alexander.

This was an action brought by B. A. de Vries of Cape Town against one Benjamin Alexander, for ejectment. The plaintiff B. A. de Vries, the proprietor of a farm called "Fraserdale," situate at Mowbray, leased it on the 12th of March, 1878, to F. W. D. Willmot for two years, Willmot to have the right of terminating the lease at the expiration of that period on giving three months' notice beforehand.