

EX PARTE MOROKO.

1910. August 15. WARD, J.

Practice.—Appeal.—Noting.

A magistrate's clerk authorised to note an appeal after the period allowed by rule 90 of schedule B of the Magistrates' Courts Ordinance.

This was an application for leave to note an appeal from the judgment of the magistrate's court at Thaba'Nchu in the matter of *Moroko v. Van Riet*. It appeared that, owing to the illness of the plaintiff's attorney in the court below, plaintiff had failed to note an appeal within the seven days after the date of the judgment, as required by rule 90 of schedule B of the Magistrates Courts Ordinance of 1902. Attorney for defendant in the court below had written a letter stating that his client did not intend opposing the application.

Blaine, K.C., for the applicant: This is a matter proper for the exercise of the Court's discretion. See *Smith and Another v. Pinto* (1868, Buch. p. 105); *Sneyman and Others v. Le Grange and Others* (3 Roscoe, 25). The rule in the Transvaal differs from those of this Court and of the Cape. In the Transvaal a sharp distinction is drawn between the noting and the prosecuting of an appeal. In the case of *Joffe v. Westgate* ([1908] T.S. 1183) the Court were of opinion that they were only given a dispensing power as regards the prosecution.

An order was granted authorising the magistrate's clerk to note the appeal. There was no order as to costs.

Applicant's Attorneys: *Gordon Fraser & McHardy.*
