

BRISTOWE, J. }
 Sept. 19th & 24th, 1912. } *Ex parte* McMILLAN'S TRUSTEE.

Insolvency.—Examination.—Subpœna in one Province on Witness resident in another Province.—Law 13 of 1895, sec. 163.—Act 27 of 1912, sec. 8.

By virtue of Act 27 of 1912, sec. 8, a divisional Court in one Province has power to summon a person resident in another Province to appear, under Law 13 of 1895, sec. 163, before a commissioner in insolvency, sitting in the former Province.

Application under section 163 of the Insolvency Law, No. 13 of 1895, for the examination in Johannesburg of certain Edward Hew Fanshawe, alleged to be resident at King Williamstown, in the Province of the Cape of Good Hope.

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Manfred Nathan, for the applicant: The Court has jurisdiction to grant the order under sec. 8 of the recent Administration of Justice Act, No. 27 of 1912. We are willing to provide the necessary expenses of the witness in terms of the section. See the definition of "subpœna" in section 2.

Cur. adv. vult.

Postea (September 24th, 1912).

Section 163 of Law 13 of 1895 is as follows:—"The High Court or a Circuit may after the sequestration of any estate, upon the application of the trustee, summon to appear before it or before a commissioner of the Court, any person known or suspected to have in possession anything of the estate. . . ."

The Court or the commissioner may examine such person upon oath . . ."

Section 8 (1) of Act No. 27 of 1912 is as follows:—"Whenever a subpœna has been issued out of any court and it appears that the person whose attendance is thereby required resides or is for the time being in a district in the Union outside the area of jurisdiction of that court, a magistrate of that district shall endorse on the subpœna his order that it be served on the person named therein and the subpœna so endorsed shall, when delivered to the proper officer within the said district, be served by him as soon as possible on the said person; provided that (a) the necessary expenses to be incurred by the person subpoenaed . . . shall be tendered to him with the subpœna. . . ."

Section 2 is as follows:—"Subpœna" shall mean a summons issued in accordance with law or rule of court, requiring the attendance of a person to give evidence or produce documents at any court or before a magistrate, when the court or magistrate has by law or rule of court jurisdiction to issue such summons."

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BRISTOWE, J. : At first I had doubts as to whether the Court had jurisdiction in this matter, inasmuch as the person to be summoned resides at King Williamstown, in the Province of the Cape of Good Hope. On consideration, however, of the terms of Act No. 27 of 1912, I have come to the conclusion that the Court has such jurisdiction. It is quite clear that the Court has jurisdiction over any person residing within the Witwatersrand Local Divisional Area to subpoena him under sec. 163 of the Insolvency Law, and a consideration of the terms of the recent Act shows that it now has power to subpoena any witness residing outside the jurisdiction of this Court, inasmuch as the definition of summons in the Act includes a subpoena. There is no distinction in my mind between a subpoena in an ordinary action and a subpoena commanding a witness to give evidence in terms of the Insolvency Law. I will therefore order the subpoena to issue, subject to the terms of section 8 (1) of the Act with regard to the expenses of the witness. Costs of this application to come out of the estate.

[Applicant's Attorneys, RUSSELL & FIDDES.]
