sent, and on the understanding that he would join her there afterwards? I have not been able to find any decided case exactly like this one. It is true there is a maxim "Where the wife is, there is the home," but that is a maxim of evidence rather than of law. The universal rule of law is that the husband's domicile is the domicile of the spouses.

In order to constitute a domicile of choice two elements are necessary—an intention to choose it, and some actual residence in the place chosen. The question is whether the wife's residence can be held to constitute such evidence of residence as is necessary. I cannot satisfy myself that that is the law. The fact of residence by a man's wife and children is evidence as to his domicile, but it does not constitute his domicile. In the circumstances I am bound to hold—with much regret—that the plaintiff cannot obtain redress from this Court. The defendant is at present in the Cape Province; he has been served there in connection with these proceedings, and everything goes to show that if he ever intended to make his domicile in Johannesburg he has changed his mind. There must accordingly be judgment of absolution from the instance.

Plaintiff's Attorney: *E. Gluckmann.*

[G.W.]

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## JACKSON v. DE WILDE.

1914. *June* 4. MASON, J

*Insolvency.—Law* 13 *of* 1895, *sec.* 3.—*Time for filing schedules.—Negligence of attorney.—Costs of voluntary surrender proceedings.*

Sec. 3 of Law 13 of 1895, enacting that "Schedules shall lie for the inspection of creditors at all times during office hours for a period of fourteen days from the date of the first publication of notice in the *Gazette*," means from 9 a.m. on the first day.

Failure by an attorney to act in accordance with this enactment constitutes negligence.

Where such negligence results in locking up an estate, which is subsequently compulsorily sequestrated, the insolvent's costs of the wasted voluntary surrender proceedings cannot come out of the estate.

Return day of a rule calling on the respondent to show cause why her estate should not be finally sequestrated.

From the petition it appeared that on the 20th May 1914 notice of intention to apply to this court on the 14th July, 1914, to surrender as insolvent the estate of the respondent was published in the "Star" newspaper of Johannesburg, it being further stated in the notice that a statement of her affairs would lie for the inspection of creditors at the office of the Resident Magistrate, Johannesburg, for a period of 14 days reckoned from the 23rd day of May, 1914. The petitioner's attorney appeared at 10 a.m. on the 23rd May, 1914, at the office of the Resident Magistrate, Johannesburg, to inspect the said statement of affairs but was informed that neither the statement nor the schedules had been lodged.

The attorney of the respondent deposed in his affidavit that on the 23rd May, 1914, he tendered the statement of affairs and schedules to the Resident Magistrate at 11.15 a.m., but he refused to accept them as from that date. On the same day he arranged for republication of the notices of intention to surrender to appear in the *Union Gazette* and *Star* as from the 26th day of May, 1914, and for the statement and schedules to lie for inspection as from the 27th May, 1914, and relodged the statement and schedules with the magistrate at about 11.45 on the 23rd May 1914. The applicant's attorney saw these schedules and statement about noon on the 23rd May, 1914, at the magistrate's office before he had lodged his application for compulsory sequestration of the respondent's estate. The amended notices of intention to surrender were published in the *Union Gazette* and *Star* of the 26th May, 1914. The respondent's attorney denied that the notices were published for the purpose of delaying the applicant's claim and said that the delay in filing the schedules on the 23rd May was through inadvertence.

It was apparently assumed that the first notice of surrender appeared in the *Gazette* on the same date as the notice in the *Star*; the former notice, which was not referred to in the affidavits, appeared in fact on May 22nd, 1914.

*L. Greenberg*, for the applicant, moved for a final order of sequestration.

*H. H. Morris*, for the respondent: I do not oppose the granting of a final order of sequestration, but I ask that the costs of the voluntary surrender proceedings be ordered to come out of the estate.

[MASON, J.: The attorney was negligent in filing the schedules; under section 3 of Law 13 of 1895 the schedules have to lie at the office of the resident magistrate "At all times during office hours." That means that they should lie there from 9 a.m. in the morning, or rather that they should be filed the previous day. Owing to the attorney's negligence all these costs were wasted, so you cannot claim them.]

*H. H. Morris*: I am claiming only the costs of the later proceedings for surrender.

[MASON, J.: The attorney's negligence extends to these proceedings also, as the estate was held up owing to his action].

MASON, J.: I shall grant an order finally sequestrating the respondent's estate. As to the respondent's application for the costs of the voluntary surrender proceedings, the facts are these:— Notice was given by the respondent that an application would be made for the voluntary surrender of her estate. That notice was published on May 20th, 1914, stating that the application would be made on July 14th, and the notice further stated that the schedules would lie for inspection at the offce of the resident magistrate for a period of fourteen days from the 23rd day of May. The applicant's attorney attempted to see these schedules but he could not do so as they were not filed. The result was that the estate was in consequence of the notice hung up from the 23rd May; thereupon the applicant applied on May 26th for compulsory sequestration, and a provisional order was granted.

It appears that the respondent's attorney arranged to readvertise the voluntary surrender on the same day, namely the 23rd May. Mr. *Morris*, for him, now applies for the costs of these later proceedings. I have grave doubts as to how far this Court can make such an order under the Insolvency Law, which provides specifically what are preferent sequestration charges. It is true that the other Judges, and I too, have made orders for costs of voluntary surrenders, without prejudice to the trustee in insolvency considering whether he should or should not, allow such costs, where there has been no negligence and they have been *bona-fide* incurred. Here, however, the whole trouble has arisen owing to the mistake of the attorney in filing the schedules too late. Where an attorney makes such a mistake, which has the effect of locking up an estate and so prevents a creditor, and particularly a judgment creditor, from enforc-

ing his rights, he should anticipate that compulsory sequestration proceedings may be instituted. I will not impose on the estate the liability of paying double costs in such a case. The application of the respondent must therefore be refused.

Applicant's Attorney: *W. J. Grout*; Respondent's Attorneys: *Ring & Goldberg.*

[G.W.]

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## RICHARDS v. KURANDA.

1914. *May*, 29; *June* 2, 3, 12. MASON, J.

*Defamation.—Slander.—In R.M. Court.—By attorney.—Extent of Counsel's privilege.*

An advocate is protected where he makes a defamatory statement in court in the interests of his client, pertinent to the issue, even though it be false, provided he has some reasonable cause for his conduct.

*Preston* v. *Luyt* (1911 E.D.C. 298) followed.

In a case known as the London case, heard in the High Court in 1912, in which plaintiff gave evidence, the Court said he was an unsatisfactory witness, ready to make unsupported assertions when his interest was in question, and not incapable of making an untrue statement.

In a case heard in the R.M. Court in 1914 between the C Co. and one Carlis, in which plaintiff was the Co's principal witness, the magistrate remarked whilst Carlis was under cross-examination, that one of the parties must be committing perjury. Defendant, who was Carlis's attorney, thereupon interposed and, with the London case in his mind, used words to the effect that the Full Bench of Judges in England had stated that plaintiff was guilty of per jury and that he (defendant) could prove it. He repeated this statement in court later. Neither of the allegations were made during plaintiff's cross-examination nor during defendant's address, and neither were true. It was found that the words complained of were uttered solely in the interest of defendant's client, but recklessly or without real belief in their truth, and without instructions from his client.

*Held*, that though there was some cause for the first allegation, the repetition was such an excess of the rights of advocacy as to make defendant liable. £50 awarded.

Action for damages for slander.

The defence was a denial of the words complained of and alternatively that they were uttered on an absolutely privileged occasion.

The facts appear from the judgment.