have given absolution from the instance. One does not expect the same particularity and precision in the Magistrate's Court as is demanded in the superior Courts. The defendant was not prejudiced; he knew exactly what case he had to meet. For these reasons I think the judgment of the Magistrate was wrong and must be set aside, and the case remitted to him to decide upon the merits.

WESSELS, J.: I concur. The cause of action here was a contract. If the cause of action was a contract, and the summons had set out a tort, the Magistrate would have been justified in saying, "There is such a material variation that I cannot go on with the case." But the plaintiff set out that he was requested by the defendant to do certain work, and that he proceeded to do the work. He did not sufficiently clearly set out that he was hindered by the defendant from completing the work; but he said the defendant refused and neglected to pay him the money he had earned. I think that is quite sufficient for the Magistrate's Court, and the Magistrate, having heard the evidence for the plaintiff, should have gone on with the case. If there were any amendments to be made the Magistrate should have allowed them.

CURLEWIS, J.: I concur.

Case remitted for hearing.

[Appellont's Attorney: W. DE VILLIERS.]

[Reported by ADOLF DAVIS, Esq., Advocate.]

DE VILLIERS, J.P.
BRISTOWE and
CURLEWIS, J.J.
March 6, 1911.

GRAIN *vs.* DOUGHERTY.

Appeal.—Time of Hearing.—Setting Down and Postponing on last available day.—Rule 95.

When notice of appeal had been given, the Court, at the instance of the appellant, on the last day of the six weeks within which the case could be set down for hearing, under Rule 95, *ordered the case to be placed on the roll for that day and the hearing to be postponed* sine die.

1911.
March 6.

Grain *vs.*
Dougherty.

Application to set an appeal down for hearing.

In the Court below judgment was given against the applicant Grain on the 23rd January. On the 27th January notice of appeal was given, but the appeal was not set down for hearing. The six weeks during which an appeal must be set down for hearing expired on the day the application was made.

C. E. Barry, for the applicant, moved that the case be placed on the roll of the day and postponed *sine die*. This was the procedure in *Barr* vs. *Du Preez* ([1909] T.S. 301).

There was no appearance for the respondent.

The Court granted the application and postponed the matter *sine die*.

[Applicant's Attorney: MACINTOSH & KENNERLY.]

[Reported by ADOLF DAVIS, Esq., Advocate.]

CURLEWIS, J.
March 7, 1911.

COOPER *vs.* VAN RYN G.M. ESTATES, LTD.

Costs.—Taxation.—Copies.—English Translation of Dutch Original.—South Africa Act of 1909, *sec.* 137.

By virtue of sec. 137 *of the South Africa Act of* 1909, *costs of translating a Dutch original document into English will not be allowed between party and party.*

1911.
March 7.

Cooper *vs.*
Van Ryn G.M.
Estates, Ltd.

Application for revision of taxation.

In this case an application was brought in February, 1911, by the respondent against the applicant, which application was granted with costs. The Taxing Master, in taxing the costs as between party and party, allowed certain sums amounting in all to 8s. 6d., being charges for the translation from Dutch into English of a certain certificate of Bezitrecht, and for copies of same in connection with the said application. Respondent's attorneys had written a letter to the Registrar of the Court to the effect that they had not instructed counsel to oppose the present application, because the items challenged were trifling.