an application under the Act of 1907. But there are two answers to that. The first is, that the applicant has had plenty of time to make an application under the Act of 1907 if he wished to. The second is, that I have no power to interfere with the order of deportation. It is a departmental order, and unless it can be shown that it has been wrongly made, I have no power to interfere with it. The application is dismissed with costs.

[Applicant's Attorneys, WAGNER & KLAGSBRUN.
Respondent's Attorneys, LAPIN & LAPIN.]

[Reported by GEY VAN PITTIUS, Esq., Advocate.]

BRISTOWE, J
Feb. 9th, 1911.

VAN RYN GOLD MINES ESTATE, LTD., *vs.* COOPER.

Practice.—Stay.—Vexatious Proceedings.—Unpaid costs. —Staying Issue of Process.

Where a party to certain proceedings has been ordered to pay the costs thereof, the Court will stay further proceedings instituted by him until the said costs have been paid, provided that such further proceedings cover substantially the same grounds as the former ones, and have been brought vexatiously.

Semble, *that the Court has no power at common law to stay the issue of a summons on the ground that proceedings thereunder will be vexatious.*

Application (*a*) for stay of proceedings in an action commenced by the respondent against the applicant until the respondent shall have paid the costs given against him in various applications from June, 1904, till June, 1909; (*b*) for an interdict restraining the respondent from taking out any summons in any of the Courts of the Province, or from instituting any further proceedings in connection with the alleged title of the respondent to certain thirty claims, the property of the applicant company, until the costs of the previous orders have been paid. All the facts appear from the judgment.

1911.
February 9.

Van Ryn Gold Mines Estate, Ltd., *vs.* Cooper.

A. E. Balfour, for the applicant, submitted that all the previous applications and the present action were substantially the same; they were all based upon the judgment of the late High Court in 1897.

[BRISTOWE, J.: I have no authority to prohibit a person from taking out proceedings.]

Counsel admitted that he could find no authority to that effect in the South African Courts, but submitted that that would be the only effectual remedy in the present case; respondent was abusing the process of the Court. Counsel cited *Van Ryn G.M. Co.* vs. *Cooper* (1906, T.H., 1).

Respondent, in person, had not filed an answering affidavit, but undertook to swear to his declaration in the action which he had commenced, with the exception of clause 19, in which he imputed fraud to the applicant company.

BRISTOWE, J.: The applicant company asks for relief under two heads. First, that all proceedings in an action which has recently been commenced by the respondent against the company shall be stayed until the costs which have been ordered to be paid by him of certain previous applications—on 12th July, 1904, 12th September, 1904, 9th January, 1906, 10th August, 1908, 28th May, 1909, and 10th June, 1909—have been paid; and, second, for an interdict restraining the defendant from instituting any further proceedings in the Supreme Court of South Africa asking for the same, or substantially the same, relief as is sought in this action, until the costs of the previous orders have been paid. As regards the interdict, it is admitted that that is a new form of relief, and that there is no precedent for making an order of that kind. It does not, of course, follow that a precedent might not be made; but I am averse to interdicting a person from issuing summons out of this Court. I find that in England it was found necessary to pass a special Act of Parliament to enable proceedings of this kind to be taken. The meaning of that I take to be that, although the powers there as regards stopping vexatious

actions are very wide, it was not the opinion of the authorities that they extended to the power of staying the issue of summons in advance, and a special Act of Parliament was considered necessary in order to give the Courts that power. I think that here also, if it were thought desirable that such a restriction should be placed upon the rights of litigants, it should emanate from the Legislature. At all events I do not feel disposed to initiate the practice.

The question of staying the present proceedings until the costs of the previous applications have been paid rests on a well-established practice. Where costs have been ordered to be paid in previous applications, provided that those applications are, if not in terms identical, at all events substantially identical with the new application, it is familiar practice that the new proceedings are stayed until those costs are paid. It does not follow, as was pointed out by MASON, J., in a case to which I have been referred in connection with this matter—*Van Ryn G.M. Co.* vs. *Cooper* ([1906], T.H., at p. 3)—that, because an order of that kind may be made, it will be made in every case; and I think that it is material to consider, not only whether this action covers substantially the same ground as was covered by the previous applications, but whether the new proceedings are, so far as I can see, vexatious. If they are *bona fide* and not vexatious, then I am not sure that an order of this kind ought to be made.

[The learned Judge examined the facts, and proceeded]: It is impossible to say that these proceedings are not vexatious, because they are directed to obtaining a relief which, so far as I can see, it is hopeless can ever be obtained.

Then the only question I have to consider is whether the relief which the respondent claims in the present action is substantially the same as that which he claimed in the proceedings of which he was ordered to pay the costs. [After an examination of the facts, the learned Judge proceeded]: They are all substantially applications *in pari materia* with the action now pending. They all deal with substantially the same thing—that is to say, enforcing and insisting upon the rights which the

1911.
February 9.
Van Ryn Gold Mines Estates, Ltd., *vs.* Cooper.

respondent thinks he is entitled to under the order of the late High Court. That being so, I think this case comes within the rule, and that it is a case in which I ought to stay the present proceedings until the costs which the respondent has been directed to pay, in the various orders referred to in the petition, have been discharged; and the costs of the present application are to be included.

[Applicants' Attorneys, ROOTH & WESSELS.]

[Reported by GEY VAN PITTIUS, Esq., Advocate.]

CURLEWIS, J. (in Chambers).
26th Jan. & 15th Feb., 1911.

Ex parte WHITFIELD AND OTHERS.

Husband and Wife.—Marriage Register.—Amendment by Court of Entry.

The Court has jurisdiction to authorise the Registrar-General to amend an error in the names of the contracting parties, contained in the Marriage Register and made owing to a misunderstanding of the marriage officer.

1911.
January 26.
February 15.

Ex parte Whitfield and Others.

Application for amendment of an entry in the Marriage Register.

It was alleged in the petition that the marriage certificate of applicants contained an error in the name of the wife, she being therein described as Annie Maria Fancutt, whereas her correct name was Amy Maria Fancutt, and that the said mistake was owing to a misunderstanding on the part of the officiating minister. The minister supported this in an affidavit attached to the petition.

I. Grindley-Ferris, for the applicants, moved, and referred to *In re Sowerby and wife* (18 S.C., 232).

Cur. adv. vult.

Postea (15th February).