MASON, BRISTOWE & CURLEWIS, JJ. March 14th, 1912.

BRUDO *vs.* CHAMBERLAIN.

Husband and Wife.—Liability of Husband for Wife's debts.—Necessaries.—Dentistry.

A dentist's attendance on a married woman when her teeth really require attention in order to arrest or prevent decay is a necessary for which her husband is obliged to pay.

1912. Mar. 14. Brudo vs. Chamberlain.

Appeal from a decision of the A.R.M., Pretoria.

Chamberlain, a dentist, sued Brudo for the sum of £7 17s. 6d., being fees for the plaintiff's attendance as a dentist on the defendant's wife. Defendant, in his plea, repudiated all liability, on the ground that being married to his wife without community of property he was not liable for debts contracted by her. In the alternative plea defendant claimed that plaintiff was not entitled to recover as the work was so badly and defectively executed that his wife had gained no benefit therefrom. It appeared from the evidence that the wife was carrying on business for herself as a tobacconist, and that the defendant was earning £10 per month as agent for a firm. Defendant also stated that he got his board from his wife in return for assisting her in the shop.

The magistrate gave judgment for the plaintiff for £6 16s. 6d., and costs, deducting an amount of £1 1s. 0d. for a tooth which had been negligently done.

Carl Jeppe, for the appellant: The husband is not liable, as it is not a household necessary. As to what is a household necessary, see *Grot.* 1, 5, 23; *Van Leeuwen, Rom. Holl. Recht*, 1, 6, 8. It must benefit the husband. If the wife had toothache all the time, and could not do her work, then I admit that the husband would be liable. A wife cannot obtain the services of a medical man for a very expensive operation, unless such operation were immediately and absolutely necessary. See also *van Leeuwen, Cens. For.*, 1, 7, 7; *Sande, Decis. Fris*, 2, 4, 4; *Holl. Cons. IV., Cons.* 248, p. 434; *Voet* 23, 2, 46.

1912. Mar. 14. — Brudo vs. Chamberlain.

The South African cases nearly all deal with food and clothing as necessaries; in the cases of *Mason* vs. *Bernstein* (14 S.C. 504) and *Coetzee* vs. *Higgins* (5 E.D.C. 352), the services of a midwife were held to be necessaries because, as was said in the first case, the husband was practically the *fons et origo* of the expenses incurred. See also *O'Brien* vs. *Keal* (1910, T.P. 707), where spectacles were in the circumstances held not to be necessaries. Under certain circumstances attendance to the teeth of a wife may be necessaries, but the onus is on the plaintiff to prove it. In the present case Mrs. Brudo did not go to the dentist; she met him accidentally and he told her her teeth should be seen to.

[MASON, J.: Must she wait till the teeth are so bad that she cannot go on any longer?]

No. A three monthly inspection of teeth may be very advisable, but is it therefore a necessary even if it would avoid future expenses? One must only deal with immediate necessaries; see *du Preez* vs. *Cohen Bros.* (1904, T.S. 157), where it was held that a grocer's account was excessive, and the amount was reduced on the principle that the amount of groceries were not immediately required; a wife cannot lay in stock for months in advance; she is limited to immediate necessaries.

The wife was a public trader and judgment should have been obtained against her; see *Hilder* vs. *Young* (11 N.L.R. 154). If it is not an immediate necessity, the dentist should obtain the consent of the husband.

Plaintiff can only succeed if he made the wife more fit for her household duties; here the work was badly done. [Counsel then dealt with the facts as to whether the workmanship was good or bad.] The magistrate should at the most have granted absolution from the instance.

T. J. Roos, for the respondent, was called upon only to argue the point of the liability of the husband: According to *Voet, loc. cit.*, the Court has a discretion to decide in each case as to what amounts to necessaries or not. Owing to the circumstances of civilization at the present day, it is a necessary to have your teeth attended to; when a tooth is decaying, it is necessary to have it

stopped. See *Amer. Dec.*, Vol. X, p. 462 (*note*), as to what are necessaries; medical services are held to be necessaries in America, and services of a dentist cannot be distinguished from medical services.

[CURLEWIS, J.: What was the condition of her teeth before she saw the dentist?]

The dentist says she had an abscess; she denies it. Although there probably was no urgent necessity, still her teeth were decaying, and she had to go to a dentist to prevent further decay.

Carl Jeppe replied.

MASON, J.: The respondent, plaintiff in the Court below, sued the appellant to recover £7 17s. 6d., being fees for the plaintiff's attendance as a dentist on the defendant's wife. It is clear that the attendance was with the defendant's knowledge, and without any objection on his part. The defendant and his wife are married out of community, and the first question raised is whether the husband is liable at all on the contract. There is no doubt that the contract was made by the wife with the plaintiff; but that, of course, does not conclude the matter. The liability of the husband in cases of this kind has been set forth in the general statement that the husband is liable for household necessaries for which his wife has contracted. The question then to decide is whether a dentist's attendance upon the wife comes within that definition. All the authorities lay down that the question of what is reasonably necessary for the purpose of carrying on the household is a matter very much within the discretion of the Court. Mr. *Jeppe*, in his vehement argument on behalf of the appellant, has admitted that urgent medical attendance does come within the scope of household necessaries. It seems to me beyond doubt that what I may call general medical attendance—medical attendance which is reasonably required, having due regard to the condition in life of the parties—is a household necessary. That was decided in general terms

1912. Mar. 14. — Brudo vs. Chamberlain.

in England, in the case of *Forristall* vs. *Lawson* (34 L.T.N.S. 903), to which my brother BRISTOWE has directed my attention; and there it was said that medical attendance was clearly a household necessary. It appears to me that dentistry comes within the ordinary words "medical attendance." A dentist is really a doctor who attends to the teeth. People are a great deal more particular nowadays with regard to teeth than they used to be. One reason is that they require to be more particular, because, owing to the circumstances of civilisation teeth are undoubtedly much more defective, owing to the somewhat luxurious way in which people live nowadays, than they are in the case, for instance, of savages. We have, therefore, to take that into consideration in dealing with this matter. Mr. *Jeppe* admits that, if the wife was suffering from violent toothache, she would be entitled to go to a dentist. I do not think that we can limit her rights so narrowly as that. I think that if teeth really require attention, and it is right and proper that they should be stopped or attended to so as to prevent decay, it is a reasonable medical attendance for a dentist to do that work. Of course, there may be circumstances in which a dentist would be unreasonably consulted; but I do not think that in the present case such circumstances appear on the record. The appellant's wife says her teeth were decayed, and she consulted the respondent, who advised her to have them attended to. According to the plaintiff's account, she came to him complaining of having bad toothache; he found an abscess, and attended to the teeth, and stopped other teeth. There is nothing on the record which would lead us to believe that it was not reasonable and proper to have the teeth attended to and stopped. Under these circumstances I think the husband, in this case, is liable for the reasonable services of a dentist. It is true that the husband's salary is somewhat small; but there is nothing on the record which would lead us to believe that the plaintiff's account is so large as to make it unreasonable for the defendant's wife to go to a dentist, and unreasonable for the dentist to attend to her without making special inquiries as to whether the husband would agree

to be liable. On the first point, therefore, it appears to me that the appeal must fail.

[The learned judge then dealt with the facts and upheld the judgment of the magistrate.]

BRISTOWE, J.: I am of the same opinion.

CURLEWIS, J.: I concur.

[Appellant's Attorney, C. H. H. SHEPPARD.
Respondent's Attorneys, REITZ & DU PLESSIS.]

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

WESSELS, BRISTOWE and CURLEWIS, JJ. Mar. 6th and 18th, 1912.

WEGE *vs.* KEMP.

Estoppel.—Representation of Fact.—Contract.—Offer.—Offer to Indeterminate Person.

To establish an estoppel by representation, the representation must be of an existing fact and not merely an expression of intention.

One person can legally contract with an indeterminate person, but anyone claiming as acceptor of an offer to so contract must give clear proof that the offer is of such a nature and that he is a person to whom the offer was intended to be made.

A document reading, "We, the undersigned, hereby guarantee to indemnify ....., of Johannesburg, against any loss he may sustain through advancing certain moneys to J. H. Source, in the amounts against our names," was signed by certain persons with amounts stated, and handed to J. H. Source, who thereupon presented the document to the respondent and obtained an advance from him. The respondent did not prove that the signatories intended to contract with him:—Held, *that the document was not a representation as to an existing fact and, therefore, created no estoppel.*