

sons why this date should be taken, because if an unlimited time were allowed to elapse before the action was brought all inquiry into the causes of the accident, and the consequences of it, might be precluded. I think the plaintiff must take his remedy as the legislature has given it, and bring his action within six months from the time when the injury arose. The second question must therefore also be decided against the plaintiff.

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CURLEWIS, J.: I concur. This result may be a great hardship on the unfortunate plaintiff. But so long as sec. 20 of our statute remains as it is, I do not see how we can meet the plaintiff or overcome the hardship—at any rate, not until the legislature introduces into the statute a provision corresponding to the provision of the English statute with regard to the extension of the period of six months within which the plaintiff has to bring the action.

[Attorney for the Plaintiff, BERRANGE.
[Attorneys for Defendant, LUNNON & NIXON.]

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

WESELS and
BRISTOWE, JJ.
May 15th and 20th, 1912. }

BLUMBERG vs. SAGORIN

Magistrate's Court.—Civil Jurisdiction.—Indefinite Claim.—Procl. 21 of 1902.

Where a summons claims an amount indefinite because increasing with the lapse of time, but on the day of hearing the amount has not increased to a sum beyond the magistrate's jurisdiction, the magistrate has jurisdiction to hear and decide the case.

Appeal against a judgment by the A.R.M., Johannesburg.

In his summons, which was dated 16th February, 1912, and returnable 21st February, the plaintiff (Blumberg) alleged that on 7th February, 1912, he bought a horse from defendant for £16, which amount he duly paid. At the time of the purchase the defendant guaranteed the horse as being sound and suitable for the purpose that plaintiff intended it, and the horse was bought

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upon such guarantee. Subsequently the plaintiff discovered that the horse was not sound, but lame and suffering from a chronic disease of the lungs, and was entirely unfit for the purposes for which it was bought. The plaintiff therefore claimed a refund of the £16. Plaintiff also alleged that "by reason of the inefficiency of the horse for the purposes for which it was purchased plaintiff has been obliged to hire another horse for £1 2s. 6d. for February 9th, and at 15s. per day since that date, and plaintiff also has to bear costs of feeding the horse in dispute at a cost of 2s. a day, and plaintiff accordingly further claims £1 2s. 6d. and 15s. and 2s. a day until defendant refunds the purchase price or accepts return of the horse."

The defendant excepted to the summons on the ground that it was beyond the jurisdiction of the Court. The magistrate upheld the exception and dismissed the summons with costs. Plaintiff appealed.

J. Brink, for the appellant. The onus is upon the defendant in the circumstances to show that the claim is beyond the magistrate's jurisdiction: *Haisman vs. Maasch* (1879, Buch. 119). Only five days had elapsed between the date of issue of summons and hearing of action, and the magistrate was not entitled to assume that the damages might be over £100, when at the time of hearing the amount of damages claimed was less than £100. The magistrate could only consider the position at the time the case was heard: *Eldridge vs. Casper* (2 R. 80). The claim for the return of the £16 purchase price was clearly within the jurisdiction of the magistrate, and, even if he came to the conclusion that the claim for damages exceeded his jurisdiction, he should have proceeded with the hearing of the claim for the £16.

L. Greenberg, for the respondent: The plaintiff is asking for an indefinite amount. If the appeal is upheld and the case sent back to the magistrate and heard by him next week, the amounts claimed would total £97 7s. 6d. A few days more makes it beyond his jurisdiction. In the proceedings a commission may be asked for, and it is impossible to estimate the delay that will be caused.

thereby. The intention clearly was to claim an indefinite amount. He referred to *Wolvaardt vs. Vermaas* (1908, T.S. 106); *Brooks vs. Brooks* (9 H.C.G. 113). He should have added the words "not exceeding £100" in his summons.

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The plaintiff asked for the summons to be amended so as to strike out the claim for damages. But if a claim is once beyond the magistrate's jurisdiction it cannot be amended so as to bring it within his jurisdiction: see *Yates vs. Simon* (1908, T.S. 884); *Jones vs. Williams* (1911, T.P.D. 536); *King vs. Harris* (1909, T.S. 292).

J. Brink replied.

Cur. adv. vult.

Postea (May 20th).

WESSELS, J.: The appellant, plaintiff in the Court below, sued the respondent for the return of £16, the purchase price of a horse, alleging that he had bought a sound horse, and that an unsound horse was delivered to him. In paragraph 6 of the summons he alleged: "By reason of the inefficiency of the horse as above for the purposes for which it was purchased plaintiff has been obliged to hire another horse for £1 2s. 6d. for February 9th (and) at 15s. per day since that date, and plaintiff also has to bear the costs of feeding the horse in dispute at a cost of 2s. per day, and plaintiff accordingly further claims £1 2s. 6d., and 15s. and 2s. a day until defendant refunds the purchase price or accepts the return of the horse." To this summons it was objected in the Court below that the magistrate had no jurisdiction because the amount claimed was indefinite, and the magistrate upheld that view; he therefore dismissed the summons with costs. The whole question is one of interpretation. Counsel for the respondent quoted to us the case of *Wolvaardt vs. Vermaas* (1908, T.S. 106). In that case summons was issued in the magistrate's court for maintenance. I have looked at the documents, and the claim was for £5 a month from the 24th March, 1907. Therefore, if one took the wording of that summons strictly, it would

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mean that the claim was for £5 a month for an indefinite period from the 24th March, 1907. The Court however held that the intention as revealed by the summons was that there should be maintenance from the 24th March, 1907, till judgment was given. I can see no difference between that case and the present. It seems to me that it is impossible to interpret this summons to mean that the plaintiff intended that he should keep the horse for an indefinite period and receive 17s. a day until the £16 was repaid and the horse fetched by the defendant, so that if the defendant could not find £16 the 17s. a day would go on for an indefinite period. It appears to me that the true intention of the summons is that the plaintiff asks the defendant to return him the purchase price, and offers to return the horse when judgment is given, and that he requires from the defendant, in addition to the return of the purchase price, a sum of £1 2s. 6d., plus 17s. a day until judgment is given. The test is whether on the day of hearing the magistrate had jurisdiction. If he had it then, it is immaterial whether by the delay of appeal the amount has mounted up to a sum exceeding £100. Of course if for some reason the hearing of the case were delayed for such a period that when the case was actually brought before the magistrate for the first time the accumulated amount would exceed £100, then it may be said that the magistrate would not have jurisdiction. But if on the day when the magistrate hears the case the figure of £100 has not been exceeded, it appears to me that there is no reason why he should not give judgment for the amount claimed. Under these circumstances we think that the judgment of the magistrate is incorrect, and that he should have held, as was held in *Wolvaardt's* case, that he had jurisdiction to try the matter, and he should have entered into the merits. The appeal is upheld with costs, and the case sent back to the magistrate for decision upon the merits.

BRISTOWE, J. concurred.

[Attorneys for Appellant, CLARK & PRICE.
 [Attorneys for Respondent, WAGNER & KLAGSBRUN.]

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