

him. I need not now decide whether or not there was in fact such an agreement, for this case is covered by a decision of the full Bench in *Smit v. Smit* (supra), in which it was held that a decree of divorce could not be granted whilst a judicial separation order subsisted. I am bound by this case no matter what my opinion might have been had this matter come before me as *res integra*. An order for judicial separation is not a peremptory order compelling the parties to live apart. It is merely an order which permits them so to live; and the order, as it is always understood, is made in the hope that the parties will not continue to live apart, but that they will compose their differences and resume conjugal relations.

But being, as I have said, bound by the decision in *Smit v. Smit*, I have no option but to dismiss this action.

Plaintiff's Attorney: *S. Short*.

[Reported by *G. Hartog*, Esq., Advocate.]

QUINNELL v. QUINNELL.

1913. August 7. MASON, J.

Jurisdiction.—Local Division.—Divorce.—Plaintiff husband within the jurisdiction.—Defendant wife resident without.

The Witwatersrand Local Division has not jurisdiction to try an action for restitution of conjugal rights, though at suit of a husband domiciled within its jurisdiction, against a wife who is resident without that jurisdiction but within the Province.

Action for restitution of conjugal rights.

The parties were married in Australia in 1901. They came to Johannesburg in 1904, where they settled. It was alleged that the desertion took place at Johannesburg. Process was served on defendant at Vereeniging, where it was admitted she was temporarily in service.

A. Alexander for plaintiff.

MASON, J.: My difficulty in this case is whether this action should not be brought in the Supreme Court. The summons describes the defendant as "of Vereeniging," and it was served upon her there by the Deputy Sheriff of Heidelberg.

It is common cause that Vereeniging is outside the jurisdiction of this Court. The question therefore is whether there has been good service or, in other words, is the defendant within the jurisdiction of this Court. It is quite true that for the purposes of edictal citation this Court may have jurisdiction though a defendant is outside the Province. But that is a special process enabling jurisdiction to be assumed because the cause is triable at the domicile.

But where a defendant is in the Province there is no room for an edict in these circumstances, nor for the operation of the provisions of sec. 3 of Act 27 of 1912, and the ordinary rule is you must sue at the defendant's residence.

It is said defendant resides at Johannesburg and not at Vereeniging, but the fact is that her residence is for the time being at Vereeniging, and it is pleaded that she has deserted her home.

I come to the conclusion therefore that this Court has not jurisdiction.

The right course therefore is not to proceed here unless service can be duly made within the jurisdiction of this Court.

For that purpose I shall extend the return day for three weeks.

Plaintiff's Attorneys: *B. Alexander Bros.*

[Reported by *G. Hartog*, Esq., Advocate.]

SEGAL v. JOHANNESBURG MUNICIPALITY.

1913. August 7. MASON, J.

Municipality.—Abattoir Bye-law 48 (G.N. 260; Gazette October 25, 1912).—How regulations thereunder to be made.—Slaughter according to Jewish rites.

A municipal bye-law prevented any person from slaughtering at the municipal abattoirs without a licence, the grant of which was subject, *inter alia*, to such regulations as to the mode in which animals were to be slaughtered as the council might prescribe. The health committee of the council, purporting to act under this power to regulate, passed a resolution that no licence was to be granted to any person to slaughter according to Jewish rites unless he produced a certificate of skill and character signed by two members of a Jewish religious body whose claim to regulate such matters was acknowledged by the council. Applicant, who was duly licensed but had not the above certificate, desired to slaughter according to Jewish rites. Respondents prohibited him