the man was shot as it was necessary for the safety of the patrol concerned.

It is for the prisoner to prove that the orders were not manifestly illegal. If, therefore, you find that the orders were manifestly illegal, and that the prisoner was aware of the manifest illegality, you will find him guilty. But the first point for you to decide is, Was Lieutenant Boyle killed, and was the body that was found that of Lieutenant Boyle?

The jury found the prisoner not guilty, and he was acquitted.

Attorney for prisoner: *J. P. van Zijl.*

JONES v. McKENZIE.

1903. *March* 5. MAASDORP, C.J., and FAWKES, J.

Magistrate's court.—Jurisdiction.—Counter-claim.—Statement by defendant on oath.

A statement on oath by a defendant that he has a *bonâ fide* counter-claim above the magistrate's jurisdiction is sufficient ground for upholding an exception to the jurisdiction.

This was an appeal from a decision of the Assistant Resident Magistrate of Bloemfontein.

Before the magistrate plaintiff claimed for £6 money lent. The defendant excepted to the jurisdiction on the ground that he had a counter-claim for £40, which would have been above the magistrate's jurisdiction.

The magistrate having satisfied himself of the *bona fides* of the counter-claim, upheld the exception, and the plaintiff appealed on the following grounds:—

(*a*) That the judgment was contrary to law, in that the plaintiff in reconvention did not give twenty-four hours'

previous notice that he intended instituting a counter-claim; and

(*b*) That an adjournment of the case should have been granted as requested, in order to enable defendant in reconvention to prove that the claim of the plaintiff in reconvention was not *bonâ fide.*

Hertzog, for appellant.

Hill, for respondent.

MAASDORP, C.J.: The assistant resident magistrate was not bound to hear the plaintiff's evidence as to defendant's counter-claim after defendant had sworn to the *bona fides* of his claim, which is beyond the magistrate's jurisdiction.

Appeal dismissed with costs.

Appellant's Attorney: *J. W. G. Steyn;* Respondent's Attorney: *J. P. van Zijl.*