LINTOTT v. HILL.

1909. *September* 22. MAASDORP, C.J.

Magistrate's court.—Interdict.—Sec. 1 *of Ordinance* 1 *of* 1906.—*Irregularity of proceedings.*

Costs.—De bonis propriis.—Agent instituting legal proceedings without power of attorney.

An order, irregularly granted at the instance of H by a magistrate in excess of his jurisdiction, which interdicted a sale in execution under his own judgment, set aside.

H, claiming to have acted as *negotiorum gestor* for his principal, ordered to pay costs *de bonis propriis* on the ground that he had produced no power of attorney.

This was an application for the review of certain proceedings which had taken place before the Resident Magistrate of Kroonstad on the ground of his incompetency in respect of jurisdiction and of the gross irregularity of the proceedings. The facts were as follows: The applicant was a creditor of a company registered in England under the name of the "Orangia Syndicate, Ltd.," which had been floated with a view to prospecting for diamonds. In July last one Sir Salter Pyne, who held the company's general power of attorney in this colony, admitted indebtedness on its behalf to the applicant to the extent of over £200. The applicant obtained provisional judgment for this amount in the resident magistrate's court, Kroonstad, on the 3rd August, 1909. A writ was taken out on this judgment and certain property, chiefly consisting of mining machinery, was attached by the messenger and the sale advertised for the 20th and 23rd August. The first sale realised £53, 4s. 6d. On the 21st August the respondent received a letter from Messrs. Roberts, Hays & Co., accountants of Johannesburg, to the effect that the Orangia Syndicate had gone into voluntary liquidation in England, and that, as they had been instructed to act on behalf of the liquidator,

they requested respondent to investigate applicant's claim and let them know what it amounted to and what steps they should take with a view to protecting the syndicate's property. Immediately on receipt of this letter the respondent applied to the magistrate for an order interdicting the messenger from selling the property advertised for sale on the 23rd August, pending recognition of the liquidator's appointment in this colony. The magistrate granted a final order as prayed, though no notice had been served on the applicant.

Blaine, K.C., for the applicant: The magistrate had no jurisdiction. He professed to act under sec. 1 of Ordinance 1 of 1906, but though that Ordinance is couched in rather wide terms, it was never contemplated that it should be used to stultify the natural and logical consequences of a judgment in a magistrate's court. Again, the amount at stake was considerably over £20, and where the magistrate's ordinary jurisdiction would be exceeded by the issue of an interdict, his power is limited to the granting of a provisional order, which is subject to the confirmation of the High Court. In the third place, there were gross irregularities in the proceedings, the applicant never having had an opportunity of opposing the order or having it set aside or reopened. The respondent acted rashly at his own risk, and costs should consequently be awarded *de bonis propriis*. The applicant was forced into court, and he had no security for his costs, the syndicate being domiciled in England.

Dickson, for the respondent: The respondent was a *negotiorum gestor*, and consequently costs should not be given *de bonis propriis*.

MAASDORP, C.J.: It is clear that the respondent had no authority to act on behalf of the syndicate. He might have taken proceedings if he had been properly instructed, but his power did not cover him. He acted, no doubt, with the best intentions, but he instituted proceedings at his own risk, and he must take the consequences. The only power a magistrate has to grant an interdict is given him by sec. 1 of Ordinance 1 of 1906, but that section certainly does not give the magis-

trate authority to set aside his own judgment. The higher courts have no such jurisdiction, nor has a magistrate. It is clear that the magistrate in this case regarded the order as final, because he did not send up the record of the proceedings to the Registrar of the High Court, as he would have done had he considered it provisional, and the terms of the order itself show that it was final. The magistrate issued a final order without hearing the respondent, and that is contrary to all principles of justice. As to costs, the respondent claims that he acted as a *negotiorum gestor*, but a *negotiorum gestor* has no authority to institute legal proceedings without instructions: he is bound to produce a power of attorney. Messrs. Roberts, Hays & Co. merely asked the respondent's advice in the matter, and thereupon be rushed into court. He acted for a principal who is admittedly in England, and as he had no power from that principal he must pay the costs himself. The magistrate's order will therefore be set aside with costs against the respondent *de bonis propriis*.

Applicant's Attorneys: *McIntyre & Watkeys;* Respondent's Attorney: *G. A. Hill.*