IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between :

THE MINISTER OF LAW AND ORDER ..... Appellant

and

STUART DREW PATTERSON ..... Respondent

Coram : RABIE, CJ, CORBETT, KOTZÉ, TRENGOVE et

VILJOEN, JJA.

Heard : 18 November 1983

Delivered : 2 March 1984

J U D G M E N T

RABIE/.....

RABIE, CJ.

The respondent in this appeal instituted an action against the appellant in the magistrate's court in Cape Town in which he claimed damages in the amount of R1 500 on the ground that he had been assaulted in Hermanus by a member of the South African Police. The appellant raised a special plea to the effect that the magistrate's court in Cape Town had no jurisdiction to hear the action because the respondent's cause of action, as set out in his summons, arose in the area of jurisdiction of the magistrate's court at Hermanus, and because the appellant, who was cited in his official capacity as a representative of the Government

of/.....

of the Republic of South Africa in terms of sec. 2 of the State Liability Act No. 20 of 1957, did not in that capacity reside or carry on business, within the meaning of sec. 28(1) (a) of the Magistrats' Courts Act No, 32 of 1944, in the area of jurisdiction of the magistrate's court in Cape Town. The appellant also pleaded over on the merits of the case and denied that the respondent had been assaulted as alleged by him. By agreement between the parties the magistrate was asked first to consider only the question of the special plea and to give his judgment thereon. The magistrate did so and held that the magistrate's court in Cape Town

had jurisdiction to hear the action. The special plea was accordingly dismissed with costs. The basis of the magistrate's finding was that Cape Town and Pretoria were "joint capitals" of the Republic of South Africa; that the Minister, in his representative capacity, had his domicilium in both Cape Town and Pretoria, and that he could therefore be sued in the magistrate's court in either Cape Town or Pretoria. The appellant appealed to the Cape Provincial Division, which dismissed the appeal but granted him leave to appeal to this court.

In its judgment (per Berman, A.J.,

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with whom Van Heerden, J., agreed) the Cape Provincial Division held that the magistrate's court in Cape Town had jurisdiction to entertain the respondent's claim by virtue of the provisions of sec. 28(1)(a) of the Magistrates' Courts Act No. 32 of 1944 in that the State, the real defendant in the action, carried on business everywhere in South Africa and that it could therefore be sued in any magistrate's court in the country, provided only that the claim in issue was one which a magistrate's court was entitled to consider.

Before proceeding to discuss the appeal, I should say that it was common cause between counsel in this court that the State was the real

defendant in the action instituted by the respondent,

and, also, that the State is a legal persona.

Sec. 28 of the Magistrates' Courts Act

No. 32 of 1944 reads as follows :

"(1) Saving any other jurisdiction assigned to a court by this Act or by any other law, the persons in respect of whom the court shall have jurisdiction shall be the following and no other -

(a) any person who resides, carries on business or is employed within the district;

(b) any partnership which has business premises situated or any member whereof resides within the district;

(c) any person whatever, in respect of any proceedings incidental to any action or proceeding instituted in the court by such person himself;

(d) any person, whether or not he resides carries on business or is employed

within the district, if the cause of action arose wholly within the district;

(e) any party to interpleader proceedings if -

(i) the execution creditor and every claimant to the subject-matter of the proceedings reside, carry on business, or are employed within the district; or

(ii) the subject-matter of the proceedings has been attached by process of the court; or

(iii) such proceedings are taken under sub-section (2) of section sixty-nine and the person therein referred to as the 'third party' resides, carries on business, or is employed within the district; or

(iv) all the parties consent to the jurisdiction of the court;

(f) any defendant (whether in convention or reconvention) who appears and takes no objection to the jurisdictio of the court;

(g) any person who owns immovable property within the district in actions in respect of such property or in respect of mortgage bonds thereon.

(2) 'Person' and 'defendant' in this section include the State."

The main argument of counsel for the appellant in this court was that although, according to sec. 28(2) of the aforesaid Act, the word "person" in sec. 28(1) is said to include the State, the State can nevertheless not properly be said to carry on business, as meant in sec. 28(1)(a). His alternative argument was that if one is constrained to find that the legislature did intend to provide that the State should, for jurisdictional purposes, be regarded as a person capable of carrying on business, one should

hold that the State carries on business only at its main administrative centre, i.e., Pretoria, and not everywhere in South Africa. The main argument of counsel for the respondent was that the judgment of the court a quo was correct in that the State carries on business everywhere in South Africa in the sense found by the Court (a matter which will be discussed later in this judgment), and also in the sense in which the expression "to carry on business" is ordinarily used, i.e., in the sense of carrying on commercial activities. Counsel's second argument, advanced as an alternative to the first, was that the question with which we are

concerned/,.....

concerned in this case was dealt with by this court in the case of Du Plessis v. Union Government (Minister of Defence), 1916 A.D. 57, and that the majority decision in that case is decisive of the present dispute. The majority decision was, briefly put, that sec. 2 of the Crown Liabilities Act No. 1 of 1910 conferred jurisdiction upon all magistrates' courts in the Union of South Africa to hear actions against the Crown, provided only that the claim fell within the limits of such courts' jurisdiction. Counsel contended that sec. 1 of the State Liability Act No. 20 of 1957 (which Act repealed the Crown Liabilities Act No. 1 of 1910) is, save for alterations necessitated by changes in the constitution of the country since

1910, in virtually the same terms as sec. 2 of the Crown Liabilities Act No. 1 of 1910, and that the majority decision in the Du Plessis case, supra, is therefore still authority for the view that every magistrate's court in South Africa has jurisdiction to entertain an action against the State, no matter where the cause of action arose, provided only that the claim in issue falls within the jurisdiction of the court.

The aforesaid argument that the majority decision in the Du Plessis case, supra, is decisive of the present dispute would, if sound, dispose of the appeal, and I accordingly propose to deal with it first.

In/.....

In Du Plessis's case the appellant sued the Minister of Defence, representing the Union Government, in the magistrate's court at Vryburg to recover £43 14s., being the balance of an account for certain articles which had been requisitioned by the military authorities. Before pleading, the defendant (the respondent in the appeal) took two exceptions. One of them - the only one with which we are here concerned - was that the magistrate's court at Vryburg did not have jurisdiction to hear the case. The magistrate overruled the exception, but his decision was reversed by the Cape Provincial Division. See Union Government (Minister of Defence)

v. Du Plessis, 1915 C.P.D. 650. On a further appeal, this court (consisting of Innes, C.J., Solomon, J.A., and De Villiers, A.J.A.) reversed the decision of the Cape Provincial Division, but Innes, C.J., and Solomon, J.A., did so on grounds that differed from those on which De Villiers, A.J.A. decided the matter. Innes, C.J., held that in terms of sec. 2 of the Crown Liabilities Act No. 1 of 1910 every magistrate's court in the country was a competent court to hear actions against the Crown, provided only that such court had jurisdiction over the subject-matter of the suit. The section read as follows :

"Any/.....

> "Any claim against His Majesty in His Government of the Union which would, if that claim had arisen against a subject, be the ground of an action in any competent court, shall be cognizable by any such court, whether the claim arises or has arisen out of any contract lawfully entered into on behalf of the Crown or out of any wrong committed by any servant of the Crown acting in his capacity and within the scope of his authority as such servant."

Innes, C.J., rejected the argument that, inasmuch as resident magistrates' courts in the Cape Province could only entertain suits against persons residing within their particular districts, they could only be competent courts within the meaning of the section when the element of residence was present. It was "jurisdiction

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over subject-matter", he said, "which was in the mind of the legislature as expressed in sec. 2 of the Act of 1910." He went on to say in this connection (at p. 61) :

> "Claims (or in other words the subject-matter of actions), against the Crown were being dealt with; and any Court competent to entertain any particular claim against a subject was given authority to entertain it against the Crown. So that 'any competent Court' meant any Court competent as to the subject-matter. The intention was to substitute the Crown for the resident subject, and therefore, so far as the Crown was concerned, to eliminate residence as an element of jurisdiction."

Concluding that "all magistrates' courts may entertain suits against the Crown within the limits of their jurisdiction as to subject-matter", the learned Chief

Justice said (at p. 62) :

> "This may not be a wholly desirable position, but it is the one created by the language of the legislature. The better provision would probably be to adopt the qualification inserted in the Cape Act of 1904, and to confine the jurisdiction of magistrates in Crown suits to cases in which the cause of action arose within their districts. That is a matter for future legislation, though the instances in which the Crown is sued in districts other than those in which the action arose would probably be few."

Solomon, J.A., like Innes, C.J., held that the issue fell to be decided "upon the construction of" sec. 2 of the Crown Liabilities Act No. 1 of 1910. He was of the view that a wide meaning should be given

to the word "competent" as used in this section (as in its predecessor in the Transvaal, viz. the Crown Liabilities Ordinance of the Transvaal No. 51 of 1903), and that it should not be made to depend on considerations of residence. He said in this connection (at p. 65) :

> "The Crown was made in the statutes amenable to Courts of Law without regard to the question of where the Sovereign resided. Such an idea indeed does not enter into the abstract conception of sovereignty. For it is with the King in his Colonial Government that we are concerned in these suits, and not with the person of the Minister, who is merely the nominal defendant in the case. It never could have been intended that

> the residence of the particular Minister, who is made the defendant in the action should be a factor in determining the competency of the Court; nor can, I think, the idea of the Crown residing in any place in the Union have entered into the mind of the legislature. In my opinion, no such consideration was present to the legislature in enacting the clause in question : the only matter with which it was concerned being the competency of the Court in regard to the extent of the claim. If the claim against the Crown was one which fell within the jurisdiction of the resident magistrate, the intention, in my opinion, was to enable any magistrate's court to deal with the case without regard to the locality of the particular district."

The learned Judge rejected the argument that "just as a corporation or company must for the purposes of

determining jurisdiction be taken to reside at the place where its business is being carried on, so also the King must be deemed to reside at the seat of Government of the Union at Pretoria", and said (at p. 66) :

> ".... the cases are scarcely analogous. For in the case of a company, unless some artificial residence is devised for it, the result would be that it would be entirely exempt from the jurisdiction of a court which, as in the case of the resident magistrate's courts in the Cape Colony, can be exercised only over persons resident within the district. And it is to avoid absurd conclusions of that nature that it was imperative to fix upon some place as the residence of a corporate body; and that could only be where its business is being carried on. In the case of

> the King, however, there is not only the difficulty that he cannot be said to carry on business, but there is the further fact that there is no necessity to devise any residence for him for the purpose of jurisdiction, if the construction already indicated is given to the provisions of sec. 2 of Act 1 of 1910."

The learned Judge went on to say (at p. 66 i.f.) that if one were, in spite of the views expressed by him in the passage quoted above, "forced to the conclusion that the King must be deemed to reside at the seat of the capital", it would lead to the "anomaly" that the only resident magistrate's court in the Union which would have jurisdiction in suits against the Crown would be that in Pretoria, no matter where

the cause of action arose.

De Villiers, A.J.A., held that the legislature, in passing the Crown Liabilities Act No. 1 of 1910, intended to confer jurisdiction on all competent courts to entertain suits against the Crown, but that it did not intend to confer jurisdiction upon a magistrate's court "which it would not have had in the case of a subject." It was clear, he said (at p. 70) -

> "that the legislation was introduced to put suitors in a position as favourable as they would have been in had the suit been against a subject, but there is nothing in the language to show that it was the intention to put them

> in any more favourable position, or to put the Crown in a less favourable position than the subject."

That being so, the learned Judge continued, his conclusion was -

> "that a magistrate's court may be a competent Court, but whether it is so must be determind in the light of the laws conferring jurisdiction upon magistrates' courts."

In the Cape Province, the learned Judge said, the matter was regulated by sec. 8 of Act No. 20 of 1856 and by sec. 5 of Act No. 35 of 1904, and the latter section extended the operation of the earlier Act so as the confer jurisdiction upon the courts of

resident magistrates "if the subject-matter is situated or arose within the jurisdiction of such Courts."

The learned Judge held in conclusion that the magistrate's court at Vryburg had jurisdiction to hear the matter in issue by virtue of the provisions of sec. 5 of Act No. 35 of 1904 in that the subject-matter of the suit (i.e., the cause of action) had arisen within the area of jurisdiction of that court.

In dealing with Du Plessis's case, counsel for the appellant contended (a) that, because of the difference in wording between sec. 1 of the State Liability Act No. 20 of 1957 and sec. 2 of the Crown Liabilities Act No. 1 of 1910 (quoted above), the former section cannot be given the meaning that was

given to the latter section by the majority of the members of the court in Du Plessis's case, and (b) that, in so far as the majority of the court held that the Crown could be sued in any magistrate's court in the country, provided only that the subject-matter of the suit in issue was within the jurisdiction of such court, that finding was obiter.

Sec. 1 of the State Liability Act No. 20 of 1957 reads as follows :

> "Any claim against the State which would, if that claim had arisen against a person, be the ground of an action in any competent court, shall be cognizable by such court, whether the claim arises out of any contract lawfully entered into on behalf of

the State or out of any wrong committed by any servant of the State acting in his capacity and within the scope of his authority as such servant."

As to counsel's argument as mentioned in (a) above, it appears that there are the following differences between sec. 1 of the State Liability Act No. 20 of 1957 and sec. 2 of the Crown Liabilities Act No. 1 of 1910 : (i) In sec. 1 of the 1957 Act the words "the State" are substituted for the words "His Majesty in His Government of the Union" which appear in sec. 2 of the 1910 Act; (ii) sec. 1 of 1957 Act uses the word "person" instead of the word "subject" which appears in sec. 2 of the 1910 Act, (iii) the words "or has arisen",

which appear in sec. 2 of the 1910 Act, do not appear in sec. 1 of the 1957 Act, and (iv) the word "any", which appears in the phrase "cognizable by any such court" in sec. 2 of the 1910 Act, does not appear in the corresponding phrase (viz. "shall be cognizable by such court") in sec. 1 of the 1957 Act. It is clear that the differences mentioned in (i), (ii) and (iii) cannot afford any support for counsel's argument as stated in (a) above. As to (iv), counsel's argument was that the use of the word "any" in the phrase "cognizable by any such court" in the 1957 Act and the absence thereof in the corresponding phrase in the 1910 Act is a

significant fact which shows that in the 1957 Act the legislature did not intend that "court", or "competent court", should have the same wide meaning that was assigned to it by the majority of the members of the court in Du Plessis's case. The argument has no merit. A reading of the two sections shows, in my opinion, that there is no difference in meaning between "cognizable by any such court" and "cognizable by such court". I may add, also, that a reference to the Dutch text of sec. 2 of the 1910 Act, which provided that "Vorderingen ..... kunnen in een bevoegd hof worden aangebracht.....",

shows that the word "any" in the phrase "cognizable by any such court" simply meant "a" ("een").

In support of his argument as mentioned in (b) above, counsel for the appellant relied on the views expressed by the majority of the members of the court in Dunning v. Union Government, 1932 N.P.D. 700. In that case Matthews, A.J.P., discussing Du Plessis's case, stated inter alia (at p. 711) that -

> "All three judgments in Du Plessis's case disclose that the mind of each member of the Court was applied solely to the question whether a magistrate's court had jurisdiction to entertain a suit against the Crown as being a competent court within the Crown Liabilities Act",

and/.....

and that -

"In so far as the majority judgments express the view or deduce the inference that, however inconvenient it may be, the Crown can be sued in any magistrate's court provided the subject matter is within the jurisdiction of such a court and irrespective of the place where the cause of action or the subject matter of the action arose, any such view or inference must in my opinion necessarily be obiter, because on the reasoning of their judgments the majority judges could have arrived at their conclusions as to the comprehensiveness of the expression 'competent court' without going so far. Furthermore, the only question for their decision was whether the Vryburg magistrate's court had jurisdiction to entertain a cause of action which did in fact arise within the jurisdiction of that magistrate's court."

Grindley-Ferris, J., in a separate judgment, agreed with the judgment of Matthews, A.J.P., and said inter alia that, as it was a fact that the cause of action in Du Plessis's case arose in the magisterial district of Vryburg, it was "unnecessary to enquire whether the magistrate's court would have had jurisdiction under the circumstances, e.g,. if the cause of action had not arisen wholly in its district."

Hathorn, J., in a dissenting judgment, stated that although it was true that the cause of action in Du Plessis's case had arisen in the Vryburg magisterial district, that fact "had nothing to do with the ratio decidendi" (p. 718 i.f.). The learned Judge, after

citing passages from the judgments of Innes, C.J., and Solomon, J.A.,in the Du Plessis case, concluded that "the fact that the cause of action arose in the Vryburg district had no effect one way or the other upon the decision of the case, which would have been exactly the same if the cause of action had arisen elswhere", and, also, that both Innes, C.J., and Solomon, J.A., decided the case on the basis that the words "any competent court" in sec. 2 of the 1910 Act meant "any court competent in respect to the subject-matter of the claim."

I find myself in agreement with the views expressed by Hathorn, J., as to the basis on which Du Plessis's case was decided by Innes, C.J., and Solomon J.A. I think, therefore, that Matthews, A.J.P., and Grindley-Ferris, J., erred in holding that the findings of Innes, C.J., and Solomon, J.A., that the Crown could be sued in any magistrate's court in the country, provided only that the claim fell within the jurisdiction of such court, were obiter. It follows that I cannot agree with counsel's argument as mentioned in (b) above.

In view of the aforegoing the question

arises whether the majority judgments in Du Plessis's case, seen in the light of the fact that there are no material differences between sec. 2 of the Crown Liabilities Act of 1910 and sec. 1 of the State Liability Act of 1957, are to be considered to be decisive of the question with which we are concerned in this case. I have come to the conclusion, as will appear more fully below, that in view of legislation regulating the jurisdiction of magistrates' courts that was passed after the decision in Du Plessis's case (which decision I accept, for the purposes of this appeal, to have been correct), the answer to this

question is "no".

In 1917 Parliament passed the Magistrates' Courts Act No. 32 of 1917. Chapter VI of this Act dealt with the question of the civil jurisdiction of magistrates' courts in the Union of South Africa. Sec. 28 contained provisions regarding the jurisdiction of magistrates' courts in respect of persons, and sec. 29 provisions regarding the jurisdiction of such courts in respect of causes of action, and there can be little doubt, I think, that it was the intention of the legislature to deal fully in this Act with the question of the civil jurisdiction of magistrates' courts. It may be noted in this connection that the

Act/.....

Act repealed all provisions relating to the jurisdiction of magistrates' courts which were at that time in force in the various Provinces of the Union of South Africa. Sec. 28 of the Act read as follows :

"28. (1) Saving any other jurisdiction assigned to any courts by this Act or any other law, the persons in respect of whom the court shall have jurisdiction shall be -

(a) any person who resides, carries on business or is employed within the district;

(b) any partnership whose business premises are situated or any member whereof resides within the district;

(c) any person whatever, in respect of any proceedings incidental to any action or proceeding instituted in the court by such person himself;

(d)/.....

(d) any person, whether or not he resides, carries on business or is employed within the Union, if the cause of action arose wholly within the district;

(e) any party to interpleader proceedings if -

(i) the execution creditor and every claimant to the subject matter of the proceedings reside, carry on bussiness, or are employed within the district or

(ii) the subject matter of the proceedings has been attached by process of the court;

(f) any defendant (whether in convention or reconvention) who appears and takes no objection to the jurisdiction of the court.

(2) 'Person' or 'defendant' in this section includes the Government of the Union and the South African Railways and Harbours."

Section 29 read as follows :

"(1) Subject to the provisions of this Act, the jurisdiction of the court in respect of causes of action shall be -

(a) in actions in which is claimed the delivery or transfer of any property movable or immovable, not exceeding two hundred pounds in value;

(b) in actions of ejectment against the occupier of any house, land, or premises within the district : Provided that, where the right of occupation of any such house, land, or premises is in dispute between the parties, such right does not exceed two hundred pounds in clear value to the occupier;

(c) in actions other than those already in this section mentioned, where the claim or the value of the matter in dispute does not exceed two hundred pounds.

(2)/.....

(2) In sub-section (1), 'action' includes 'claim in reconvention'".

The aforesaid Magistrates' Courts Act of 1917 was repealed by the Magistrates' Courts Act No. 32 of 1944, which is (as amended) still in operation. This Act, in sections 28 and 29 thereof, re-enacted, with certain variations, the provisions of sections 28 and 29 of the earlier Act. I have already quoted sec. 28 of the present Act, and I do not think it is necessary to quote sec. 29 thereof.

It will be observed that sec. 28(1) contains a description of persons in respect of whom a magistrate's court has jurisdiction, and that sec.

28(2) then proceeds to say that the words "person" and "defendant", where they occur in sec. 28(1), "include the State". (Similar provisions , it will be noted, appeared in sec. 28 of the 1917 Act.) From this it would seem to appear that the legislature intended that the State should, whenever it is necessary to determine in which magistrate's court it may be sued in any particular case, be dealt with in the same way as a natural person. A magistrate's court would therefore be competent to hear an action against the State if two grounds of jurisdiction exist, viz.

(a) it would have to have jurisdiction by virtue

of one or more of the provisions of sec. 28(1), and (b) it would have to have jurisdiction in respect of the cause of action as provided for in sec. 29. Jurisdiction in respect of subject-matter alone (as regulated in sec. 29) is therefore not sufficient to confer jurisdiction on a magistrate's court.

In the Du Plessis case, supra, as shown above, Innes, C.J., and Solomon, J.A., held that in terms of sec. 2 of the Crown Liabilities Act of 1910 jurisdiction as to subject-matter alone was sufficient to confer jurisdiction on every magistrate's court in the country to try actions against the State. As I have said above, the legislature, in passing sections

of
28 and 29/the Magistrates' Court Act of 1917 - and also sections 28 and 29 of the present Magistrates' Courts Act - intended, I think, to deal comprehensively with the question of the jurisdiction of magistrates' courts, and although there is no significant difference between the wording of the section of the Crown Liabilities Act of 1910, which the Court had to interpret in the Du Plessis case, and that of sec. 1 of the State Liability Act of 1957, I am of the opinion that the aforesaid provisions of the Magistrates' Courts Act of 1917 and of the Magistrates' Court Act of 1944 have rendered the reasoning of Innes, C.J., and Solomon, J.A., in Du Plessis's case no longer

applicable/.....

applicable. In saying this I am fully aware of the fact that jurisdiction conferred on magistrates' courts in respect of persons by sec. 28 of the present Magistrates' Courts Act was conferred subject to "any other jurisdiction assigned to a court by ..... any other law" (see the introductory words to sec. 28(1), and also of sec. 28(1) of the 1917 Act); I nevertheless do not think that the legislature, having intended (as I think it did) to deal comprehensively with the question of the jurisdiction of magistrates' courts in respect of persons (including "the State") and causes of action in the Acts of 1917 and 1944, would have intended that the position as stated by the majority of the Court in

Du Plessis's case should remain unchanged. I may point out in this connection, too, that in the current (7th) edition of Jones and Buckle, The Civil Practice of the Magistrates' Courts in South Africa, the submission is made that the Magistrates' Courts Act of 1944 "nullifies the effect of Act 1 of 1910, as interpreted by the Appellate Division, in relation to the jurisdiction of magistrates over the Government, and places the Government as a defendant in the same position as any other person, notwithstanding the opening words of the section." (The same submission was made in earlier editions of the work with regard to the 1917 Act.) As to the aforesaid savings clause,

reference/.....

reference may also be made to the case of Hattingh v. Union Government, 1934 T.P.D. 315, in which it was contended inter alia that the clause had the effect of preserving the jurisdiction of all magistrates' courts to hear actions against the State, as held by the majority of the Court in Du Plessis's case. The Transvaal Provincial Division rejected the argument and held that the legislature, "by giving the Government a residence" in sec. 28 (i.e., sec. 28 of the Magistrats' Courts Act of 1917) "impliedly intended to modify the provisions of sec. 2 of the Crown Liabilities Act" as interpreted in Du Plessis's case. As to the savings clause, I would add, also,

that in my view there is nothing in sec. 1 of the State Liability Act of 1957 which would entitle one to disregard the provisions of sec. 28 of the present Magistrates' Courts Act. The two sections can properly be read together : sec. 1 of the State Liability Act entitles the subject to sue the State in any competent court, and the question as to which magistrate's court is competent to entertain any particular suit is to be determined in the light of the provisions of sec. 28 of the Magistrates' Courts Act.

With regard to sec. 28 it will be observed, furthermore, that subsec. (1) (d) thereof

provides/.....

provides that a magistrate's court has jurisdiction in respect of "any person, whether or not he resides, carries on business or is employed within the district, if the cause of action arose wholly within the district." This provision, which also appeared in sec. 28 of the 1917 Act, removes what Solomon, J.A., described as an "anomaly" in the Du Plessis case. I quote from his judgment :

> "..... if .... we were forced to the conclusion that the King must be deemed to reside at the seat of the capital, it leads to this anomaly that the only resident magistrate's court in the Union which would have jurisdiction in suits against the Crown would be that of Pretoria. It matters not

> where the plaintiff resides or where the cause of action arose, if proceedings are to be brought in the resident magistrate's court they must be initiated in Pretoria."

Innes, C.J., left open the question whether the provisions of sec. 5 of Act No. 35 of 1904 (C.) - the section on which De Villiers, A.J.A., relied when he held that the magistrate's court at Vryburg had jurisdiction to hear the case because the cause of action had arisen in the area of jurisdiction of that Court - were "operative in respect of suits against the Government of the Union", and also the question whether that section was still in force "after the repeal of the

main Act (i.e., Act No. 37 of 1888) which it was intended to supplement". (Act No. 37 of 1888 was repealed by the Crown Liabilities Act of 1910.) Sec. 28(1)(d) of the Magistrates' Court Act removes the doubt referred to by Innes, C.J.

In view of the aforegoing I am of the opinion that the majority decision in Du Plessis's case that every magistrate's court in the country is competent to enterain any action against the State, provided only that the claim in issue is within the limits of the jurisdiction of such court, can no longer be regarded as valid, and that the question

whether the respondent in the present case was entitled to sue the appellant in the magistrate's court in Cape Town must accordingly be determined by reference to the provisions of sec. 28 of the Magistrates' Courts Act No. 32 of 1944. I now proceed to consider that question.

The court a quo, as I have said above, held that the respondent was entitled to sue the appellant in the magistrate's court in Cape Town on the ground that the State carries on business (as meant in sec. 28(1)(a) of the aforesaid Act) everywhere in South Africa, and accordingly also in the magisterial

district/.....

district of Cape Town. (In view of that finding the court a quo found it unnecessary to deal with Du Plessis's case, supra). The business carried on by the State everywhere in the country, the court a quo held, is that of governing the country. In coming to the conclusion - a finding that was supported by counsel for the respondent in this court - the court a quo relied on the judgment of Lord Diplock in the English case of Town Investments Ltd and others v. Department of Environment, (1977) 1 All E.R. 813. The issue in that case was whether certain premises were during a certain period the subject of a

"business tenancy" within the meaning of two statutory "counter-inflation" orders. The buildings concerned were hired by the Government and were used as offices for civil servants employed in various government departments. The answer to the aforesaid question turned on the question whether the buildings could be said to be occupied by the tenant "for the purposes of a business carried on by him." (These words appeared in the two statutory rules). Lord Diplock (with whom Lord Simon of Glaisdale, Lord Kilbrandon and Lord Edmund-Davies agreed, Lord Morris of Borth-Y-Gest dissenting) said inter alia (the passage is

referred/.....

referred to in the judgment of the court a quo) :

> "The answer to this question depends on how broad a meaning is to be ascribed to the word 'business' in the definition of 'business tenancy' in the two counter-inflation orders. The word 'business' is an etymological chameleon; it suits its meaning to the context in which it is found. It is not a term of legal art and its dictionary meanings as Lindley LJ pointed out in Rolls v. Miller, ((1884) 27 Ch. D. 71 at 88) embrace 'almost anything which is an occupation, as distinguished from a pleasure - anything which is an occupation or duty which requires attention is a business...'".

Lord Diplock proceeded to hold that the "activities of government" carried on in the leased premises by servants of the Crown could properly be described as

"business", and that "in exercising the functions of government the civil servants of the Crown were all carrying on a single business on behalf of the Crown." There can be little doubt, I think, that the meaning that was assigned to the word "business" in the aforesaid case is not the ordinary, or usual, meaning of the word, and it is therefore somewhat surprising that the court a quo should have been content to base its finding as to the meaning of the expression "carries on business" in sec. 28(1)(a) of the Magistrates' Courts Act on Lord Diplock's judgment without having any regard to the Afrikaans version of the section.

The Act, it may be added, was signed in Afrikaans. When there is any uncertainty as to the meaning of a word or expression in, say, the English version of a statutory provision, a consideration of the other - Afrikaans - version may serve to remove that uncertainty. See generally Peter v. Peter and Others, 1959(2) S.A. 347(A.) at p. 350 D, and S.v. Moroney, 1978(4) S.A. 389 (A.) at pp. 408E-409A. The Afrikaans text of sec. 28(1)(a) reads that a magistrate's court has jurisdiction in respect of "'n persoon wat in die distrik woon, besigheid dryf of in diensbetrekking is", and there can be little doubt that the expression "besigheid dryf", in its ordinary meaning, is inappropriate to

describe/...

describe the carrying on of the functions of government.

The authoritative Woordeboek van die Afrikaanse Taal, referring to the expression "'n besigheid dryf", states that "besigheid" means "handelsaak, winkel, bedryf", or "handelsbedrywighede". It is clear, in my opinion, that "besigheid bedryf" has a commercial connotation, and that it cannot have the meaning that was assigned to the expression "carries on business" by the court a quo.

Counsel for the respondent contended, in the alternative to his main argument, in which he supported the finding of the court a quo as to the

meaning of the expression "carries on business", that the State carries on business in the ordinary, commercial sense of the expression (e.g., by providing transport services, and by selling bonus bonds through its post offices), and that it does so everywhere in the Republic. The same argument was, it would seem, advanced in the court a quo, but the court did not deal with it.

It is not wholly clear to me that it can properly be said that the State carries on business in the ordinary, i.e., commercial, sense of the expression (cf. the remark of Solomon, J.A., in

Du Plessis 's.....

Du Plessis's case that "the King .... cannot be said to carry on business"), although I appreciate that it may be contended that the legislature, in providing that "person" in sec. 28(1) of the Magistrates' Courts Act includes "the State", intended that the State should, for the purposes of determining jurisdiction, be considered to be a person capable of carrying on business. I do not find it necessary to enter upon a discussion of this question, however, for even if one were obliged to hold that the State should, for jurisdictional purposes, be deemed to be a person capable of carrying on business, I would find

the proposition that it must be held to carry on business everywhere in the Republic, and that it can therefore be sued in any magistrate's court in the country, no matter where the relevant cause of action arose, wholly unacceptable. I am of the opinion that one should, on the grounds of convenience and in the interests of certainty, adopt a rule similar to that which the courts apply when determining the forum in which a trading corporation or other artificial person may be sued. In Sciacero & Co v. Central South African Railways, 1910 T.S. 119, a case in which the appellant had instituted an action against the

respondent in the magistrate's court at Belfast for the value of goods that had not been delivered and for a refund of railage paid thereon, Innes C.J., said inter alia (at p. 121) :

> "The general rule with regard to the bringing of actions is actor sequitur forum rei. The plaintiff ascertains where the defendant resides, goes to his forum, and serves him with the summons there. And corporations are held to reside at the place where their head office is, and where the general supervision of their business is carried on. But the Magistrates' Court Proclamation renders a defendant liable to be sued not only where he resides, but where he carries on business; and the point we have to decide is whether the railway administratio 'carries on business' at Belfast.

The magistrate has held that it does not. In the widest sense, no doubt, the administration does 'carry on business' at Belfast. It conveys passengers and goods to and from that place, receives revenue there, has servants and agents on the spot, and transacts at that station, as at every other branch station, certain business which it is constituted to deal with. But the words can hardly be taken in their widest sense, because of the serious inconvenience which would follow in the case of great bodies like railway administrations, which have agencies and branch offices in numerous parts of the country, if they were sued not at the place where the management is situated, and where an explanation of the matters in dispute could be given, but at any small station where any of their officials reside and service could be effected."

This/.....

This decision was cited with approval in T.W. Beckett & Co. Ltd. v. H. Kroomer, Ltd., 1912 A.D. 324, where this court (at p. 334) referred to a number of English cases in which it was held that trading and railway corporations reside or carry on their business at the place where their chief office is situated, and that the locality of that office determines the forum in which alone the company is justiciable. See also Estate Kootcher v. Commissioner for Inland Revenue, 1941 A.D. 256, where Watermeyer J.A., delivering the judgment of the Court, referred to Beckett's case, supra, and pointed out (at p. 261)

that in a number of English cases, cited by him, the phrase "the place where the corporation carries on business" was used not in its popular sense, but in the sense of "the place where the central management and control actually abides."

The considerations which move the courts to restrict, for jurisdictional purposes, the "residence" or "place of business" of a trading corporation to the place where the central management of such corporation is exercised, apply with equal, and even greater, force to the case of the State, considering its vast and country-wide activities.

In/.....

In the case of the State that place is Pretoria, which is, according to sec. 23 of the Republic of South Africa Constitution Act No. 32 of 1961, "the seat of Government of the Republic."

I should point out in conclusion that the court a quo, in holding that the State carries on business everywhere in the Republic and that the respondent was therefore entitled to sue it in the magistrate's court in Cape Town, expressed the view that if the Government was inconvenienced by being sued in that court, it could have applied for a transfer of the case to the magistrate's court at

Hermanus, where the respondent's cause of action arose. In saying this, the court referred to sec. 35(1) of the Magistrates' Courts Act of 1944 which provides that a court in which an action has been instituted may, on application made to it, transfer the case to another court if it is shown that it would cause the applicant "undue expense or inconvenience" if the action were to proceed in the court in which it was instituted. If the court a quo intended to indicate that in its opinion the existence of this provision was a good reason for holding that a plaintiff should be permitted to sue the State in any magistrate's

court in the Republic, then I disagree with it.

The relief which sec. 35(1) may afford the State in a particular case cannot in my opinion weigh up against the considerations which argue in favour of the adoption of a rule which would limit, as indicated above, the forum in which the State may be sued.

In view of the aforegoing I am of the opinion that the appellant's special plea should have been upheld, and the following order is accordingly made :

(1) The appeal is upheld with costs.

(2) The order of the court a quo is set

aside/.....

aside and the following order is substituted therefor : "The appeal is upheld with costs, and the order of the magistrate's court is altered to read : 'The defendant's special plea is upheld with costs'."

P. J. RABIE

CHIEF JUSTICE.

CORBETT, JA.
KOTZÉ, JA.
TRENGOVE, JA.
VILJOEN, JA.

Concur.