CASES

DECIDED

IN THE SUPREME COURT.

JAN. TO AUG. 1880.

KRAMER *vs.* VAN REENEN AND ANOTHER.

Misnomer of defendant in summons, how far sufficient to vitiate proceedings.

One Maria Kramer, who had been summoned under the name of Margaret Cramer to appear before the Resident Magistrate of Cape Town in an action wherein she was defendant, allowed judgment to go against her by default, and a writ of attachment was consequently issued, under which certain movables belonging to her were seized. She applied to have such writ set aside on the ground that her misnomer in the summons was such an irregularity as relieved her from the necessity of obeying it. Held, *that it was not such an irregularity, and that the application must be refused.*

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& Another.

In this case respondents were called upon to show cause why a certain writ of attachment obtained with reference to certain articles of furniture belonging to the defendant, in a suit in which the respondent Van Reenen was the plaintiff and the applicant the defendant, should not be set aside and declared to be illegal on the ground that the proceedings which had been taken were wholly irregular. Applicant's true name was Maria Kramer, but in the summons in the

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Resident Magistrate's Court issued in connection with the said suit she was called Margaret Cramer. She did not appear on the summons, and judgment went against her by default. Subsequently certain movables belonging to her were taken in execution by one Thomas Hill, the messenger of the Resident Magistrate's Court and one of the respondents. Applicant then applied to have the writ of attachment set aside, on the ground that the mistake in her name rendered all the proceedings irregular. She also alleged that the debt for which judgment was given had been incurred not by herself but by one Adriaan de Beer who was in her service at the time and who had been given strict orders not to purchase anything on credit.

Leonard, for applicant. Mistake in applicant's name is a sufficient irregularity in the summons to justify applicant in not obeying it.

Jones, for respondent. The irregularity in question is not such as to justify the application. The applicant is clearly liable even though her name may have been misspelt in the summons. She has practically admitted her identity by discussing the nature of the debt. If she had appeared before the Magistrate, he would have amended the summons. See *Crawford* vs. *Satchwell* (2 Strange, p. 1218), and *Fisher* vs. *Magnay* (5 Manning and Grainger, p. 781).

Leonard, in reply. The Magistrate had no power thus to amend the summons. See *Thorley* vs. *de Lima* (1 Menzies, p. 91).

De Villiers, C.J. :—The object of the Court is always to do substantial justice so far as it can be done according to the law. Judgment has already been given by the Magistrate against the applicant, and a writ has been issued, and the question is now whether the Court should stay further proceedings, or allow the law to have its course. The applicant has made no statement in her affidavit that the money for which she was sued was not really due by her. She does not say that she did not obtain the goods, and the respondents assert that the goods were delivered to her. Under these circumstances I think the Court would be doing a gross injustice if it were to stop the proceedings which have been taken, especially considering that it is quite

competent for her to go to the Court to have the action re-opened if she find she has a substantial defence. I think the Court is not bound to apply the extraordinary remedy now asked for. The application must be refused with costs.

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STOCKENSTRÖM, J., concurred.

[Applicant's Attorney, C. H. VAN ZYL.]

NIEUWOUDT *vs.* THE REGISTRAR OF DEEDS.

Improperly attested powers of Attorney.

The Registrar of Deeds is justified in refusing to accept a power of attorney granted by a party living beyond the Colony, unless the signature of the said party, besides being witnessed in the ordinary manner, be attested by some person of position, such as a Landdrost.

In this case respondent was called upon to show cause why he should not be ordered to pass transfer of a certain piece of land to applicant. It appeared that one S. W. Burger and one R. J. Burger were the joint owners of a certain piece of land situated within the Colony. This land they sold to applicant. R. J. Burger, who lived at Heidelberg in the Transvaal, signed a joint power of attorney authorizing one C. H. van Zyl to pass transfer of the said land to the applicant. Burger's signature was witnessed in the ordinary way, but was not attested by the Landdrost of Heidelberg. It was customary for the Registrar of Deeds in the case of powers of attorney purporting to be signed by parties resident beyond the Colony to require the signatures of such parties to be attested by a Justice of the Peace, a Landdrost, or some such well-known person, as well as by the ordinary witnesses, and he refused to accept the said power of attorney as sufficient authority to justify passing transfer of the said land.

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Jones, supported the application.