and our successors." From the time when this Court first came into existence up to the present, the office of interpreter from English into Dutch, and *vice versâ*, has always been deemed indispensable for the proper administration of justice, and the holders of the office have always been treated as officers of this Court. This *status* the plaintiff obtained upon his acceptance of the permanent as distinguished from a merely acting appointment, and he was not deprived of this *status* by the mere fact that his letter of appointment provided that he should not be thereby admitted into the ordinary Civil Service of the Colony. The result is that, in my opinion, the plea in question, if substantiated, will constitute a solid defence to the action, and the plaintiff's exceptions must accordingly be overruled with costs.

DWYER and SMITH, JJ., concurred.

[Plaintiff's Attorney, J. C. WESSELS.
Defendant's Attorneys, J. & H. REID & NEPHEW.]

VAN SCHALKWYK *vs.* HUGO AND ANOTHER.

Act 6, *of* 1861, § 7.—*Act No.* 7, *of* 1865.—*Prescription.*

Where a person wishes to put an end to prescriptive occupation he must bring an action for that purpose against the person who is in such occupation.

This was an action instituted by Willem Jacobus Dirkse van Schalkwyk, of French Hoek, against Jacobus Philippus Hugo and Andries Hendrik le Roux, for a declaration of rights, recovery of damages for trespass, and an interdict. The plaintiff was owner of certain land at French Hoek, which was in several lots. Defendants were owners of an adjoining farm called "La Provence." The French Hoek river flowed between these properties. Plaintiff contended that this river was originally intended to be the boundary between his land and the land of the defendants, or that, at

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any rate, he had obtained a prescriptive right over the piece of land he now claimed, which lay between the river and the rest of his property. Defendants denied the trespass alleged, and further denied the plaintiff's property in the land in question. It was proved on the part of the defendants that the diagrams of the property of the plaintiff and defendants pointed at the defendants' predecessors as being the original owners of the land in dispute. It was proved on the part of the plaintiff that he and his predecessors had been continuously in possession of such land from 1820 to 1855. The plaintiff's land had been granted at three different periods, *viz.*, one part in 1813, another in 1829, and another in 1833. The part of defendants' property about which there was no dispute was granted in 1820.

Leonard (with him *Gregorowski*), for plaintiff. The river was clearly intended to be the boundary line between the estates of plaintiff and defendants. At all events, plaintiff and his predecessors had held adverse possession of the land in question long enough to be entitled to prescription.

Maasdorp (with him *Jones*), for defendants. There is no proof of prescription. The property in question was not occupied by plaintiff as his own. If the property belonged to plaintiff, why were the beacons on plaintiff's side of the river? Defendants were justified in acting as they did. *Angell on Watercourses*, § 117.

Leonard, in reply. The diagrams are untrustworthy.

De Villiers, C.J.:—This case has been extremely well argued on both sides, and it is now unnecessary for the Court to postpone giving judgment, it being abundantly clear what the judgment should be. For the present we must dismiss from the consideration of this case the grant of 1820, regarding which, however, I would only make this remark. The plaintiff alleges that this grant, inasmuch as it mentions Pepler's land as the boundary, must be construed by the surrounding circumstances, as they existed at that time, and the land of Mrs. Pepler must be taken to mean the land at that time occupied by her. But it must then be taken into consideration that the grant of 1820 especially alludes to the diagram as to what is transferred to the defendants in this case, or their predecessors. It is clear that, in 1820, a

transfer was made to the defendants, and the diagram attached to that grant would appear to show that the boundary extended to the river, and, further, to the beacons known as F, C, and Hugo's beacons on the opposite side of the river. By that grant the defendants' predecessors obtained the whole of the land. At that very time the Peplers occupied land on the opposite side of the river, and the diagram itself shows that the land adjoins the Jouberts' land. There then were two distinct occupiers, the Peplers and the Jouberts. The Peplers occupied, according to the evidence, land to the river. Now, assuming that the grant of the land beyond the river and to the beacons F, C, did come to the Jouberts, there was, on the part of the Peplers, an adverse possession of this very strip of land now in dispute. From the year 1820 till 1855 there was such an adverse possession. The evidence of the slaves is perfectly clear on the point. The old man, Esau Alexander, said he was seventy-three years of age, and, as far back as he could remember, the land on the one side of the river was occupied by the Peplers, the land on the other side by the Jouberts. Now, if the case rested on the evidence of the slaves, there might be some difficulty in deciding it, although I ought to add that they were evidently intelligent and truthful. But their evidence is fully confirmed by the fact that the vineyard, which falls within the land in dispute, has always been cultivated by the Peplers, and is now upwards of seventy years old.

Until the year 1855, therefore, the plaintiff and his predecessors in title had peaceably, openly, and as of right occupied the land in dispute. In 1853 or thereabouts it was discovered that the boundary line, according to the grant, passed through the vineyard, but no proceedings were taken against the occupiers, who remained in possession until after 1855. It does not even appear that any intimation of the discovery was made to them. Can it then be said that there has been an interruption, or as the civilians would term it, an *usurpatio* of their adverse enjoyment (*usucapio*)? Their occupation had begun in good faith, without force or fraud, and even if afterwards they were informed that the land did not belong to them, there would be no such interruption, unless they were actually dispossessed, or unless, at all events, judicial proceedings were taken against them.

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At that time the period of prescription in regard to immovable property was one-third of a century. So long as the adverse occupiers remained in actual possession, the course of their incompleted term of prescription could only be interrupted by means of a judicial interpellation in the same way as a creditor can only prevent the term of prescription from running against him by means of a judicial interpellation against the debtor. For that purpose a summons to appear in a Court having jurisdiction would be sufficient. Upon these matters I need only refer to *Voet* (41, 3, 20) and to *Act No.* 6 *of* 1861 (sect. 7). The Court will, by its judgment, declare that the river is the boundary between the farms of the plaintiff and defendants.

DWYER and SMITH, JJ., concurred.

[Plaintiff's Attorney, C. C. DE VILLIERS.
Defendants' Attorney, J. C. DE KORTÉ.]

In re PETITION OF G. C. RENS.

Curator bonis appointed to a deaf and dumb person.

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In re Petition of G. C. Rens.

The applicant, Gerhardus Christiaan Rens, stated in his petition:—

That in 1844 two curators of his property had been appointed on the ground that he was deaf and dumb, and incapable of managing his affairs, both of these curators being now dead.

That he was entitled to a sum of money in the hands of the Master of the Supreme Court, the interest of which the curators had annually received and expended for his benefit.

That, although deaf and dumb, he was quite able to manage his own affairs, and was desirous of disposing by will of the money belonging to him.

Wherefore he prayed that he might be declared capable of managing his affairs, that his property might be released from curatorship, and that the Master might be authorized to pay over to applicant the sum in his hands.

Evidence was given to the effect that applicant was deaf and dumb, but that he was not actually of unsound mind,