1880. Feb. 3. „ 12.

Zeederberg & Co. *vs.* Bosman & Co.

of a quantity of raw silk. It may be that Jansen & Co. are liable at the suit of the plaintiff in this case, but I do not think the defendants are liable. They gave special authority to Jansen & Co. to sell 1000 sacks at 27*s.*, and the latter had no authority to sell 1500 sacks at 26*s.* 6*d.* Judgment must therefore be for the defendants, with costs.

[Plaintiffs' Attorney, ISAAC HORAK DE VILLIERS.
Defendants' Attorney, PAUL DE VILLIERS.]

AHNELT *vs.* VISCOUNTESS DE MONTMORT.

Pleadings—Exceptions.

Exceptions can only be raised to a declaration upon the facts stated in the declaration, but no new facts can be introduced for the defendant to rely upon.

1880. Feb. 20.

Ahnelt *vs.* Viscountess de Montmort.

This was an argument upon exceptions. The plaintiff's declaration set forth:—

That in 1861 one Jacob Letterstedt made his last will, by which he provided, *inter alia*, that the Cape Town branch of a business which he carried on should after his death be continued and managed by a manager, as would more fully appear from a copy of the said will to the declaration annexed. On a vacancy occurring in the office of manager, the executors were when requisite to appoint a fit person to such office, at a remuneration settled in the will.

That thereafter the said Jacob Letterstedt died without having on these points altered or revoked his will.

That the Board of Executors were duly appointed Executors of the said will, and were the sole surviving Executors thereof.

That in their capacity as executors aforesaid, they on the 1st of January, 1876, duly appointed the plaintiff as manager of the said branch, on the occurrence of a vacancy, and that plaintiff accepted the said office and remained in it, and performed the duties thereof until the 5th January, 1880.

That on the said 5th January, 1880, defendant, being the only child of the said Jacob Letterstedt, and vested with

certain rights and privileges under his said will, and claiming to have under the said will the power to dismiss the manager of the said business at her discretion, wrongfully and unlawfully dismissed plaintiff from the said office.

That according to the true intent and meaning of the said will, defendant had not by law the power so to dismiss the said manager.

There was a second count in which plaintiff claimed the sum of £15,000 as damages for his dismissal without due and lawful notice.

Defendant took exception to this declaration on the following grounds.

1. Inasmuch as plaintiff averred that he was appointed by the Board of Executors as manager of the Cape Town branch of the said business in pursuance of the terms of the will, and it appeared by the terms of the will that the plaintiff could only have been so lawfully appointed up to the date at which defendant attained the age of twenty-five years, to wit, the 13th of May, 1878, when such appointment *ipso facto* ceased, and defendant became entitled to the whole of the profits of the said business without the interference of the Board of Executors or of any person appointed by them.

2. Inasmuch as the averments in the declaration respecting plaintiff's alleged appointment by the Board of Executors showed no privity of contract between plaintiff and defendant, and consequently no breach of contract by defendant.

3. Inasmuch as the declaration was in other respects vague, informal, insufficient, and bad in law.

Upington, A.G. (with him *Jones*), for plaintiff.
Cole, Q.C. (with him *Innes*), for defendant.

De Villiers, C.J.:—The objections to this declaration are purely technical, but are of importance with reference to the practice of the Court. I have understood the practice of the Court to be that exceptions can only be raised to the declaration upon the facts stated in the declaration, but no new facts can be introduced for the defendant to rely upon. There is a new fact introduced into these exceptions, namely, that on the 13th May, 1878, the defendant attained the age of twenty-five years. The defendant therefore, instead of

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raising this defence by way of exception, ought to have raised it by way of plea. I do not see how the Court can uphold this exception. Then there is another exception as to the privity of contract, which may fairly be held to be an exception to the second count. It is however raised as an exception to the whole declaration. This exception must also be overruled.

Exceptions overruled, costs to be costs in the cause.

[Plaintiff's Attorney, C. C. DE VILLIERS.
Defendant's Attorneys, FAIRBRIDGE, ARDERNE & SCANLEN.]

COETZEE *vs.* TIRAN.

The signature of a third party at the back of a promissory note creates no liquid liability.

Norton vs. *Satchwell* (1 Menz., p. 77) followed.

1880. Feb. 28.

Coetzee *vs.* Tiran.

Provisional sentence was claimed against defendant on the following promissory note.

RUIGTE FONTEIN,

£144. 0. 0. 16*th January*, 1878.

On the 16th day of April next, I, the undersigned Horace Walter Parminter, residing at Bredasdorp, in the district of Caledon, promise to pay to Mr. Martin Jacobus Coetzee, of Ruigte Fontein, in the district of Albert, or order, the sum of one hundred and forty four pounds sterling for value received, payable at the Oriental Bank, Steynsburg.

(Signed) HORACE W. PARMINTER,
Bredasdorp.

No endorsement on the note had been made by plaintiff but the signature of defendant was written on the back of the note.

Gregorowski, for plaintiff, prayed for provisional sentence upon the note against the defendant as endorser of it. *Van der Keessel* (*Thes.* 527) showed that plaintiff was entitled to such sentence.

Leonard, for defendant. Defendant is not liable as endorser. The point now sought to be raised has been