

HOFMEYR v. DU TOIT.

1910. October 15. MAASDORP, C.J.

Costs.—Security for.—Peregrinus.—South Africa Act.

Where A was residing within the Union, but outside the jurisdiction of the provincial division of the Supreme Court where he sued B, *Held*, that he was not a *peregrinus*, and therefore was not obliged to furnish security for costs.

The plaintiff, residing at Capetown, sued the defendant, who resided at Bloemfontein, for provisional sentence on an acknowledgment of a debt of £1600 bearing interest at 6 per cent. from the 1st December, 1906. The defendant raised the preliminary objection that security for costs must be given by the plaintiff.

Blaine, K.C., for the defendant: The plaintiff would have been a *peregrinus* prior to the consummation of Union. The South Africa Act has not affected the position. The word *peregrinus* does not denote foreigner in the ordinary acceptance of the term, but merely one who is resident outside the jurisdiction of the Court. See *Oak v. Lumsden* (3 S.C. 366).

Dickson, for the plaintiff: Security has ceased to be necessary since the promulgation of the South Africa Act. See *Lennon v. De Lisle* (as reported in the *Transvaal Leader* of the 23rd September, 1910).

MAASDORP, C.J.: I have not much difficulty on this point. Mr. Justice BRISTOWE in the case of *Lennon v. De Lisle* has given certain reasons for his judgment. Supposing, for argument's sake, that those reasons are not strictly applicable to this case, they are in themselves good. But beyond that the question still is: What does the term *peregrinus* connote in South Africa? The word signifies a man who comes from abroad and is wandering away from his own country—a pilgrim. It

would be a great misfortune if, after the consummation of Union, we were merely pilgrims in every province except that in which we are resident. My opinion is that we are not, and I must therefore overrule the objection.

Plaintiff's Attorney: *C. J. Reitz*; Defendant's Attorneys:
Marais & De Villiers.
