lawfully entitled to do, he would have suffered very serious harm; and indeed not a single witness has contradicted that fact. None of the witnesses for the plaintiff have contradicted it. Therefore I think we may take it as not only the result of their evidence, but as the result of the circumstances of this case, that, at any rate as regards the individual owners, they would have been overcome if they had offered any resistance, as they were lawfully entitled to do, to the operations of the mob.

It is not actually necessary for us to determine whether there was also a riot in this case. But it seems to me that all the essential elements constituting a riot, in respect of the attack on these particular premises, were also present. There was a great mob; they burst open the doors; they swarmed over the whole place; they destroyed the property; they threatened the fire brigade; and there is no doubt, to my mind, that all the elements of riot were present on that particular occasion. Therefore, on both grounds, it seems to me that the defendants have succeeded in establishing their defence in this action.

GREGOROWSKI, J.: I concur.

Plaintiff's Attorneys: *Rooth & Wessels;* Defendant's Attorney: *B. J. A. Lingbeek.*

[G. v. P.]

OLIVER v. W. FRANCIS & SONS.

1915. *October* 25, *November* 15. DE VILLIERS, J.P., WESSELS and CURLEWIS, JJ.

Magistrate's court.—Garnishee order.—Landdrost's court judgment. —Proclamation 21 *of* 1902, *sec.* 49.—*Ordinance* 12 *of* 1904, *sec.* 6 (1).

By virtue of sec. 49 of Proclamation 21 of 1902 and sec. 6 (1) of Ordinance 12 of 1904, any magistrate has jurisdiction to grant a garnishee order in respect of an unsatisfied judgment of a Landdrost's Court of the late South African Republic.

Appeal from a decision by the A.R.M. of Johannesburg.

In 1895 the respondents obtained judgment against one J. E. Oliver in the Landdrost's Court at Pretoria. A writ of execution

was issued and a portion of the judgment debt recovered. In 1915 the respondents obtained in the magistrate's court, Johannesburg, an order on the African Banking Corporation garnisheeing a sum of money lying to the credit of J. E. Oliver in satisfaction of the judgment debt. On the return day the African Banking Corporation and J. E. Oliver appeared and alleged that the magistrate had no jurisdiction to entertain the application and that the J. E. Oliver to whom the money belonged was not the judgment debtor. The magistrate found against those contentions and confirmed the rule. J. E. Oliver appealed.

B. A. Tindall, for the appellant: The magistrate's court, Johannesburg, had no jurisdiction. Under sec. 49 of Proclamation 21 of 1902 a judgment of the Landdrost's Court, Pretoria, can only be proceeded with in the magistrate's court, Pretoria. Sec. 6 (1) of Ord. 12 of 1904 must be strictly interpreted and does not extend the provisions of sec. 49 of the Proclamation of 1902. The respondents' remedy was in the Supreme Court.

I. Grindley-Ferris, for the respondents: Sec. 49 of the Proclamation places judgments of a Landdrost's Court on exactly the same footing as those of a magistrate's court, and execution on the former can be obtained in the same way on the former as on the latter. Sec. 6 (1) of the Ordinance must be read with sec. 49 of the Proclamation.

Tindall replied.

Cur. adv. vult.

Postea (November 15).

WESSELS, J.: The respondents, plaintiffs in the Court below, sued J. E. Oliver and the African Banking Corporation as garnishees of a certain debt. It was alleged in the summons that the plaintiffs had obtained judgment against the defendant J. E. Oliver on the 26th November, 1895, in the Court of the Landdrost of Pretoria, and that they were entitled to attach the money of Oliver in the hands of the bank. It appears that judgment was given in the Court of the Landdrost at Pretoria, in November, 1895, against one J. E. Oliver. One question which the magistrate had to decide was whether the J. E. Oliver against whom that judgment was given was the J. E. Oliver who appeared before the magistrate in Johannesburg. The magistrate came to the conclusion, on the evidence, that the defendant was the same person. His judgment has

been appealed against, and the first question raised by Mr. *Tindall* in this Court is whether the magistrate of Johannesburg had jurisdiction. Counsel's argument was to the effect that the Garnishee Ordinance, 12 of 1904, gave resident magistrates the right to issue garnishee orders, but that the Ordinance had to be interpreted strictly, and that it was only a judgment of a Court of resident magistrate which could be garnisheed and of which any other magistrate had cognisance. As against this it was argued that judgments of the Landdrost's Courts were placed upon identically the same footing as those of a Court of resident magistrate, and therefore a resident magistrate to-day had the right to garnishee an order of the Republican Landdrost's Court. Sec. 49 of Proclamation 21 of 1902 says, *inter alia*, that: "Every judgment and sentence of any inferior Court which heretofore existed" (that is, which existed before the date of the Proclamation) "within any district of this Colony shall and may be proceeded upon in the Court of resident magistrate hereby created and established having jurisdiction over a district comprising the town or village in which such former Court was holden, precisely as if the complaint or action whereon the same was given or pronounced had been originally given or pronounced in such last-mentioned Court." The section provides, in other words, that the former Landdrosts' Courts are abolished and the Court of resident magistrate is placed in exactly the same position as the Landdrost's Court. In whatever way a judgment of a Court of resident magistrate can be executed, in that way a judgment of a Court of Landdrost can be executed. The judgment of the Landdrost was to be considered equivalent to the judgment of a resident magistrate. Then in 1904 came Ordinance 12 of 1904, which is stated to be: "An Ordinance to amend the Magistrates' Courts Proclamation of 1902 in certain respects," and amongst other things it deals, in section 6, with the power of magistrates to issue garnishee orders. In section 8 provision is made that the Ordinance "may be cited as the 'Magistrates' Courts Proclamation Amendment Ordinance, 1904,' and shall be read as one with the Magistrates' Courts Proclamation, 1902, and any law amending the same." In other words, Ordinance 12 of 1904 forms part and parcel of the Magistrates' Courts Proclamation, 1902, and should be read as one with it. It seems to me that if that is the case we must read sec. 49 of the Proclamation and sec. 6 (1) of the Ordinance in such way that the terms "Landdrost's Court" and "Resident Magistrate's Court" are interchangeable. Under these circumstances it seems to me that the magistrate has jurisdiction.

It was also contended that it was at any rate only the magistrate at Pretoria who had jurisdiction in the present case. But it is clear, both from sec. 6 (1), and from the fact that a garnishee order is merely a form of execution, that the Court of resident magistrate of Johannesburg has an equal jurisdiction with the magistrate of Pretoria in this respect. If the magistrate at Johannesburg has jurisdiction to give a garnishee order with respect to a judgment of the resident magistrate's Court of this district, and if the resident magistrate's Court of this district is equivalent to the old Landdrost's Court, it seems quite clear that the magistrate at Johannesburg had the right to give a garnishee order with regard to a judgment given or order made by the Landdrost of Pretoria in 1895.

The next question to determine is whether the plaintiff has established the identity of the J. E. Oliver against whom judgment was obtained in the Landdrost's Court in November, 1895, with the J. E. Oliver who appeared before him. I cannot see how we can interfere with the magistrate's judgment in this respect. He took the evidence of the various witnesses who appeared before him, and he came to the conclusion that the J. E. Oliver of the Landdrost's Court judgment was the same J. E. Oliver as appeared before him; and there was ample evidence before him to justify that conclusion. The case set up by the respondent was that there were two other J. E. Olivers; one was his son, and the other was a man he had known, who was not a relative of his, and that it may have been one of these persons against whom judgment was obtained by the plaintiff in 1895. But Francis states emphatically that he had no business dealings with any other J. E. Oliver; his books were not called for, and it was not proved that there was any other account in the same name. Francis says he knew J. E. Oliver well, and had had a considerable number of transactions with him. Besides Francis, other witnesses also identified the defendant. In these circumstances it appears to me that we are not in a position to cast any doubt on the finding of the magistrate in this respect. The appeal must, therefore, be dismissed with costs.

DE VILLIERS, J.P., and CURLEWIS, J., concurred.

Appellant's Attorneys: *Wagner & Klagsbrun;* Respondents' Attorneys: *Pienaar & Marais.*