the prosecutor considers it necessary to "compel the appearance" of the accused by summons he can request the clerk of the Court to issue the necessary process, and the clerk is then bound to do so. Where the prosecutor does not consider a summons necessary, then he does not make the necessary request and the summons is not issued.

Reliance was placed on Rule 74, which requires the "charge and summons" to be read to the accused at the trial; and it was urged that summons meant a summons under Rule 67 (which undoubtedly it does), and that charge meant the charge referred to in Rule 68. But "charge," as I have pointed out, is also mentioned in Rule 62. The entry in the book of the clerk of the Court is the charge, and that, I think, is the charge which Rule 74 requires to be read to the accused.

I therefore agree with the other members of the Court in thinking that the complaint of irregularity in this case is unfounded. On the other point, I have nothing to add, and I agree that the appeal must be dismissed.

Attorneys for Accused: *Webb & Dyason.*

[G. v. P.]

---

## S.A. RAILWAYS v. KEMP.

1915. *December*, 17. MASON, J.

*Costs.—Taxation.—Review of.—Employment of two attorneys.—Residence of Minister of Railways.—Offices of Administration at Johannesburg.—Duplication of charges.*

Where an action was instituted by the Minister of Railways in the Supreme Court, Pretoria, and it appeared that practically the whole administration of the railway service and of the particular branch concerned in the action was carried on in Johannesburg, *Held*, on a review of taxation, that plaintiff was entitled to employ an attorney both at Pretoria and at Johannesburg, but, *Semble*, that duplications of costs should not be allowed.

Review of taxation.

In an interlocutory application in the action of the *Minister of the S.A. Railways* v. *Kemp*, the defendant failed and judgment was given against him with costs. Those costs were taxed, and this application was brought by the defendant to bring that taxation in review. Defendant alleged in his petition that he had objected to the taxation of that portion of the bill of costs consisting of charges of the plaintiff's Johannesburg attorneys, on the ground that plaintiff was domiciled in Pretoria, and that he was

not entitled to engage Johannesburg attorneys and charge their costs as between party and party.

An affidavit was filed on behalf of the plaintiff to the effect that the principal administration work of the S.A. Railways, and particularly all matters affecting claims, as in the present action, were conducted and dealt with at the Administration head office in Johannesburg, and that it was necessary and important that the attorneys of the Administration should be instructed in Johannesburg.

*Gey van Pittius*, for the defendant: It was not necessary to employ attorneys in Johannesburg; the plaintiff is domiciled in Pretoria, and should, therefore, only employ Pretoria attorneys. See, however, *Portuguese Wine Depôt* v. *Schenk and Others* (1906, T.S. 174).

There are many duplications of charges of those should not have been allowed; see *Policansky* v. *Hermann & Canard* (1911, T.P.D. 319, at p. 322).

*C. E. Barry*, for the plaintiff: The case of *The Portuguese Wine Depôt* (*supra*) is similar to the present case. No objection was taken to the taxation to the duplication of charges, and that point cannot therefore be raised now.

*Gey van Pittius* replied.

MASON, J.: This is an application to deal with the revision of a bill of costs in an action instituted by the South African Railways against Kemp. In an interlocutory application, the defendant failed and judgment was given against him with costs. Those are the costs taxed. In the taxation, two bills of costs were rendered—one by the Johannesburg attorney, and the other by the Pretoria attorney of record. Objection was taken that the Minister of Railways, against whom the action has to be brought, is resident, in law, in Pretoria, and was not entitled to employ a Johannesburg attorney at all, and, therefore, that the Johannesburg attorney's bill should be entirely struck out. That was the question raised before the Taxing Officer, and I am quite clear that that is the question raised and intended to be raised by the petition on which this review is based. Now, in reply to that, the defendant files affidavits showing that the whole of the administration practically is carried out in Johannesburg, and that the particular branch concerned in this action—the Claims Branch—is entirely carried on in Johannesburg. Under those circumstances, it seems to me that under the principle which was adopted in the case of

*The Portuguese Wine Depôt* v. *Schenk and Others* (1906, T.S. 174) and confirmed by the full Court in the case of *Policansky* v. *Hermann & Canard* (1911, T.P.D. 319), it is quite clear that the defendant was entitled to employ the Johannesburg attorneys, as being those attorneys with whom he would really have to deal and consult in the matter, and through whom most of the local proceedings would have to be conducted; and that the Pretoria attorneys would, in substance, be in the same position as an ordinary Pretoria attorney who is employed by a country attorney. Now, that being the case, the main objection seems to me to fail. The principle has been long adopted in the Courts; it has been sanctioned by various Judges, and I think I should be disturbing the decisions if I were to uphold that objection.

Then, Dr. *van Pittius* maintains he is entitled to raise the question that there is some duplication of charges in these two bills. Now, that seems to me not raised by the petition, and I do not gather, by looking at the bills, so far as one can see, it was raised before the Taxing Officer—at any rate, it is not raised specifically in the petition. The other question was specifically raised, but I am not entitled to assume it was ever intended to object to specific items in the bills as contained in duplicate charges, but I do wish to say, having seen these bills, that it does seem to me, *prima facie*, that some of the charges are duplications. I will refer to one only. The Pretoria attorneys received the defendants' plea and counter-claim, and they are allowed two guineas for perusing and considering that. That is forwarded to the Johannesburg attorneys, and they are allowed £1 11s. 6d. for perusing and considering that. Why the charges should be different, I do not know. If £1 11s. 6d. is enough in one place, it ought to be enough in the other. But it is quite clear that this plaintiff was made to pay two attorneys for perusing and considering the same thing. If the matter really had to be dealt with in Johannesburg, that is the place where the plea ought to be perused and considered, and if, *vice versa*, it ought to be dealt with in Pretoria, double charges should be disallowed. The Taxing Officer must be very careful, in future, where there are these double bills to see that there are no duplications of charges.

The application, therefore, I am bound to refuse, with costs.

Plaintiff's Attorneys: *Lunnon & Nixon;* Defendants' Attorneys: *Webb & Dyason.*

[G. v. P.]

1915. *December* 17. MASON, J.

*Insolvency.—Application for sequestration of a firm.—Names of partners.—Practice.*

Applications for the sequestration of a partnership firm should set out the names of the partners inasmuch as a partnership is not a *persona* in terms of the Insolvency Law.

Application for the provisional sequestration of the estate of the respondents. Applicants stated in their petition that the respondents were Mahomed Ebrahim & Co., carrying on business as general merchants at Bethal, and stated the grounds upon which the application was based.

Further facts appear from the judgment.

*G. Hartog*, for the applicants, moved.

MASON, J.: In these matters I think it ought to be considered a settled practice—it is a practice, I think, always enforced—that a sequestration should not be issued against the name of a firm only; that it must be stated who the partners of the firm are, because, of course, under the Insolvency Law, a firm is not an entity. Therefore, in this case, I think the application ought to stand over. I shall continue the provisional order for what it is worth; but, in this particular case, the necessity for such a rule is apparent. The Master calls attention to the fact that there are two Mahomed Ebrahims already under sequestration, and he does not know whether this Mahomed Ebrahim is a third person. As a matter of fact, apparently it is not Mahomed Ebrahim at all, but Mahomed Ebrahim Jassim (?); so that the necessity for having something definite in the order for sequestration is still more apparent.

Under those circumstances, the matter must stand over for information as to who Mahomed Ebrahim & Co. are. The return day to be on the 30th instant.

[G. v. P.]