BRISTOWE J.
April 8th, 26th, 1912.

KROOMER, LTD., *vs.* BECKETT AND CO., LTD.

Jurisdiction—"Residence"—Company—Residence at Branch Office—Jurisdiction of Witwatersrand Local Division—Procl. 14 *of* 1902, *sec.* 16.

For the purpose of jurisdiction, an incorporated company may be said to reside where it carries on a substantial part of its business. Whether it resides at a branch office is a question of fact depending upon the extent and character of the business transacted thereat.

Where an incorporated company had its head office and registered address at Pretoria, but carried on a large business at Johannesburg under a separate management, to which large powers, including powers to bring and defend actions, were entrusted:—Held, *that such company resided at Johannesburg within the meaning of Procl.* 14 *of* 1902, *sec.* 16.

Such a company is amenable to the jurisdiction of the Witwatersrand Local Division in an action instituted against it on a contract made and to be performed within the Witwatersrand District.

Quaere: *Whether it is subject to the jurisdiction of that Division to the same extent as an ordinary* incola.

[Upset on appeal, see 1912, A.D.—Ed.]

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Action for £676 4s. 4d. damages for breach of contract. The plaintiff alleged that the defendants were a company registered with limited liability under the company laws

Sec. 16 of Proclamation 14 of 1902 (with the necessary corrections) is as follows:—

"The Transvaal Provincial Division Court shall have have cognizance of all pleas and jurisdiction in all civil causes and proceedings arising or which shall have arisen within the said Province . . . . . with jurisdiction over His Majesty's subjects and all other persons whomsoever residing or being within the said Province."

Sec. 27:—"The Witwatersrand Local Division Court shall be a Court of Record and shall, within the district in which it may be holden, have and exercise concurrently with the Transvaal Provincial Division Court all such and the same jurisdiction, powers and authority as are by this proclamation vested in the said last-mentioned Court, ..."

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of the Transvaal, and carried on business as general merchants and importers in Johannesburg and elsewhere.

The defendants pleaded as follows: "Before pleading to the merits, the defendant company pleads that the Witwatersrand Local Division has no jurisdiction to try this action. The cause did not arise and the defendant company does not reside within the area within which the said Court has jurisdiction."

There was no plea over on the merits. By consent the Court proceeded to hear evidence and argument on the question of jurisdiction only, the defendants agreeing to apply for leave to plead in case the Court held they were amenable to the jurisdiction. The facts appear from the judgment.

J. Stratford, K.C. (with him *Manfred Nathan*), for the plaintiff: This Court has jurisdiction as the contract was made and was to be performed within the jurisdiction, and the defendant is resident here. The place where the acceptance of a contract takes place is the locale of the contract; *Cowan* vs. *O'Connor* (20 Q.B.D. 640). Sec. 16 of Proc. 14 of 1902 does not limit the jurisdiction of this Court, but creates such jurisdiction. The section refers to "all civil cases" not to "causes of action." Numbers of other actions are cognizable here which are not mentioned.

[BRISTOWE, J.: The section means all actions which by the common law are cognizable by this Court.]

I agree. In arguing this case I shall apply your lordship's decision in *Schlimmer* vs. *Rising's Estate* (1904, T.H. 108), as if the Witwatersrand area were the whole country, and the rest of the Transvaal were a foreign country.

Whether the defendant company is resident here is a question of fact; see the *Annual Practice*, 1908, p. 50. The question simply is: Is the company here? *La Bourgogne* (1899, Probate 13; 1899, A.C. 431); *Dunlop Pneumatic Tyre Co.'s* case (1902, 1 K.B. 342). The case of *Wallis* vs. *Gordon Diamond Mining Co., Ltd.* (6 H.C.G. 43) seems against me, but it was decided on a wrong assumption of what the English law was. It was

assumed that a company could have one residence only, whereas it has been held in *Logan* vs. *Bank of Scotland* (1904, 2 K.B. 499) that a company can have two residences, and that the Court will take the most convenient.

E. Esselen, K.C. (with him *B. A. Tindall*), for the defendant: Carrying on business is not equivalent to residence. Sec. 27 of Proc. 14 of 1902 shows that this Court is to have a limited jurisdiction. See *Steytler* vs. *Fitzgerald* (1912, Buch. A.D. 479), specially the judgment of DE VILLIERS, C.J., at p. 485, and LAWRENCE, J., at p. 503; the decision was based on sec. 30 of the Ordinance of 1834, the Charter of Justice establishing the Eastern Districts Court, which is similar to section 16 of our Administration of Justice Proclamation.

Corporations are held to reside at the place where their head office is; INNES, C.J., in *Sciacero* vs. *C.S.A.R.* (1910, T.S. at p. 121). See also *Foote, International Law*, 3rd Ed., pp. 132 and 142; *Jones* vs. *Scottish Accident Insurance Co.* (55 L.J.Q.B. 415); *Bank of Africa* vs. *Cohen* (1908, T.H. 52).

[BRISTOWE, J.: Would the local magistrate's court have jurisdiction over the defendant?]

Yes, I admit that, because, in terms of sec. 12 (*a*) (1), a resident magistrate has jurisdiction over persons carrying on business within his district. See also *Coetzee* vs. *Sykes* (1910, T.H. 156) and *Pretoria Syndicate* vs. *Transvaal Loan and Mortgage Co* (1 O.R. 82).

J. Stratford, K.C., in reply: The same considerations do not arise in an action between two *incolæ* as between an *incola* and a foreigner. My learned friend's argument comes to this, that this Court would have jurisdiction if the defendant company's head office were in England, but not if it were in Pretoria.

[BRISTOWE, J.: Yes, that is so. In *Fitzgerald's* case Lord DE VILLIERS said that as Steytler was domiciled within the Supreme Court area, he could not be arrested by the Supreme Court to found jurisdiction, and therefore the E.D. Court could not arrest him. Following that argument in this case, the Provincial Division could

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sue the defendant by virtue of its residence in Pretoria, and not of its residence in Johannesburg. Is not this Court therefore in the same position, namely, that it cannot sue by virtue of the defendants' Johannesburg residence?]

I submit not. See *Bank of Africa* vs. *Cohen* (1908, T.H. 54) and *Peel* vs. *National Bank of South Africa* (1908, E.D.C. 488).

Cur. adv. vult.

Postea (April 26th, 1912).

BRISTOWE, J.: In this action the plaintiffs claim damages against the defendants for the breach of a contract for the sale of 2,000 pockets of sugar. The defendants plead that the Court has no jurisdiction, and that is the only issue which I am now required to decide. The ground on which the jurisdiction is disputed is that the cause of action did not arise, and that the defendant company does not reside within, the Witwatersrand District. The declaration alleges, and it is not denied, that the defendants carry on business in Johannesburg, and that the contract was to be performed within the jurisdiction. But this, it is said, is not sufficient. And evidence was called to show (1) where the contract was entered into and (2) where the company's main business is, and what is the nature and extent of its Johannesburg business. The evidence shows that the defendant company has its registered office and its main business in Pretoria, and that it is there that the general management of the affairs of the company is carried on. It has branch businesses in various parts of the Transvaal, of which by far the largest is the Johannesburg branch. Mr. Beckett was inclined to be reticent as to the extent (even within a considerable margin) of the Johannesburg business, but I am satisfied from his silence, not less than from his admissions, that it is not very much less in quantity than the business in Pretoria. The Johannesburg branch is carried on by three managers, who hold a power of attorney, giving them (amongst other things)

the widest powers of bringing and defending actions in the name of the company, and of choosing *domicilium citandi et executandi* on its behalf. Up to a short time ago wholesale as well as retail trade was carried on there, and, although it is denied that wholesale business is now done, it is admitted that the Johannesburg managers have power to do it, and the Johannesburg business is described on the company's billheads as "Wholesale and Retail Departmental Stores." The Municipal valuation of the premises occupied by the Johannesburg branch is admitted to be £70,000. As regards the present contract, Mr. Kroomer says that the offer was made in the first instance by telephone from Mr. Gawith, the defendants' manager in Pretoria, to himself in Johannesburg, and that the contract was completed at an interview between them at the Carlton Hotel in Johannesburg. Mr. Gawith denies this, and asserts that the contract was completed by telephone. I prefer the plaintiff's evidence, and I hold that the contract was entered into at the Carlton Hotel, as he says. The point is perhaps of little importance, because, according to *Cowan* vs. *O'Connor* (20 Q.B.D. 640), a contract is entered into at the place where the offer is accepted, and in the present case the acceptance was certainly here. But, however this may be, I hold that the contract was entered into within the area of this Court's jurisdiction. The Witwatersrand High Court, of which the Witwatersrand Local Division is the successor, was established and the area of its jurisdiction prescribed by section 24 of the Administration of Justice Proclamation of 1902. Its powers came from section 27, which provided that within its own district it should "have and exercise concurrently with the Supreme Court all such and the same jurisdiction powers and authority as are by this Proclamation vested in the said last-mentioned Court." The jurisdiction of the Supreme Court was defined by section 16, which gave it "cognisance of all pleas and jurisdictions in all civil causes and proceedings arising . . . within the said Colony . . . with jurisdiction over His Majesty's subjects and all other persons whomsoever residing or being within the said Colony." The effect of

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these provisions was to give to the High Court within its own area the same jurisdiction as the Supreme Court "in all civil causes and proceedings arising" within such area, "with jurisdiction over His Majesty's subjects and all other persons whomsoever residing or being within" such district. I had occasion to consider these sections in the case of *Schlimmer* vs. *Rising* (1904, T.H. 108), and I there held that the jurisdiction over persons "residing or being" within the area was merely supplemental to the civil and criminal jurisdiction given by the earlier part of the section, so that the civil jurisdiction of the Court depended on whether the proceedings arose within its area, not on whether the defendant was "residing or being" within it. On consideration I see no reason to doubt this view, more particularly as it has been followed in *Bank of Africa* vs. *Cohen* (1908, T.H. 52), and is not unlike that expressed by INNES, J., in *Steytler* vs. *Fitzgerald* (1912, A.D., at p. 315) with regard to the somewhat similar jurisdiction of the Eastern Districts Court. In the last-mentioned case the expression cause or legal proceeding "arising within" a particular area was construed by the same learned Judge (p. 315) to mean any action for which the Court having jurisdiction within such area would be the proper *forum*. Applying this to the present case, it would seem that the causes over which the High Court was given jurisdiction are those for which, under the general law, that Court (being within its area, concurrently with the Supreme Court, the highest tribunal) would be the proper *forum*. And there can be no doubt that (if I may further quote the words of INNES, J.) "the residence or presence of the contemplated defendant is an important element in the decision of the question whether an action may properly arise in a particular territory." As a general rule, indeed, residence is conclusive, and any action, wherever the cause of it arose, may be brought in the *forum* of the defendant's residence. Whether this is necessarily so in a case like the present, where the residence (if it exists) is not the main one, is a question which I reserve for future consideration. Two questions therefore arise: (1) whether the defendant company is resident in Johannes-

burg, and, if so, then (2) whether it can be sued there on the present cause of action. Residence is always a question of fact (*La Bourgogne*, 1899, P., at p. 13; 1899, A.C., at p. 433; *De Beers, etc., Mines* vs. *Howe*, 1906, A.C., at p. 458; *Saccharin Corporation Ltd.* vs. *Chemische Fabrik, etc., Co.*, 1911, 2 K.B., at p. 520); though the meaning of the term may vary according to the context in which it is used (*Buck* vs. *Parker*, 1908, T.S., pp. 1104, 1105). Generally speaking I suppose that for the purpose of jurisdiction a living person may be said to reside where he lives or where his home is, though questions of difficulty not infrequently arise even as to this. A corporation, however, having no body, does not require a home in the ordinary sense. It only exists through the activities of those who discharge its corporate functions, and where these activities are carried on, that is where it enjoys its legal existence. In other words, it exists where its business is, and in the only sense in which it can be said to have a residence it is there that it resides; *Russell* vs. *Cambefort* (23 Q.B.D., p. 528, per COTTON, L.J.); *Dunlop Pneumatic Tyre Company's* case (1908, K.B. 342, per COLLINS, M.R.). It was long ago held that a corporation could "dwell" within the meaning of the County Court Act (9 and 10 Vic. c. 93, s. 128), and that a trading corporation dwelt where it carried on its substantial business, whether that was its registered office or somewhere else. (*Taylor* vs. *Crowland, etc., Company*, 24 L.J.: Exch. 253; *Keynsham, etc., Lime Company* vs. *Baker*, 33 L.J. Exch. 41; *Aberystwyth, etc., Pier Company, Ltd.* vs. *Cooper*, 35 L.J.Q.B., at p. 45, per MELLOR, J.). Thus a railway company was held to "dwell" at its principal station, where the general superintendence of the whole concern was centered, and not at any of its local stations (*Adams* vs. *G.R. Railway Company*, 30 L.J. Exch. 124; *Shiel* vs. *G.N. Railway Company*, 30 L.J.Q.B. 331; *Brown* vs. *L. and N.W. Railway Company*, 32 L.J.Q.B. 318); and in *Aberystwyth, etc., Pier Company* vs. *Cooper* (*supra*), a company formed to maintain a pier was held to dwell not on the pier, but at its registered office in London, where its substantial business was carried on and its

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representatives were to be found. For the purposes of income tax (though residence for that purpose is not necessarily the same as residence for the purpose of serving a writ) a company is held to reside where the central management and control of the business is carried on *Calcutta Jute Mills* vs. *Nicholson* (1 Ex. D. 428); *De Beers, etc., Ltd.*, vs. *Howe* 1906, A.C. 455). Now a company may have more than one place of business. It may even have more than one principal place of business. And I think it is settled in England that in such a case it may reside for the purposes of jurisdiction in more than one place. In *Carron Iron Company* vs. *McLaren* (5 H.L.C. 416), a Scotch company, which carried on business in Scotland and only had agencies for sale in England, was served with process of the Court of Chancery at one of such agencies, and Lord ST. LEONARDS, in giving judgment, said: "If the service upon the agent is right it is because in respect of their house of business in England they have a domicile in England. And in respect of their manufactory in Scotland they have a domicile there. There may be two domiciles and two jurisdictions; and in this case there are, as I conceive, two domiciles and a double sort of jurisdiction, one in Scotland and one in England; and for the purpose of carrying on their business one is just as much the domicile of the corporation as the other." The decision of the Court was that the company had no English residence, and that therefore the service was bad, and from this Lord ST. LEONARDS dissented. But none of the Judges appear to have doubted that there might be two domiciles and two jurisdictions; and this view was afterwards adopted by the Court of Queen's Bench in *Newby* vs. *Van Oppen* (L.R. 7, Q.B., at p. 296) and by the Court of Appeal in *Haggin* vs. *Comptoir d'Escompte de Paris* (23 Q.B.D., at p. 524). It has accordingly been held that a foreign corporation which carries on business in England is resident there, and may be served with process in exactly the same way as an English corporation. This was first decided in *Newby* vs. *Van Oppen* (*supra*), which was followed by *Lhoneux, etc., Company* vs. *Hong Kong, etc., Corporation* (33 Ch.D. 446), where BACON, V.C.,

said (p. 448): "that the defendants carry on business in London is distinctly found by the evidence. They have an office, write up their names, and beyond all question stamp upon themselves in their place of business here the assumption that here they carry on their business." In *Haggin* vs. *Comptoir d'Escompte de Paris* (*supra*) a decision to the same effect was given by the Court of Appeal, COTTON, L.J., saying (p. 522): "I think that when a foreign corporation, established by foreign law, sets up an office in England, and carries on one of the principal parts of its business here, it ought to be considered as resident in England, and be treated as if it were established by English Law." And in the case of "*La Bourgogne*" (1892, P. 1, and 1899, A.C. 431) it was held by both the Court of Appeal and the House of Lords that a French steamship company which had an office in London, where applications for freight and passage could be made to an agent for the company, carried on business, and was therefore resident within the jurisdiction; and Lord HALSBURY (1899, A.C., p. 433), after quoting with approval the judgment of BACON, V.C., which I have just cited, and stating the facts, added: "It appears to me that as a consequence of these facts the appellants are resident here in the only sense in which a corporation can be resident . . they are here; and if they are here they may be served." These decisions have since been followed in the *Dunlop Pneumatic Tyre Company's Case* (1902, 1 K.B. 342), where a foreign company which hired a stand at an English bicycle show, exhibited their goods there and took orders, were held to reside within the jurisdiction while they occupied the stand; and in *Saccharin Corporation Ltd.* vs. *Chemische Fabrik, etc., Company* (1911, 2 K.B. 516), where the company was held to be resident within the jurisdiction because it employed an agent in England to sell its goods on commission with power to enter into binding contracts of sale.

It has been held however (following the Railway decisions under the County Court Acts), that a Scotch railway company does not reside in England merely because it has running powers over an English line and a booking

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office and a clerk at an English station (*Mackerath* vs. *Glasgow and S.W. Railway Company*, L.R. 8 Exch. 149; *Palmer* vs. *Caledonian Railway Company*, 1899, 1 C.B. 823). And it has also been held (though some of the cases may not be quite reconcilable with certain of those already cited) that merely having an agent for sale (*Carron Iron Company* vs. *McLaren*, *supra*), or a collecting agent (*Nutters* vs. *Messageries Maritimes*, 1 T.L.R. 644), in England or an office which belongs to an independent agent who works for the company on commission (*Grant* vs. *Anderson and Company*, 1892, 1 Q.B. 109; "*The Princesse Clementine*," 1897, P. 10), is not sufficient to constitute residence. And the same decision was arrived at where an American company maintained an office in England for the convenience of English shareholders (*Badcock* vs. *Cumberland, etc., Company*, 1893, 1 Ch. 362). "The true test," said COLLINS, M.R., in the *Dunlop Pneumatic Tyre Company's Case* (at p. 348) "is whether the foreign corporation is conducting its own business at some fixed place within the jurisdiction." In the case of *Jones* vs. *Scottish, etc., Insurance Company* (17 Q.B.D. 421) which was strongly relied on by Mr. *Esselen* the defendants were a Scotch company carrying on business in Scotland but with branch offices in England and the plaintiff applied for leave to serve the writ out of the jurisdiction on the ground that the company were "ordinarily resident" in England within the meaning of R.S.C., 1883, Ord. II. r. I. (*c*). The application was refused, POLLOCK, B., after referring to the cases with regard to "dwelling" under the County Court Acts saying "If we decide that the head office is the place where the company is domiciled or resident it is clear that we decide upon the same principle as the previous cases. If on the other hand we hold that a company is domiciled where it has an agent for local business, we should come to the absurd conclusion that it is domiciled in every town in England, Scotland and Ireland where it has an agency." With regard to this decision it is to be observed (1) that, notwithstanding the language of the judgment the actual decision was not that the Company was not "resident" in England but that it was not

"ordinarily resident" in England, which is a very different thing; (2) that the cases of *Haggin* vs. *Comptoir d'Escompte de Paris* and "*La Bourgogne*" had not then been decided and the case of *Lhoneux and Company* vs. *Hong Kong, etc., Corporation* which was decided in the same year was not cited; and (3) that if, and so far as it is inconsistent with the double residence cases, it cannot stand. In the subsequent case of *Watkins* vs. *Scottish Insurance Company* (33 Q.B.D. 285) an ordinary writ which had been served on an English branch of a Scottish Company on the assumption that the Company had an English residence was set aside on the ground that the provisions as to service in R.S.C. 1883, Ord. 9, r. 8 (3) only applied "in the absence of any statutory provision regulating service of progress" and the Companies Act of 1862 provided for service at the registered office; see *Logan* vs. *Bank of Scotland* (1904, 2 K.B. at p. 499). And the last-mentioned case makes it clear (see p. 498) that there is no exception of Scottish and Irish Corporations from the general rules as to residence.

There are not many South African cases in which this point has been dealt with, but in such as there are the English cases have been followed. In *Wallis* vs. *The Gordon Diamond Mining Company, Limited* (6 H.C.G. 43) it was held, following *Newby* vs. *Van Oppen*, that a company registered and having its head office in England but also carrying on business in Kimberley was resident in Kimberley as well as in London. In *Peel* vs. *National Bank of South Africa, Limited* (1902, E.D.C. 482) KOTZE, J.P., said (p. 490), though it was only a *dictum*, "it is quite clear that the court has jurisdiction on the branch of a bank, whose head office is beyond the jurisdiction, carrying on business at any place within the jurisdiction, especially in a matter which, as the pleadings show, involves a contract between the parties entered into and to be performed within the jurisdiction of the Court": and in *Bank of Africa* vs. *Cohen* (1908, T.H. 54), an English bank with a branch in Johannesburg was held entitled as an *incola* to sue a *peregrinus* by attachment. Again in *Sciacéro and Company* vs. *C.S.A.R.* (1910, T.S. 119), it was held, following *Brown* vs. *L. and N.W. Railway*

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Company (*supra*) that the C.S.A.R. did not carry on its business within the meaning of Proclamation 21 of 1902 p. 12 (*a*) (1), which gives a Magistrate jurisdiction in an action against a person "residing or carrying on business" within his district, at a local station. In giving judgment INNES, C.J., distinguished the case from that of an ordinary trading company. "A trading company" he said (p. 122) "can hardly carry on a branch business without a very substantial degree of management and discretion being entrusted to its local representatives. But in the case of a railway company the branch offices exist for merely limited purposes and are managed entirely from head quarters. They are merely spots in the arteries of traffic where the agents and servants of the Company collect fares and receive and dispatch goods entirely at the orders and behest of the central administration." (See also *Natal, etc., Mail Service* vs. *Boult,* 10 N.L.R. 163). The case of *Pretoria Syndicate* vs. *Transvaal Loan etc., Company* (1 O.R. 62) to which I was also referred did not deal with the question of double residence.

This principle has never been extended to unincorporated partnerships. An attempt to induce the Court so to extend it was made in *Russell* vs. *Camberfort* (23 Q.B.D. 526) but it failed; COTTON, L.J., pointing out that the cases were not parallel, for whereas a corporation being a creature of the law could be said to reside where it carried on business, a partnership, having no existence, could have no residence apart from that of its members and the partners themselves could not be said to reside in England merely because they had a business there. It has accordingly been held after some dissent (see *O'Neil* vs. *Clason,* 46 L.J.Q.B. 191; *Pollexfen* vs. *Sibson and Company,* 16 Q.B.D. 792; *Shepherd* vs. *Hirsch Pritchard and Company,* 45 Ch. D. 221; *Lysaght* vs. *Clark and Company,* 1891, 1 Q.B. 552), that a foreign firm cannot be brought before an English Court by an ordinary writ served at the English place of business (*Russell* vs. *Camberfort, supra*) or on a partner resident in England (*Heineman and Company* vs. *Hale and Company,* 1891, 2 Q.B. 83), or who happens to be temporarily there (*Western, etc., Bank of New York* vs. *Peres,* 1890,

1 Q.B. 304), such last-mentioned service being good only against the partner served. And a similar decision has been arrived at with regard to the latter partnership rules (*Grant* vs. *Anderson and Company*, 1890, 1 Q.B. 109; *St. Gobain, etc., Company* vs. *Heyerman's Agency*, 1893 Q.B. 96; *MacIver* vs. *G. and J. Burns*, 1895, 2 Ch. 830). The defendants in the present case are not a private partnership but an incorporated company. As I have said they carry on a large branch business in Johannesburg under a separate management to which large powers are entrusted, including the power to bring actions and defend them. It cannot, I think, be doubted on the cases I have mentioned that the defendants would be regarded as resident in Johannesburg if their main business were abroad. What difference can it make that it is in Pretoria? Residence, as I have pointed out, is a question of fact depending on the extent and character of the business transacted at the branch in question. And if the facts establish such residence I cannot see that it matters whether the chief business is in Pretoria or in China. In my opinion on the facts of this case the defendants are resident in Johannesburg.

The next question is whether by reason of such residence they are amenable to the jurisdiction of the Court in the present action. In *Wallis* vs. *The Gordon Diamond Mining Company, Limited* (6 H.C.G. 43) it was held that the defendant company's Kimberley residence was limited to its mining operations and business at Kimberley and that it could not be sued in Kimberley on a contract made in England and requiring to be performed there. "In respect of their mining operations and business in Griqualand West" said SOLOMON, J., (at p. 48), "the defendant company have a domicile here and may be sued in this Court by persons with whom it has had dealings in Griqualand West. But I can find no authority for the proposition that it can be sued here upon contracts entered into in England and to be performed there." Some colour seemed to be lent to this limitation of the effect of residence by certain *dicta* of Lord ST. LEONARDS in the case of *Carron Iron Company* vs. *MacLaren* (*supra*) and possibly by the case of *Newby* vs. *Van*

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Oppen (then the latest case on the point) the head note of which says "a foreign corporation carrying on business in England, although not incorporated according to English law, may be sued as defendants in an English Court in respect of a cause of action which arose within the jurisdiction." Some such limitation may also seem to be reasonable, though it is difficult to see why it is more unreasonable to permit a foreign company to be sued in Africa on a foreign contract because it has a business in Africa than it is to permit such jurisdiction to be acquired by attachment as may certainly be done if the case of *Le Comte* vs. *W. & B. Syndicate* (1905, T.S. 646) is good law. But, however this may be, it is clear beyond dispute that (with the possible exception of *Badcock* vs. *Cumberland, etc., Company, supra*), this principle of limited residence finds no support in the later English cases. The view on which they have proceeded has been simply that a foreign corporation, carrying on business in England, stands on precisely the same footing as an English Corporation. It is in fact an English Corporation because English law recognises it as a *persona*, a body incorporated by foreign law. It is therefore a personality by English law; it exists and resides in England, because it carries on corporate activities there. It is therefore amenable to the jurisdiction of the English Courts like any other *incola*. As COTTON, L.J., said in *Haggin* vs. *Comptoir d'Escompte de Paris* (*supra*) "if a corporation established by foreign law carries on business here it must be considered as resident in this country and must be equally liable to service as if it was established here." Or to use the language of Lord HALSBURY in "*La Bourgogne*," to which I have already referred, "the appellants are resident here in the only sense in which a corporation can be resident . . .they are here; and if they are here they may be served." Accordingly in *Lhoneux and Company* vs. *Hong Kong, etc., Corporation* (*supra*), where the defendants were a company registered and having their main office abroad and only a branch office in England, an action for an account of the dealings of one of their foreign branches with produce consigned to such branch by the plaintiffs who were a foreign firm, not

carrying on business in England, and for damages for negligent treatment of such produce was entertained and held to be properly commenced by an ordinary writ served on the English branch. And in "*La Bourgogne*" (*supra*) the cause of action was a collision on the high seas. The case of *Haggin* vs. *Comptoir d'Escompte* (*supra*) did not go quite so far, because there the contract may have been (it does not actually appear whether it was or not) entered into in England. But I refer to it because it is very like the case which I am now considering. The action there was on guarantees given to the plaintiff, an Englishman, by the head office of the defendant bank in Paris, the London manager having no power to enter into such contracts; and it was held that the action was maintainable in England on an ordinary writ. That the doctrine in question might lead to startling results was recognised in *Badcock* vs. *Cumberland, etc., Company* (*supra*) but there was nothing in that case which can be said to have disturbed the current of the authorities. The weight of authority is therefore against the doctrine of limited residence. But, even if it were upheld, the only possible limitation, as it seems to me, would be one in accordance with the *rationes jurisdictionis* set forth in *Emwald* vs. *German-West African Company* (5 S.C. 26). Nor does *Wallis* vs. *Gordon, etc., Company, Limited,* (*supra*) go beyond this. It is suggested by the CHIEF JUSTICE *in Steytler vs. Fitzgerald* that a limitation of this kind may arise in the Cape Province from the language of the Charter of Justice; and if so it might perhaps equally arise on the language of our own Administration of Justice Proclamation, though whether this will ever be held in the face of *Le Comte* vs. *W. & B. Syndicate* is another question. It is not however necessary for me to pursue this inquiry, because, even if such a limitation were adopted, it would not cover the present case, where the contract, as I have already said, was both made and to be performed within the jurisdiction.

This being so, it seems to me that I must hold that the defendants in this case are subject to the jurisdiction of this Court. The special plea therefore fails and must be dismissed with costs.

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I had and still have doubt about the correctness of the procedure in this case. But as a similar procedure seems to have been followed without objection in *Moogulli* vs. *Bhyat* in the Provincial Division (though in that case the defendant pleaded over) I have not thought it necessary to object, more particularly as the plaintiffs concur in desiring to have the question of jurisdiction disposed of now.

[Plaintiff's Attorney, H. D. BERNBERG.
Defendant's Attorneys, CLIFFE & DEKKER.]

BRISTOWE, J.
April 26th 29th, 30th,
May 1st, 1912.

BAGLEY *vs.* DE KOK.

Work and Labour—Remuneration—Architect's Certificate—Condition Precedent—Reservation in Certificate—Contract—Construction—Altering Punctuation.

Where the granting of a certificate by an architect is a purely ministerial function, the production of a certificate is not a condition precedent to the recovery of payment.

In the construction of a clause of a building contract, where it was doubtful whether an architect's certificate was required for all payments or only for some, the Court varied the punctuation by inserting a colon so as to make the clause conform to the ordinary terms of building contracts which require an architect's certificate for all payments.

An architect's certificate certifying for payment contained the words "it is understood that certain small items are at once completed to the owner's satisfaction." The said items were of a trivial character:—Held, *that the said words should be read as a reservation and not as a condition, and did not prevent the certificate being regarded as final* (*McCarthy* vs. *Visser*, 22 S.C. 122, *followed*).