has been some difficulty about the orders which have been issued. The first order seems to have been issued under a misapprehension. But there is no doubt about the meaning of the order. All that was meant by BRISTOWE, J., was that having regard to the judgments in this particular application, which had been pronounced by himself and by MASON, J., the Licensing Court should now give effect to them, and issue a licence in favour of Hitchcock. With regard to the application made by Mr. *de Waal*, for leave to the appellant to sell the stock he has in hand, without expressing any opinion whether such an application should be entertained, the Court considers that it is not one which it can decide at the present stage. The appeal is dismissed, with costs.

MASON and CURLEWIS, JJ., concurred.

Appellant's Attorneys: *Pienaar & Niemeyer;* Respondent's Attorneys: *De Beer & Slade.*

[G. v. P.]

EX PARTE NESER N.O.

1914. *October* 15. DE VILLIERS, J.P., MASON and CURLEWIS JJ.

Attorney.—Articled clerk.—On active service.—Condonation of breach of service of Articles.—Sec. 21, *Ordinance* I. (*Private*) *of* 1905.

An articled clerk, during the period of service of his articles enlisted and proceeded to the front. His father meanwhile applied for an order directing that the period spent by his son on active service should not be considered or treated as having interrupted the articles of clerkship, *Held*, that the application was premature as sec. 21 of Ord. 1 (Private) of 1905 only contemplated an application to condone a breach of service after it had occurred.

The applicant set forth in his petition that he was an attorney notary and conveyancer practising at Klerksdorp, and made this application as the father and natural guardian of Vivian Herbert Neser, a minor, who was serving him as an articled clerk under articles entered into on 7th July, 1913. With the applicant's consent the said V. H. Neser had enlisted in one of the irregular forces

of the Union and proceeded on active service with his regiment. The applicant prayed the Court to direct that the time spent by the said V. H. Neser on active service might not be considered or treated as having interrupted his service of articles of clerkship to the applicant.

The Incorporated Law Society offered no objection provided the unexpired portion of the three years was ultimately served by the said V. H. Neser.

The application was, on 13th October, referred to the Full Court by MASON, J.

J. M. Murray, for applicant, referred to Ordinance 14 of 1902 and Ordinance 1 (Private) of 1905, sections 21, 22; *Ex parte Tom* (1907, T.S. 762). In the Cape Province, where the three years of service must be consecutive (Charter of Justice, sec. 20; Act 12 of 1858, sec. 3; Rule 149), the Court has granted leave in advance: *Ex parte de Villiers* (16 C.T.R. 748).

Even if the Court cannot condone a breach of continuity before it has actually taken place, application should be made in advance for an expression of the Court's opinion: order per CURLEWIS, J. in *Ex parte Maré* (1908, T.S. 102). See also *Incorporated Law Society* v. *Hitchcock* (3 Buch. A.C. 338).

DE VILLIERS, J.P.: In my opinion this application is premature. The petitioner is the father of an articled clerk, who has enlisted as a volunteer in Enslin's Horse, and has proceeded to the front. It is stated in the petition that his absence on active service might be treated as a breach of the continuity of the service of his articles of clerkship to his father, to whom he is articled, and the petitioner prays that the Court may direct that the period spent by his son on active service shall not be considered or treated as having interrupted the service of articles of clerkship. Notice of the application has been given to the Law Society, and they see no objection to the principle of the application. They do not object to the granting of the prayer, provided the articled clerk is required to complete the service of three years in all—that is, that the period during which he is on active service shall be served after the expiry of three years from the date of the commencement of the articles. I do not understand the Law Society to say that necessarily that is all that should be required. Obviously if the break is very long it may be necessary that the period of three years in all should be considerably extended. For an important point to be considered in

the service of articles is the efficiency of the attorney. But in my view these are not considerations which we can deal with at present, because of the wording of sec. 21 of the Law Society's private Ordinance I of 1905. That section contemplates that the Court may give relief where there has been a break in the service of articles owing to accident, mistake or other sufficient cause. In my interpretation of the section an application of this kind can only be entertained by the Court after the break in the service has occurred. Therefore any application beforehand is premature, and cannot be entertained by the Court. I understand that there are numbers of other persons in the position of this articled clerk. I do not think that it is the function of this Court to express any opinion as to whether going on active service constitutes "good cause" within the meaning of the section. But if it does not—a matter upon which I do not wish to express any opinion whatsoever—if there are a considerable number of persons in the same position, their remedy may have to be by special legislation. But so far as this Court is concerned, I do not think that we, at the present stage, can give the articled clerk any relief. Nor do I think that it is advisable for the Court to express an opinion, which would be nothing more than an opinion, and certainly would not bind any Court which may have to consider the application when it is renewed. For these reasons, I come to the conclusion that there should be no order on the application.

MASON, J.: The difficulty in connection with this application arises under sec. 22 of the Law Society's Private Ordinance, No. I of 1905. That section definitely requires continuous service for three years without any break whatsoever. The section was passed after decisions of this Court laying down that under Proclamation 14 of 1902 continuous service was not required. I do not think the Court has power to set aside the definite provisions of the statute unless the legislature has conferred that power upon the Court. The question then arises whether under this or any other Ordinance such a power of dispensation is conferred upon the Court. The only section which has been cited to us, which so far as I know applies to a case of this kind, is sec. 21. I have considered that section most anxiously, in order to see whether relief could not be afforded to the present applicant. It is common knowledge that there are numerous cases of articled clerks who have been called out compulsorily under the Defence Act. I find it difficult to imagine

a more sufficient cause for a break in service than a compulsory call to join the Defence Force. If a compulsory call is good and sufficient cause, then in circumstances of great public emergency it seems to me that voluntarily, from a sense of duty, joining the military forces of the country is equally good and sufficient cause. It is for that reason that I have been anxious to see if there is anything in the statute which would justify us at the present stage in granting some specific relief to the applicant. But having carefully considered sec. 21, it seems to me that the section only applies to an irregularity which has already occurred. It was not intended to give the Court power to authorise an irregularity beforehand. It was intended, and is expressed, to give the Court power to condone an irregularity already committed, if the Court considered that there was good and sufficient cause for it. Under these circumstances, though with great regret, I do not feel that the Court is competent to make the order which is asked for, or to give any specific relief.

CURLEWIS, J.: I feel compelled to the view that unfortunately this Court has no authority or jurisdiction at the present moment to give the relief which is asked for, or even that which is suggested in the letter from the Law Society to the Registrar of the Court. I very much regret this, because I cannot conceive of a more laudable or sufficient cause for the breaking of an articled clerk's service of his articles, than to take up arms on behalf of his country in time of war.

Applicant's Attorneys: *Neser and Hopley.*

[A.D.]

RIESEBERG v. BERRY.

1914. *October* 15. DE VILLIERS J.P. and CURLEWIS, J.

Defamation.—Pleading.—Place where slander uttered.—Omission of.—Effect.—Exception.
Magistrate's court.—Practice.—Exception.

A sued B for damages for defamation in a magistrate's court. B excepted to the summons on the ground that it did not state the place where the alleged slander was uttered. The magistrate refused an amendment of the summons and upheld the exception. *Held,* on appeal, that the amendment should have been allowed as being neither material to the merits of the case nor prejudicial to B, and that the exception should have been dismissed.

Per CURLEWIS, J.: The procedure adopted by way of exception to the summons was the correct one.