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Brown vs. Hudson.
Cronje vs. Halse and Hudson

given to parties who, although allowed to appear for plaintiffs or defendants, when duly authorized in writing under the 13th section of Schedule B of the Act, were still not necessarily enrolled. A person, therefore, may, in my opinion, subject to this prohibition as to charging fees, employ any person he likes in a civil suit to conduct cases before the magistrate It is further maintained at the Bar that it is only the principal who so employs who suffers grievance by the magistrate's refusal to hear the party he has selected to appear for him. I cannot agree to that. It is not only the employer, but the employed, who suffers grievance; and any person suffering a grievance has a right to come to this Court for redress. The order of the magistrate was, in my opinion, wrong, and the present application should be granted.

BELL, J.: I agree with my brothers that it is competent for any plaintiff or defendant to appear in a magistrate's court by any person duly authorized in writing under the provisions of Act No. 20, 1856, section 13, Schedule B. The only difference of opinion is whether the "any person" referred to in that section has, when he is refused a hearing, a right to come here and complain. I concur on this point with my Brother FITZPATRICK, that the privilege is only that of the plaintiff or defendant themselves. But as the magistrate was substantially wrong in the matter, we will not give costs. The party moving was technically wrong, but practically right.

The application was thereupon refused without costs.

In *Halse vs. Hudson and Cronje.*

BELL, C.J., said: Here the litigant does appear and make the application on his own behalf; and, on the principle laid down in the case just decided, this motion is granted, and with costs against both respondents.

[Applicant's Attorneys, FAIRBRIDGE & ARDERNE.
Respondents' Attorney, VAN ZYL.]

QUEEN *vs.* SMYTH.

IN RE P.'s PETITION.

Where a Resident Magistrate, on the conviction of a prisoner sentenced him to find security for good behaviour only, without fine or imprisonment, held, on an application by the Crown, that this was no substantial sentence, and the Magistrate was directed to pass a substantial sentence accordingly.

Such sentence to find security not being a sentence coming under review of the Court under Act 20, 1856 *section* 47

the Court declined to grant the prayer of a petition from the prisoner for a review, on the general ground of an alleged improper conviction.

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Queen vs. Smyth
In re P.'s Petition

The respondent, Smyth, appeared in person on the following notice:

ARTHUR SMYTH, Esq.,
Resident Magistrate, Wynberg.

In the Supreme Court of the Colony of the Cape of Good Hope.

In the Matter of *The Queen vs. J. S. P.*

Whereas J. S P. was on the 24th day of June, 1869, duly committed for trial before you on a charge of indecently assaulting one Rebecca Andrews, and whereas the said J. S. P. was accordingly on the 24th day of June, 1869, tried before you for the said crime; and whereas it appears by the record of the said trial that the said J. S. P. was on the said 24th day of June, 1869, duly convicted of the said crime: Be pleased to take notice that this Honourable Court will be moved on Monday, the 2nd day of August next, at 10 o'clock in the forenoon, or so soon after as counsel can be heard, by William Downes Griffith, Esquire, Her Majesty's Attorney-General for this Colony, for and on behalf of her said Majesty; at which time you are hereby required to show cause, if any, why a mandamus should not issue from this Honourable Court to pass sentence on the said J. S. P.. in respect of such conviction as aforesaid according to law, and why you shall not be ordered to pay the costs of this application.

Dated at Cape Town, 21st day of July, 1869.

Griffith, A.-G., for the Crown, read the record of the Magistrate's Court in the case referred to, as follows:

In the Court of the Resident Magistrate for Wynberg,
24th June, 1869.

Queen vs. J. S. P., charged with the crime of assault.

On being arraigned, the prisoner pleads not guilty.
Evidence (taken previously) read over, in terms of the 29th section of Act 3 of 1861.
The prisoner calls witnesses for the defence.
Judgment: Guilty.
Sentence: To find security in the sum of £200 for himself and two sureties for £100 each, for the good behaviour of the said J. S. P. for one year towards all Her Majesty's subjects generally, and towards the said Rebecca Andrews, in particular.

And read certain correspondence, verified by affidavit, between the Attorney-General's department and the respondent, the effect of which was that the respondent, when requested to pass a more substantial sentence, had submitted that in his opinien the sentence passed was a substantial one, and had declined to take any further steps in the matter. Hence the present application.

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Griffith, A.G., argued that no sentence had really been passed upon the prisoner.

The respondent, in person, argued *contra.*

There being upon the notice paper a petition from J. S. P., the party referred to (setting forth the circumstances of the case, and alleging that on the evidence he had been improperly convicted, and praying "that under the power and authority vested in this Honourable Court under the Royal Charter of Justice, the Court would direct the said Resident Magistrate to transmit the record in the said proceedings to the Registrar of this Honourable Court, in order that your petitioner may be in a position to bring the same under review before the Court, or that your petitioner may have such other relief in the premises as shall be consistent with law and justice)," the Court desired to hear *Cole*, who appeared on behalf of the petitioner, before deciding on the other motion.

Cole then argued that there is a power in the Supreme Court to review decisions in the Magistrate's Court under the 42nd and 47th sections of Act 20. 1856. And that the sentence passed by the Magistrate was such a substantial sentence as required that he should, in the usual way, have forwarded the proceedings to the Judges of the Supreme Court for review. To be bound over to keep the peace for six months was a substantial sentence, and involved the implication that, unless the sureties required were found, imprisonment would be the consequence.

BELL, C.J., said: With reference to the argument that the finding of the Magistrate was equivalent to a sentence, he had very little hesitation in repudiating that argument and refusing the petition. Under the Charter of Justice, it was true, this Court had a wide power of reviewing the proceedings of inferior Courts; but Act 20, 1856, had to a great extent taken that power away by limiting the review of Magistrates' judgments to those which fell under section 47 of that Act, and which did not embrace the present case. This disposed sufficiently of the petition. The other application was by the Attorney-General for a mandamus on the Magistrate to pass a sentence, instead of merely directing the finding of bail, which was no sentence whatever. Under the general authority vested in this Court to compel magistrates to perform their duty, an order would issue upon the Magistrate of Wynberg to pass a suitable sentence upon the prisoner, and to pay the costs of this application; his conduct having, in the opinion of the Court, been very open to reprehension.

DENYSSEN, J., and FITZPATRICK, J., concurred.

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[The Magistrate subsequently passed sentence of a fine of £10, or imprisonment for a month and a day, which brought the matter under review before BELL, C.J., the Judge of the week, when the proceedings were certified to be "in accordance with real and substantial justice."]

[Crown Attorneys, REID & NEPHEW.
Attorney for P., FAIRBRIDGE & ARDERNE.]

QUEEN *vs.* SCHEEPERS.

Ord. 40, *sect.* 51. *Application for bail in case of murder.*

Ord. 73, *sect.* 14 *and* 15, *Ord.* 2, 1837, *construction of.* HELD *by majority of the Court* (BELL, C. J., FITZPATRICK, J.; DENYSSEN, J., *dis.*) *that the power of private persons to arrest without warrant, and, on resistance, to kill or wound the party sought to be arrested, is limited to such persons as have either seen or have actual knowledge of the commission of a crime, and does not extend to such as have merely a reasonable suspicion of its commission.*

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Queen vs. Scheepers.

Buchanan applied, under the 51st section of Ordinance No. 40 (which provides that the Supreme Court has power to bail in all cases whatever, whether capital or not, where innocence may be fairly presumed, &c.), for a release on bail of R. J. Scheepers, a farmer residing in the Victoria West division, who had been committed for trial on a charge of wilful murder in shooting a Hottentot. Having stated the facts, which, as he submitted, amounted to a fair presumption of innocence, he quoted sections 14 and 15 of Ordinance 73, which respectively provide "That every person in whose presence any murder, culpable homicide, rape, robbery, or assault with intent to commit any crime, or theft of any cattle, sheep, or goat, or other crime of equal degree of guilt with any of the crimes aforesaid, is committed or attempted to be committed, or who has knowledge that any such crime has been recently committed, shall be hereby authorized and required to arrest or forthwith to pursue the offenders; and every other private person to whom the purpose of such pursuit shall be made known shall be hereby authorized and required to join and assist in the same; and every private person who on such pursuit being made shall come up with any person having the property which has been stolen in his possession, or with any person whose traces have conducted his pursuers from the place where the crime was committed to the place where he shall be overtaken, shall be hereby