

In re BROWN.

*Attorney's Clerk.—Enrolment of Articles.—Rule of Court,
No. 213.*

The 213th Rule of Court, as to the enrolment of articles of service is imperative ; and the accidental omission of registration cannot be remedied by the Court.

A petition was presented to the Court from William Hutton Brown, which set forth that petitioner, on the 17th September, 1875, being then a minor, of his own free will, and with the approbation and consent of his father, entered into articles of clerkship with an attorney, W. A. Harries, of Port Elizabeth, to serve for three years from the 1st September, 1875; that previous to entering into the said articles petitioner had been in the service of Mr. Harries as clerk continually for a period of about five years; that the said articles were duly stamped and executed; that he had well and faithfully served the whole period of the articles; that owing to an inadvertence and accidental omission the said articles of clerkship were not enrolled and registered in the office of the Registrar as required by law; that this was first discovered when it was mutually agreed that the said articles should be extended for a further period of two years, owing to petitioner not having attempted to pass the law examination; that unless the Court allowed the service under the said articles to count, petitioner would be obliged to serve for a further period of five years, or to serve for three years and pass the University Matriculation and Law Examinations; wherefore he prayed that the said period of service for three years be allowed to count, and that the said articles might be annexed to and enrolled and registered with the fresh articles entered into by petitioner to serve Mr. Harries for a further period of two years. The affidavit of Mr. Harries corroborated the allegations contained in the petition; and the affidavit of Mr. Scrivenor, one of the witnesses to the articles, stated they were signed and executed in his presence on the 17th September, 1875.

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Cole, for the petitioner, admitted that the 213th Rule of Court, which was promulgated on the 4th of February, 1845, and confirmed by Ordinance No. 22, 1847, was in terms im-

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perative; but this was a case, if there was any, in which the strictness of the rule ought to be relaxed. It was hard to make the clerk suffer for what was admitted to be the fault of the attorney.

DE VILLIERS, C.J., said:—I regret we cannot help the petitioner. We should be acting in direct opposition to the rule if we made the order asked for.

DWYER, J., said:—It would be well if an Act of Parliament was obtained giving the Judges discretionary powers, both retrospectively and in future cases.

Application refused.

[Applicant's Attorneys, REID & NEPHEW.]

THE MISSION TRADING CO. vs. HESSEL.

Hawker.

A Hawker who had sold goods for some months from his wagon on a public roadway crossing a farm held not liable in an action of damages brought by a shopkeeper, the lessee of the property over which the said public road ran.

1879.
May 16.
The Mission
Trading Co. vs.
Hessel.

Louis Hessel was summoned in the Court of the Resident Magistrate for Namaqualand, on the 17th March, by the Mission Trading Company of O'okiep for £20 damages sustained by reason of his having, from the 1st January to date of suit, "wrongfully and unlawfully carried on, in the public road at O'okiep, in a certain wagon fixed there for the purpose, the trade or business of a retail shopkeeper, in selling and disposing of wares, groceries, and other articles under and by virtue of a retail shop license, or under and by virtue of a hawker's license, or one or other or both of such licenses, to the damage and prejudice of the plaintiffs." To this summons the defendant pleaded the general issue. Evidence was taken to shew that the plaintiffs, by a contract with the Cape Copper Mining Company, obtained, together with Messrs. Webster & Co., the exclusive right of trading at the mines situated on properties leased or owned by the said company, of which properties O'okiep was one. The defendant had established himself in the public road running over the place O'okiep, near one of the plaintiffs' shops,