1879. Feb. 11. „ 18. — Coaton *vs.* Alexander.

with the money of the society, both as to the £25 and as to the £15 which Ring consented should go into the funds of the society, in order that the creditors of Ring should have no claim whatever. It is perfectly clear from the beginning that that was the object of the society, and it was consented to by Ring and by all the other subscribers. The learned Counsel for the plaintiff seemed to feel this so strongly that the only way in which he could attempt to get out of it was by bringing forward a most unfair charge against a gentleman who was notorious for being always at the head of any charitable movement, the Rev. Mr. Rabinowitz. It was suggested that he wished to defraud the creditors of Ring, and when a case of that sort is made out, I do not think that Coaton, the plaintiff, deserves much consideration at the hands of the Court; but even if the Court were to give, as I think they ought, absolution from the instance, I think that then the society would be bound in honour and in equity to retain their own £25 and the sum of £8 8*s.* 7*d.* paid for forage, and that they ought to restore the balance of the purchase-money to Ring himself, and not Coaton. I do not think Coaton had any *locus standi* in this case whatever, and cannot agree with the majority of the Court on the question of costs.

Judgment for plaintiff accordingly, each party to pay his own costs.

[Plaintiff's Attorney, J. Horak de Villiers.
Defendant's Attorneys, Fairbridge, Arderne, & Scanlen.]

Falconer *vs.* Juta.

Foreign Contracts of Service.—Masters and Servants Act, No. 15, 1856.

A Stationer's Assistant is not a "Servant," within the meaning of the Masters and Servants Act, No. 15, 1856.

1879. Feb. 25. — Falconer *vs.* Juta.

This was an action for the recovery of damages.

The plaintiff's declaration set forth that at the time of the making of the contract hereafter mentioned he was in the employment of Messrs. Longman & Co., of London, of

which the defendant had notice, and that upon the 29th June, 1877, and at London, in consideration that the plaintiff would proceed to Cape Town and there enter into the service of the defendant, and serve him for a period of three years from the date of his arrival at Cape Town, in the capacity of assistant in his business of bookseller and publisher, at a salary of £200 a year for the first two years, and £240 for the third year, salary to commence from the date of the plaintiff's arrival in Cape Town, the defendant promised to retain the plaintiff in his service during the period and on the terms aforesaid. That plaintiff accordingly proceeded to Cape Town and arrived on 20th September, 1877, and entered into defendant's service and continued therein until the month of December, 1878, when he was wrongfully dismissed by the defendant, whereby the plaintiff had suffered damages in the sum of £200. Wherefore he prayed judgment.

The defendant pleaded the general issue.

It appeared that the agreement had been entered into in London by the plaintiff with the defendant's son acting for his father. Defendant's son wrote to the plaintiff a letter offering the terms stated in the declaration. The plaintiff stated he had accepted this offer in writing, but this was denied on the other side. There was no contract of service drawn up. After plaintiff had been a year in defendant's service he received notice on the 2nd September, 1878, that his services would not be required after the end of that year.

Upington, A.G. (with him *Leonard*), for the defendant, contended that as this contract which was alleged by the plaintiff had been entered into out of the Colony, and was for more than a year, and was not in writing, as required by section 1, chapter 2, Act 15, 1856, the plaintiff could not found an action upon it. Further, that the Act required that where there was an oral contract it should not be binding unless it was stipulated in it that the servant should enter upon his service within one month from the date of the contract. A telegram which had been sent to plaintiff by the defendant's son could not be looked upon as forming a written contract (*Chiodi* vs. *Waters*, 1 Stark. 335).

Jacobs (with him *Jones*), for the plaintiff, were not heard on the merits. On the question of damages Counsel referred to *Maine on Damages*, p. 108.

1879. Feb. 25.

Falconer *vs.* Juta.

DE VILLIERS, C.J., said:—The defence in this case is a hopeless one. The Masters and Servants Act, No. 15, 1856, does not apply in the least to a contract such as this. The interpretation clause of that Act clearly shows that it is meant to apply to contracts made with persons employed for wages to perform any handicraft or bodily labour in agriculture, manufactures or domestic service, and the like, but certainly not to a contract with a gentleman who came out from England to serve as a clerk to a stationer. The judgment of the Court must be for the plaintiff. As to the amount of damages, one year's salary, or £200, would under the circumstances be a fair amount to award.

FITZPATRICK, J., and DWYER, J., concurred.

Judgment for plaintiff accordingly for £200 damages, with costs.

[Plaintiff's Attorneys, FAIRBRIDGE, ARDERNE, & SCANLEN.
Defendant's Attorneys, REDELINGHUYS & WESSELS.]

MORISON *vs.* EXECUTORS OF MORISON.

Will: construction of.

A bequest of the usufruct of an inheritance to a son for his natural life, with remainder over after the death of himself and his wife, is a bequest to the son for his life, and on his death to his executors during the lifetime of his wife, who survived him.

A bequest cannot be given by implication, unless it be a necessary implication.

1879. Feb. 20. „ 27.

Morison vs. Executors of Morison.

The executors testamentary of the estate of the late Johanna Dorothea Morison were sued to answer Caroline Morison in an action to have the rights of the plaintiff to certain benefits under the will of the said Johanna Dorothea Morison declared—

The late Mrs. Johanna Dorothea Morison made a will on the 11th June, 1850, whereby amongst other things she declared to nominate and institute her six children, two sons and four daughters, one of her sons being Niel Adam Morison, as her sole and universal heirs and heiresses to the residue (after deduction of certain bequests) of her estate and pro-