MOROKO v. VAN RIET.

1910. *September* 1. MAASDORP, C.J., and WARD, J.

Magistrate's court.—Appeal.—Jurisdiction.—Spoliation.—Sec. 1 (*d*) *of Ordinance* 22 *of* 1909.

Though sec. 1 (*d*) of Ordinance 22 of 1909 gives a magistrate jurisdiction in a claim involving delivery of ownership of movable property, it does not give power to order the restoration of possession on ground of spoliation.

This was an appeal from a decision of the Resident Magistrate of Thaba'Nchu. The respondent (plaintiff in the court below) had sued appellant for the restoration of certain movable property, consisting of iron standards and rolls of fencing wire alleged to have been wrongfully taken from plaintiff's farm. The magistrate had ordered the appellant to restore the property and pay costs.

Sec. 1 (*d*) of Ordinance 22 of 1909 reads:—

(1) The jurisdiction of Courts of Resident Magistrates in civil cases as set forth in section twenty-three of the Magistrates' Courts Ordinance, 1902, shall be and is hereby extended in the manner following, and from and after the taking effect of this Act Resident Magistrates shall have jurisdiction under the said section:—

. . . . . .

(*d*) In any final judgment in a civil case to order the delivery to the plaintiff or to any third party who has intervened of any movable property claimed in lieu of or in addition to damage claimed; provided that the value of such movable property and the amount of such damages shall not, when added together, exceed an amount beyond the jurisdiction of a Court of Resident Magistrate.

Blaine, K.C., for the appellant (in answer to the Court): If the magistrate has jurisdiction to try a case of this nature, it can only be under sec. 1 (*d*) of Ordinance 22 of 1909; but the section does not appear to apply except in the case of a final judgment dealing with the ownership of the goods claimed. Here it is

clear from the claim and the method in which the magistrate treated the case that this was not such a final judgment, but a claim for a *mandament van spolie*. The case of *Ncotama* v. *N'cume* (10 S.C. 207) can be distinguished from the present case, as there was an alternative claim for the value of the cattle for which plaintiff sued. The magistrate refused to deal with the counter-claim, because he treated the case as one of spoliation.

Dickson, for the respondent: In the case of *Loots* v. *Van Wyk* (16 S.C. 419) there was also an alternative claim for the value, but the case was clearly treated as one of spoliation, and the Court did not doubt the correctness of the magistrate's decision. If the magistrate can decide questions of ownership, *à fortiori* he can decide the lesser question of spoliation.

MAASDORP, C.J.: The jurisdiction depends entirely on the wording of the statute. If there had been an alternative claim for damages in lieu of delivery it would have fallen within the section. Here it was not the case of a claim for the delivery of ownership, but for the restoration of possession. The appeal must be allowed with costs.

WARD, J., concurred.

Appellant's Attorneys: *Gordon Fraser & McHardy*; Respondent's Attorneys: *Marais & De Villiers*.