disrepair which is not due to "reasonable wear and tear"—say for instance an earthquake. The lessee would therefore be liable for the results of an earthquake. But what about "reasonable wear and tear"? That would not be reasonable wear and tear, but what the phrase does mean is that the lessee is to be liable for all damage, even damage which was not due to reasonable wear and tear. It does not concern the plaintiff what the second part of the clause means; he is concerned with the first part which says, "you are liable for repairs necessitated by reasonable wear and tear."

After all, as Mr. *Blaine* pointed out, this agreement was entered into in contemplation of a sale. It was practically a deed of sale on the hire-purchase system; it was in contemplation of a future sale. That is why the lessee was to have full benefit and take the risk at once of all this damage and responsibility for which the lessor would otherwise have been liable. The whole question depends upon the construction of the English language.

FAWKES, J.: I find difficulty in construing the latter part of the clause. I cannot understand how "wear and tear" can be exempted from "damage." The words are not applicable at all. At the same time I agree with the Chief Justice that the sentence requires a semi-colon after the word "expense" and that the latter part of the clause "reasonable wear and tear" cannot refer to the former part requiring the property to be kept in repair. Under these circumstances I agree that the appeal should be allowed.

Appellant's attorney: *I. Bergh*; Respondent's Attorneys: *Fraser & Scott.*

[Reported by *R. C. Streeten*, Esq., Advocate.]

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MATTIG v. BLORE.

1913. *March* 10. MAASDORP, C.J., and FAWKES, J.

Prescription.—Absence from Province.—Time from which prescription runs.—Chapter XXIII. of the Law Book, arts. 3 and 6.

Where cause of action arose in the Transvaal, but B came to reside in this Province before the period required for prescription in the Transvaal had expired, and was sued here by M, *Held*, that prescription ran from the date on which the claim originally accrued, and was not interrupted by B's absence, and that the period must be determined by the law in force in this Province.

This was an action for damages on the ground of negligence in the performance of defendant's duties as an attorney in the year 1906, when he was practising in the Witwatersrand High Court. Subsequently the defendant came to reside as a farmer in the Ficksburg district of this Province. He pleaded that the action had been prescribed. In the alternative he denied negligence and pleaded justification of his conduct in the matter. The plaintiff was a married woman residing in Johannesburg.

The Court heard argument on the question of prescription.

C. L. Botha, for the defendant.

G. Brebner, for the plaintiff.

MAASDORP, C.J.: The Court is of opinion that this claim of prescription must be allowed. The law which applies to the question of prescription must be the law of this Province unless there is anything in our Statute Law which says the law of a neighbouring Province must apply. The law which has reference to this question is contained in art. 6 of Chapt. XXIII of the Law Book which begins by providing for the case of debtors who were resident in this State at the time when their debt arose, absenting themselves from the State for a particular period. That is not the case here; so we need not consider that part of the article. Then it goes on to say: "provided that in respect of all claims against or contracts of whatever nature entered into between persons who at the time when such contracts were entered into, or such demands accrued, were both resident in one of the neighbouring Colonies, and whereof the debtor afterwards came to reside in this State, the prescription to be applied during the time that both were resident outside the country shall be according to the laws and provisions which are proved to be of force in regard to prescription in the country last inhabited by the debtor," which in this particular case would be the Transvaal. The period of prescription was not, however, completed in the Transvaal, so that this portion of the article is also inapplicable to the present case. The only law which can apply to it is the law that is laid down in art. 3*, that is to say the period of prescription is four years, which has to

*Art. 3, so far as it is material, reads as follows:—No claim or action arising from any claim for which the preceding article does not provide." (Claims provided for in art. 2 are those based on liquid documents and written contracts) "may be brought in any Court in this State after the expiration of four years from the time when such claim or right of action on such claim accrued" . . . .

be calculated from the time the action arose in the Transvaal, namely four year from the original date of the debt. Here more than four years have expired and the exception must be allowed and judgment entered for the defendant.

(After argument as to costs).

We can only deal with the case strictly according to the laws of procedure. There ought to have been an exception in this case and the plaintiff had no right to draw it as a plea and as a case that had to go to trial. We can only therefore allow such costs as would have been allowed if an exception had been taken and such exception allowed after argument thereon.

FAWKES, J., concurred.

Plaintiff's Attorneys: *Harris & Lovius*; Respondent's Attorneys: *Botha & Goodrick.*

[Reported by *R. C. Streeten*, Esq., Advocate.]

KEMPS (BORN ZIJLSTRA) v. KEMPS.

1913. *March* 12. MAASDORP, C.J., and FAWKES, J. *April* 1. FAWKES and WARD, JJ.

Husband and wife.—Divorce.—Malicious desertion.

W left H in order to earn a living because H did not support her. W admitted that H had asked her to return to him, but added that she supposed he wanted to come back that he might be supported by her. H had written a letter to to W in 1908 containing the following words: "You are henceforth independent: think no more of me. Hate me . . . It is best for you to consider me dead . . . I hate you; I cannot live with you any more." W sued H for restitution of conjugal rights failing which divorce on the ground of malicious desertion.

A rule *nisi* was granted, calling upon H to restore conjugal rights, and on the return day, there being no appearance for H, a decree of divorce was granted.

This was an action for restitution of conjugal rights. The plaintiff in her evidence stated that she and the defendant were married at the Hague, Holland, in 1901 and that they came to Rouxville in 1902. She said that her husband did not support her and that she lived with her parents at Rouxville. He did nothing