

Coram :
KOTZÉ, C.J.
AMES-
HOFF, J.
MORICE, J.

CARDINAAL

v.

THE GOVERNMENT OF THE SOUTH AFRICAN
REPUBLIC.

1896

3 June.

4 September.

LICENCE—LAW AGENT—PRESCRIPTION—LAW NO. 2, 1871 (a).

1897

26 June.

Law agents, sworn translators, &c., can be sued by the Government for the payment of their licences.

The demand for licence moneys is not prescribed after the lapse of one year, and arrear licence moneys can therefore also be claimed.

THIS was an appeal from the decision of the Landdrost of Carolina. The appellant was sued in April, 1896, for 26*l.*, being licence moneys due by him as a law agent and sworn translator for the years 1895—96. The appellant pleaded specially :—

- (a.) That seeing a licence was a permission to do something or to practise in the future, no one could be sued to pay licences for something that was already past.
- (b.) That licences to practise as law agent and sworn translator could be taken out quarterly, and according to sect. 3 of Law No. 2 of 1871, the computation of the amount of licence due must commence from the beginning of the quarter in which the licence was issued.
- (c.) That the payment of licences fell under that portion of the legal system known as fiscal law, and seeing that the Estimates Law was only of force from year to year, the payment of licences was subject to a prescription of a year, and the State could, therefore, after the lapse of the year, no longer institute an action.

The case was heard by the Landdrost on the 1st May, 1896, and judgment was given in favour of the Government for 22*l.* 15*s.*, being the licence moneys for law agent and sworn translator for the year 1895 and for the first two quarters of the year 1896. Against this judgment an appeal was noted.

(a) Lokale Wetten, 1849-55, p. 428.—TR.

Esser, for the appellant: The Government cannot sue for the licence moneys, but can only proceed indirectly. Fiscal rights are prescribed within a year. (*Vide Grotius*, bk. 3, ch. 46, n. 8.)

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*Durbury*, for the respondent: The authority cited refers not to licences but to fines. There is no prescription against the *fiscus*. (*Voet*, 44, 3. 11; *Matthaeus de Auct.* bk. 22, cap. 7, n. 45—47. See sect. 3 of Law No. 2 of 1871, amended by Volksraad Resolution of 10th June, 1873.)

*Cur. ad. vult.*

*Postea.* 4th September, 1896.

Korzé, C. J., intimated that the Court desired that the appeal should be further argued on the point whether the claim for the licence moneys by the State was prescribed after the lapse of a year, and if so from what period the year began to run.

*Postea.* 26th June, 1897.

*Lohman*, for the appellant, referred to *Grotius*, bk. 3, ch. 46, n. 8, and *Groenewegen's* note to n. 13; *Placaat*, 4th September, 1603; *Groeneweg. de ll. abr. l. 2, Cod. 4, tit. 61; Rechtsgeleerd, observ. Vol. 3, p. 261, obs. 99.*

*Coster*, for the respondent: It is merely the fine for non-payment of the licence moneys, which is prescribed in a year. (*Voet*, 44, 3. 7 and 44, 3. 11; *Matthaeus de Auctionibus*, lib. 2, cap. 7, n. 45—47; *Van Zurck*, sect. 57, sub re "*Gemeene Middelen*"; *Van den Berg, Neerl. Advys.-Boek*, Cons. 281 and Cons. 206; *Schorer ad Grot.* 3. 46, sect. 8.)

Korzé, C. J.: We think that the licence moneys may be considered as a tax which can be claimed for a year already past. A distinction is moreover to be drawn between the fine imposed for the non-payment of a licence and the paying or collecting of the licence money itself. The former may indeed, according to the authorities, be prescribed within a year; but no authority has been produced to show that the latter is taken out of the ordinary rule with regard to prescription. The appeal will accordingly be dismissed with costs.

Attorneys for the appellant: *Roux and Ballot.*

Attorney for the respondent: *Carl Ueckermann, Senr.*