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 HOMBERGER
 v.
 MINING
 COMMISSIONER
 OF JOHANNES-
 BURG.
 Esser, J.

Mining Commissioner, the issue (of licences) is entirely left to his discretion, but that he has at the same time to proceed in the interests of the diggings, and, on refusing to issue a stand licence he is bound to show that the application for the same would be "to hamper the digging on a known precious metal or stones bearing area." In the case before me the Mining Commissioner has entirely failed to show the existence of any such reason for his refusal. On the contrary, the applicant has succeeded in his contention that the ground applied for is open and suitable for stands without hampering the digging, which is not anywhere contradicted by the Mining Commissioner. For these reasons I think the appeal should be allowed with costs, and the Mining Commissioner must be ordered to issue to the applicant two stand licences for the unoccupied ground applied for in the proclaimed township of Johannesburg situate on the proclaimed farm Randjeslaagte.

Attorney for the appellant: *Jas. Berrangé.*

Coram :
 KOTZÉ, C.J.
 MORICE, J.
 ESSER, J.

N. E. SMUTS & Co. v. R. H. BOLMAN.

FOREIGN JUDGMENT—ARREST *AD FUNDANDAM JURISDICTIONEM*—DOMICIL—JUDGMENT BY DEFAULT.

1897
 5 July.

Where in an action on a judgment by default granted by a foreign tribunal it appeared that the defendant at the time of the judgment was not domiciled within the jurisdiction of such tribunal, and that jurisdiction had merely been founded by arresting certain immovable property of the defendant, the Court granted absolution from the instance.

THIS was an action for the payment of 148*l.* 3*s.* 8*d.* with interest, being the amount of a judgment granted by default in favour of the plaintiff against the defendant, by the Court of the Eastern Districts of the Cape Colony, together with the taxed costs of the action. The facts were as follow: The plaintiff practised as an attorney at Aliwal North in the Cape Colony, under the style or firm of N. E. Smuts & Co. The defendant formerly resided in the Cape Colony, but was now living at Krugersdorp, in the South

African Republic. In 1895 the plaintiff obtained in the Eastern Districts Court of the Cape Colony an arrest *ad fundandam jurisdictionem* of certain erven belonging to the defendant in the colony. The plaintiff thereupon instituted an action against the defendant for 90*l.* 14*s.* 9*d.*, being the balance of certain fees for professional services, &c., and obtained on 21st November, 1895, a judgment by default in his favour with costs. The erven on being sold realised next to nothing, and the plaintiff now sued the defendant in this Court for the amount of the judgment with costs. The defendant pleaded a general denial, and specially that from the time that the plaintiff made a claim upon him, and when judgment was given against him, he had never been under the jurisdiction of the Court of the Eastern Districts of the Cape Colony; that before judgment was pronounced against him no summons had ever been served on him; that he never had notice of any action instituted against him nor of the judgment given against him; and that consequently the said Court had no jurisdiction in the matter beyond the erven which had been attached, as in November, 1895, he was no longer domiciled in the Cape Colony. The plaintiff in his replication alleged that, although the defendant had temporarily left the colony, he was still domiciled there. After some discussion, the Court decided to hear evidence in regard to the domicil of the defendant in 1895. From the evidence of the defendant, it appeared that he removed to this State in June, 1895. He left the Cape Colony on account of poverty, and came to this country for the purpose of settling here. He had had himself registered with the field-cornet on his arrival.

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KOTZÉ, C. J.: The plaintiff, in his petition to the Eastern Districts Court, says that the defendant has no intention of returning to the Cape Colony.

Curlewis, for the plaintiff, admitted this.

Lohman (with him *Kock*), for the defendant, was not heard.

KOTZÉ, C. J.: We find that the defendant left the Cape Colony with the view of not returning, and that since June, 1895, he has been domiciled in this Republic. On the authority of *Acutt Blaine & Co. v. Colonial Marine Insurance Co.* (1 Juta, 402), which

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we have before followed, the plaintiff can not, under the circumstances, come to this Court to have the judgment of the Eastern Districts Court made a judgment of this Court; but if so advised, he can take out here a fresh summons on the original claim. There must be absolution from the instance in favour of the defendant, with costs.

Attorneys for the plaintiff: *Rooth and Wessels.*

Attorney for the defendant: *C. Ueckermann, jun.*

Coram:
 KOTZÉ, C.J.
 MORICE, J.
 GREGO-
 ROWSKI, J.
 ———

B. RUTTIGERS *v.* W. A. PHILLIPS, LIMITED.

SWEEP—CESSION OF SWEEPSTAKES TICKET—OWNER.

1897
 6 July.

T. bought a ticket in the sweep of the defendant. One of the conditions subject to which the ticket was issued was, that prizes would be paid out, on production of the ticket, to the owner of the ticket or to the person to whom he had properly indorsed it. T. sold and delivered his ticket to B., who gave the defendant notice in writing of this sale. At the drawing, the ticket in question drew a prize. The amount of the prize was paid out by the defendant to T., who had represented that he had lost the ticket. Held, that the defendant was liable to B. for the amount of the prize which had been drawn by the ticket.

THIS was an appeal from the judgment of Jorissen, J., delivered in the Circuit Court at Johannesburg on 16th December, 1896. The plaintiff (the present appellant) sued the defendant for the payment of the sum of 562*l.* 10*s.* under the following circumstances:—The defendant firm was a company which held lotteries, the result of which depended on horse-racing. In May, 1896, there was a lottery on the result of the Kimberley Autumn Handicap. One Tavares bought a ticket (No. 2,967) in this lottery. On the 14th May, 1896, Tavares sold this ticket to the plaintiff at Potchefstroom for 15*l.* He duly handed over the ticket to the plaintiff, and verbally authorized him to do and to sign everything that might be necessary and requisite in order to