

1897  
 ATT.-GEN.  
 v.  
 ANDRESON.  
 —  
 Ameshoff, J.  
 —

obligation to legal assistance bordering on favour, but indeed on the general human interest which is involved wherever the repression of crime is concerned. Repression of crime has, through the extension of international intercourse, ceased to be a concern merely of this or that State, and has become a universal concern which all States are equally bound to protect.

But now this obligation will be precisely violated by a refusal to extradite. The majority of the Court have also appealed to local legislation, and in that I cannot follow them. Having once for all discarded the old theory, Law No. 9, 1887, becomes nothing but a category of those crimes with regard to which the South African Republic assigns the settlement to the civilized world, and, if this be so, the jurisprudence grown up under the local law collapses as being erroneous. After the judgment in *Brown v. Leyds N. O. (a)*, I feel at full liberty to adopt this course, and in my opinion the sooner this jurisprudence is thrown overboard the better for the State. The Court in its consideration of the matter ought to be national and not obstructive, and this, in my view, it is to a very great degree by the decision now pronounced and based on antiquated theories. I am therefore of opinion that the appeal should have been allowed.

Attorney for respondent: *S. K. H. Lingbeek.*

Coram.  
 KOTZÉ, C.J.  
 AMES-  
 HOFF, J.  
 ESSER, J.

## DE LANGE v. SCHMIDT.

### CLAIM IN RE-CONVENTION—LIQUID CLAIM.

*No illiquid claim can be allowed in re-convention against a liquid claim in convention.*

1897  
 13 September.

THIS was an appeal from the Landdrost of Waterberg. The appellant instituted a provisional claim against the respondent before the Landdrost for the sum of 31*l.* 12*s.* 6*d.*, being the balance due on two promissory notes in his favour, payable at the office of the African Banking Corporation at Pretoria, where, however, they

(a) *Ante*, p. 17.

had been dishonoured, no provision for payment having been made. A tender of 18*l.* 11*s.* 9*d.* was made on behalf of the respondent, and further, a counterclaim was set up for 16*l.* 11*s.* 6*d.* An exception was taken on behalf of the appellant that a claim in re-convention must be of the same right and kind as the claim in convention, and in support thereof reference was made to *Van Leeuwen, Com. bk. 5, ch. 8, § 8, p. 492.* This exception was dismissed, in consequence of which the appellant appealed.

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*Lohman*, for the appellant: When the liquid claim was admitted, the Court ought to have granted provisional judgment. After that the counterclaim could have been considered. There was, moreover, even no evidence in support of the counterclaim.

The Court, in giving judgment, allowed the appeal with costs, and varied the judgment of the Court below into provisional judgment for the plaintiff with costs.

Attorneys for the appellant: *Roux and Ballot.*

G. DE C. MACCARTIE v. F. H. BROMWICH.

FOREIGN JUDGMENT—JUDGMENT BY DEFAULT—  
JURISDICTION

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

*Where it appeared ex facie a judgment, granted by default by a foreign tribunal, that the defendant did not at the time of the judgment reside within the jurisdiction of such tribunal: Held, that the plaintiff could not succeed in an action on this foreign judgment unless he proved that the defendant, although absent, was nevertheless domiciled within the jurisdiction of the foreign tribunal at the time judgment was given against him.*  
*Smuts v. Bolman, ante, p. 206, followed.*

1897  
13 September.

THIS was an appeal from a decision of the Acting First Special Judicial Commissioner of Johannesburg, given on the 21st July, 1897. The respondent (plaintiff below) had, on the 11th November, 1896, obtained a judgment, in the Queen's Bench Division of the High Court in England, against the appellant (defendant below) for the sum of 15*l.* 10*s.* 10*d.*, with costs. The costs had been taxed at 8*l.* 1*s.* 8*d.*, and the plaintiff now sued the