

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.

1897
DE LANGE
v.
SCHMIDT.

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

1897
 MACCARTIE
 v.
 BROMWICH.
 —

defendant on this judgment for the recovery of 162*l.* 12*s.* 6*d.*, with interest. The defendant raised an exception of "non-jurisdiction," on the ground that the Court below was bound to examine whether the judgment was in order, and that the Court was not competent to do. This exception was dismissed, and thereupon the defendant pleaded that when the judgment was given he was beyond the jurisdiction of the Court, and that, consequently, the judgment was invalid. The plaintiff admitted that at the time of the judgment the defendant resided beyond the jurisdiction of the Court, but alleged that the domicile of defendant was at that time still in England. The judgment on which the action was brought was as follows:—

"The 11th day of November, 1896.

"The defendant (residing out of the jurisdiction) not having appeared to the writ of summons herein, it is this day adjudged that the plaintiff recover against the said defendant, Gerald de Courcy MacCartie, 154*l.* 10*s.* 10*d.*, and costs to be taxed."

No evidence was taken, and the Judicial Commissioner pronounced the following judgment: "The *onus* in this matter rests on the defendant to show that at the time the judgment was given the Court had no jurisdiction; in other words, that he had changed his domicile. He has failed to do so, and as he relies simply on the plea set up by him, and has no other defence, the Court grants judgment for the plaintiff as prayed."

Esselen, for the appellant, referred to *Smuts v. Bolman*, ante, p. 206; and *Acutt, Blaine & Co. v. Colonial Marine Insurance Co.*, 1 Juta, 402.

Wessels, for the respondent.

KOTZÉ, C. J.: It appears *ex facie* the writ of judgment of the English Court that the defendant at the time of the judgment resided beyond the jurisdiction of the Court, and that he did not appear. We think that from this it must be inferred, unless the plaintiff shows the contrary, that the foreign Court had no jurisdiction, and that therefore, without further proof, the judgment cannot be confirmed here. The appeal must consequently be allowed, with costs, and costs of the exception taken in the Court

below. The summons in that Court can, however, stand; and the plaintiff may, if he so desires, submit evidence before the Judicial Commissioner that the defendant, when judgment was given, was, in reality, domiciled within the jurisdiction of the English Court.

1897
 MACCARTIE
 v.
 BROMWICH.
 —
 Kotzé, C.J.
 —

Attorney for appellant : *J. H. L. Findlay.*

Attorneys for respondent : *Rooth and Wessels.*

ASHER BERNSTEIN v. THE STATE.

IMPORT DUTY LAW—CONTRAVENTION—MATERIAL ACT—
 LAW No. 4, 1894, SECTS. 1, 3, AND 64.

Coram :
 AMES-
 HOFF, J.
 JORIS-
 SEN, J.
 ESSER, J.

The appellant was convicted in the Landdrost Court of a contravention of sects. 1 and 3 in conjunction with sect. 64 of Law No. 4, 1894 (the importation of cigars without having paid the customs duty thereon). It appeared that, through a mistake on the part of the railway officials, the cigars were delivered, without payment of the duty, at the residence of the appellant instead of at the entrepôt, and that when the mistake was discovered the appellant denied having received the cigars. Held, on appeal, (per Ameshoff and Jorissen, JJ.; Esser, J., dissentiente), that the material act of contravention was not the importing, but the non-payment of the duty on importation, and that therefore the conviction in the Court below was right.

1897
 8 September.
 14 ,,

THIS was an appeal from a judgment of the Criminal Landdrost of Johannesburg. The appellant, together with a certain Albert Greenblatt, was charged with a contravention of sects. 1 and 3, in conjunction with sect. 64 (a) of Law No. 4 of 1894, in that they, on the 5th August, 1897, at Johannesburg, had wrongfully and unlawfully imported and received 10,000 cigars, imported from England, a country beyond seas, whereon they had to pay, under sect. 1, a duty, and, under sect. 3 of the said Law, an import duty of 15s. per 100 cigars, amounting to 75/., and therefore a total amount of duty of 76/ 17s.; but that they had avoided payment of this amount of duty, and had, accordingly, committed the said contravention, which is rendered punishable by sect. 64 (a) of the said Law.