CHITTENDEN v. SCHOEMAN.

1905. *March* 3. INNES, C.J., and MASON, J.

Practice.—Letter of demand.—Wrong address. –Posting.—Tender after summons.—Costs.

An unregistered letter of demand was posted to an address stated in an acknowledgment of debt to be the address of the debtor. It failed to reach him owing to the fact that the address given was the wrong one; of which fact the debtor was aware. After the issue of summons the debtor tendered the amount claimed, but without costs. *Held*, on appeal, that the posting of the letter of demand under the above circumstances was sufficient, and that the plaintiff was entitled to judgment with costs.

Appeal from the Assistant Resident Magistrate of Pietersburg.

The appellant caused a letter of demand to be sent directed to the address given by the respondent as his own in an acknowledgment of debt in respect of which demand was made. The letter was not registered; it failed to reach the respondent owing to the address given being incorrect. Although the respondent knew of the error at the time, he did not inform the appellant. After issue of summons the defendant tendered the amount of the promissory note and interest, but without costs. The tender was refused and the case proceeded. The magistrate gave judgment for the amount of the tender, but ordered the plaintiff to pay the costs. Against the decision on the question of costs the plaintiff appealed.

Williamson, for the appellant.

The respondent was in default.

INNES, C.J.: In this matter a letter of demand was directed and posted to the respondent at an address which he had specially inserted in the acknowledgment of debt sued upon as being his address. At the time, however, he knew that the address was

wrong, but he did not inform the appellant of the mistake. The latter was quite unaware of the true facts. Tht being so, the respondent must be held to be bound by the address which he gave. Receiving no reply to his letter of demand sent to that address, the appellant was entitled to issue summons. The magistrate was wrong on the question of costs; and the appeal must on that point be allowed.

MASON, J., concurred.

Appellant's Attorneys: *Macintosh & Kennerley.*

HUTTON v. STEINWEISS.

1904, *November* 21; 1905, *March* 6. SOLOMON, MASON and CURLEWIS, J.J.

Partnership.—Attorney and client.—Professional conduct.—Secret agreement.—Good faith.—Contract contra bonos mores.

Where an attorney, while acting as legal adviser to a partnership, entered into a secret contract with one member to protect him against and to watch in his interest the acts of the other member in connection with partnership business, *Held*, on appeal, that such a contract was *contra bonos mores* and would not be sustained by the Court.

The facts are set forth in the judgments of the lower court ([1904] T.H. 293) and of the court of appeal.

Leonard, K.C. (with him *J. de Villiers* and *Manfred Nathan*), for the appellant: The agreement between Hutton and Steinweiss is not *contra bonos mores.* Hutton had no duty to Aaron as partner; he was not in Aaron's confidence. Moreover, if he undertook to reveal any wrong schemes one partner had against the