

NELLMAPIUS vs. THE STATE.

Preliminary Examinations—Summons Irregular.

N. was arrested on a charge of forgery and fraud on October 6th, 1885, and on the same day discharged on bail, binding himself to appear to answer the charge at any time within six months. The preliminary examination was instituted, but was not finished within six months from the above-mentioned date. On April 27th, 1886, after expiry of the six months, the Landdrost of Pretoria issued a summons on behalf of the Public Prosecutor calling upon N. to appear to undergo a further preliminary examination on May 1st. N. refusing to appear, was arrested and the preliminary examination was continued. On application by N. to have the summons of April 27th and all subsequent proceedings against him set aside, it was held that the summons, having been signed by the Landdrost, pro the Public Prosecutor, was informal, and must therefore, with all subsequent proceedings, be set aside, but that N. was not freed from undergoing further preliminary examination.

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On October 6th, 1885, Nellmapius was arrested on a charge of forgery and fraud. On the same day he was discharged on bail, binding himself to appear to answer the charge at any time within six months. The preliminary examination was instituted on Oct. 7th, 1885, and was continued, with intermissions, till March 23rd, 1886. On April 27th, 1886, the Landdrost of Pretoria, *pro* the Public Prosecutor, issued a summons calling upon Nellmapius to appear to undergo further preliminary examination. On May 1st Nellmapius wrote a letter to the Landdrost denying his power to issue such summons and refusing to appear. Thereupon he was arrested and fined £5, but again discharged on bail. The preliminary examination was continued after protest on his part. He applied to the judge in chambers to have the summons and all subsequent proceedings set aside, and claimed to be free from further prosecution on the ground that the above-mentioned period of six months had expired.

Ford, for the applicant. A second bail bond could not be demanded from the accused. As he was not indicted within six months from the date of the first bail bond, he was free from all further prosecution. Art. 69 of the Ordinance on *Criminal Procedure* (1866) says: "No wrong-doer, who has been discharged on bail and who has not been put on his trial within the time mentioned in his bail bond, shall be bound to give further security for his appearance." Art. 55 says: "The judge has the power and is bound to discharge any person on bail during the preliminary examination or after it has been concluded, when such is demanded by the wrong-doer, unless he is guilty of a capital offence."

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Leyds, A.-G., for the State. Art. 69 must be read with articles 63 and 70. It is applicable only in cases where the preliminary examination has already been concluded. This is not the case here. Art. 70 reads: "All wrong-doers must be put on their trial within the period of six months *after the conclusion* of the preliminary examination, and in the event of any wrong-doer not being put on his trial within such time he shall have the right to demand his discharge, and no wrong-doer thus discharged shall be again charged with the same crime."

Kotzé, C.J. I am of opinion that article 69 does not free Nellmapius from further preliminary examination. The summons is, however, informal, having been signed by the Landdrost *pro* the Public Prosecutor. The arrest for not appearing to answer to this summons, and the fine, must therefore be set aside.

VAN PALM vs. SCHULTIS.

Arrest—The Grounds for Believing that a Person is about to leave the Country must be given.

Where there was no proof that P. intended to leave the country for good, and the application by S. for a warrant to arrest him did not give any reasons for believing that he did intend to do so, the Court set aside the arrest.