1890. April 14. June 2. 1891. Feb. 25.

Symonds *vs.* New Florida Gold Mining Co.

estopped from denying his liability to the company, whatever his position may be with regard to Bailey. I thoroughly agree with this portion of the judgment of the Chief Justice. I cannot, however, agree with his view that by signing the articles of association and subsequently denying his liability appellant committed a fraud upon the Registrar of Deeds. Cases might arise where a person signs the articles of association, and might still deny his liability for calls. The appeal must therefore be disallowed, with costs.

JORISSEN and AMESHOFF, JJ., concurred.

DU TOIT AND OTHERS *vs.* VAN DER MERWE, VAN WŸK, AND ALBRECHT.

Partnership.—Submission to arbitration.

The deed of partnership between applicants and respondents provided that disputes were to be submitted to arbitration. The applicants applied to the Court for an order compelling the respondents to sign a certain deed of submission to arbitration. Held, *that the respondents could not be compelled to sign the deed, as they had a right to object to any of the terms contained therein. A person can be compelled* præcise ad factum *only when he has bound himself to do a certain and definite thing.*

1891. Jan. 15. March 3.

Du Toit and Others *vs.* Van der Merwe, Van Wŷk, and Albrecht.

This was an application calling upon respondents to show cause why they should not be called upon to sign a certain deed of submission. The parties formed a certain company called "De Eendracht." Their deed of partnership provided that all differences should be referred to arbitration. All the applicants signed a deed of submission. Albrecht's power-holder was willing to sign (Albrecht being absent), but van der Merwe and van Wŷk refused to sign, and alleged that Albrecht might return and repudiate the action of the holder of his power of attorney.

Jeppe, for the applicants: This is an exceptional case. There is an agreement to go to arbitration in cases of

difference. The two respondents are willing to sign if the Court orders them to do so. (*Cf. Russell on Awards*, p. 64.) The Court can under special circumstances compel a person to sign a deed of submission.

Esselen, for Albrecht.

Kingsmill, for van der Merwe and van Wyk.

Cur. adv vult.

Posteà, March 3rd, 1891.

KOTZÉ, C.J.: This is an application for an order compelling the respondents to sign a certain deed of submission to arbitration under such terms as the Court may deem fit. It appears that all the parties are partners in a certain partnership known as "De Eendracht." In § 15 of the deed of partnership it is stated that "All disputes arising out of this contract shall be regulated and decided by the ordinary way of arbitration." The petition sets forth that disputes have arisen and that the respondents refuse to sign a certain deed of submission to arbitration. The question is whether the Court can compel the respondents to do this. It seems to me that the Court cannot grant the order sought. *Schmidt* vs. *Francke* (1 Menzies, p. 334) is a direct authority for this. It is indeed true that the learned editor of the report of the case expresses his opinion in a note to the effect that *moribus nostris nemo liberari potest praestando id quod interest, sed praecise ad factum cogi potest*, but then it must, in my opinion, be shewn that the respondents bound themselves to do a certain and definite thing. There is nothing before the Court to show that they approved of the deed of submission in the terms in which it is drawn up, or have given their consent to it, or have signed it, and seek subsequently to repudiate it. If it were so, the case would be different, and they would be bound *praecise ad factum*. They have a perfect right to say that, notwithstanding § 15 of their agreement, they can object to all or any of the provisions contained in the deed of submission. Section 15 is too loose and too vague, and if the Court compelled them in virtue thereof to sign the particular deed of submission, it would practically be concluding a contract for the respon-

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dents against their will and desire (*cf. Story, Equity Jurisprudence*, § 1457). But where the matter to be submitted to arbitration is certain and definite, the case is different (*cf. Davies* vs. *The South British Insurance Company*, 3 *Juta*, p. 416). The application must be refused, with costs.

DE KORTE, AMESHOFF, and JORISSEN, JJ., concurred.

In re DORMER.

Contempt of Court, ex facie curiae *under Roman-Dutch Law.*

In an application for confirmation of a rule nisi *calling upon the editor of a newspaper to shew cause why he should not be dealt with for contempt of Court committed in an article reflecting upon the Judges of the High Court, it was urged that contempt of Court could not be committed* ex facie curiae, *nor could it be summarily dealt with under Roman-Dutch Law* ; Held, *that contempt of Court could be committed* ex facie curiae *as well as* in facie curiae, *and summarily punished.*

Held, *further, per* KOTZÉ, C.J., *and* JORISSEN, J. (MORICE, J., *diss.*) *that the article in question constituted a contempt.*

(*Per* KOTZÉ, C.J., *and* JORISSEN, J.) *that a Judge dealing with a case of contempt of Court is not sitting* in re suâ sed alienâ, *and that the particular Court concerned, and it alone, is to judge of and deal with the alleged contempt.*

1891. March 4.

In re Dormer.

On February 23rd, 1891, a rule *nisi* was issued calling on Francis Joseph Dormer to shew cause why he should not be ordered to disclose the name of the writer of a certain article entitled "Drifting," and appearing in the newspaper *The Star*, published in Johannesburg on February 18th, 1891, or otherwise to shew cause why the Argus Company, Ltd., should not be dealt with according to law as printers and publishers, for contempt of Court by reason of the publication of said article, whereof copy is