

As a general rule, it is not unreasonable for an attorney to accept certain counseils available before briefing him formally. If counsel accepts the brief and thus retains it for reasons such as another and more lucrative brief, and his attorney accepts this, this will constitute conduct for opposition not be covered as between party and party. There may be valid reasons for counsels' withdrawal, such as illness or inability to undertake the matter, in which event different considerations may be applicable. The costs incurred in obtaining counsel under the aforementioned circumstances (ie unusual costs as contemplated in Rule 70 (3), for which reason they are "unusual") costs as contemplated in Rule 70 (3), for the delivery of the brief, an oral contract arises and any further steps save for the delivery of the brief are unnecessary. Confirmation by letter, and attending upon a matter, an attorney telephonically arranges with counsel that he will undertake delivery thereof, is an unnecessary expense.

**F** Costs—Party and party—Costs regarding establishing of counsel before formally bringing him are recoverable—if availability is confirmed telephonically, written confirmation is unnecessary—Costs thereof recoverable—Where counsel returns briefs without justification, the counsel costs are not recoverable—Letter costs “unusual” as intended in Rule 70 (3).

Waar die prokureur telefoonies met die advokaat reëls dat die advokaat h be-party-en-party uitgawes verhaalbaar nie. D moontlik gesgtigde redes wes waarom h advokaat hom van h opdrag daaruit voorstuur is tussen party-en-party overhalbaar. Daar mag moet ontrek, soos bv sietekе of onbevegheid om die opdrag in water gevall en ander oorreggings toepassing mag vind. Die uitgawes om ontrekking deur h advokaat te bekoma, resoerter onder die begeerb „ongewone uitgawes“ soos in Reg 70 (3) bedoel en is daarom nie as paarde opdrag sal hamter, ontslaan n mondeline kontak en is emige ver- dece stappe behaave die oorhandiging van die opdrag onmogig. Bevestiging per heel, en opwagting by aflewering daarvan, is n onnodiige uitgawe.

Koestie-Parry-en-party—Koestie aangangande vasselling van beskikbaarheid van advokaat voor sommige opdrapgevalle verhaldbaar—Indien beskikkbaarheid telefoonies beweeting is, is skrifstuklike beweetsiging oor- boedge—Koestie daarvan onverhaldbaar—Waar advokaat hom sonder gegronde rede van opdrag onttrek, is gevoldlike uitgawes onver- haalbaar—Lasgeenoemde uitgawes „ongewoon“ soos bedoel in Regt 70 (3).

A  
1983 Februarie 16 SPOELSTRA R  
(TRANSVAALSE PROVINSIALE AFDEELING)  
WARM ID MAKELAARS v MARAIS

Mr Clasen, on the other hand, argues that he acted under colour of right in that he cannot was not *mala fide*, that he had the right in that he thought, on the advice of his attorney, that he had the right to exercise his lien in order to obtain payment, or earlier payment, and he referred me to the case of *Spijz v Kestning* 1923 WL D 45 at 49, in support of this proposition. He also urged upon me that I should not metriculously decide this question, but should take a robust view on the question of costs after a matter has been settled. He referred me in this connection to the case of *Rouppell v Metal Art (Pty) Ltd and Another* 1972 (4) SA 300 (W) at 302-303, where Marago J applied this principle in a question of costs.

In my view the action by the applicant was misguided and somewhat high-handed, but I am not in a position to find that it was *mala fide*, vexatious or used in terrorum. It seems to me that the applicant might well have believed that it was acting within its rights in seeking to enforce payment.

Under these circumstances I am not prepared to grant attorney and client costs against it, and I will grant ordinary party and party costs.

The result is that the application is dismissed with costs and that the costs on the counter-application are awarded to respondents on a party and party basis.

In this case counselled that clearly the second respondent could be arbitrated upon, had the other conditions been complied with. However, I have already dealt with the question of the compliance with the other pre-condition. I have found that the compliance with the other pre-conditions, I have already dealt with the other conditions been complied with. The only extant question is then the costs on the counter-application. Mr. Nesser says that the action by the applicant in locking the gates was a vexatious and malicious one and that the Court should express its disapproval of this mode of conduct in abusing its rights by awarding attorney and client costs against it. He refers me to the provisions of clause 31 of the contract (the general provisions), in which the contractor is required to afford all reasonable facilities to any other contractors employed by the employer, and their work on the site available to them. He also referred me to the site and to make the site available to them. The parties in the special conditions of contract, \$5, where it was agreed between the parties that the employer, through the engineer, shall have the right to send any workmen and materials on to the works during the contract period for the execution of any works not provided for in the contract and the contractor shall allow such persons free access to the works.

This, says Mr. Nesser, indicates that the lien, even if it existed at that stage, could not be enforced in the way in which the applicant sought to enforce it.





Le Chassuer Boere (Edms) Bpk v Maine Chance Farms (Pty) Ltd (super te 362B-E) handel met 'n beswaaier teen die weiteming van die koste verbondne aan 'n oproep na elk van 'n junior en senior advokaat "to arrange for availability". Van die verslag is dit duidelik dat beide advokaate wel beskikbaar was. Daar is klareblyklik ook uitgawes ge- Dié vooralgande opwaaglijs by dieselfde advokaate met die oproep. Die praktyk van die uitgawes tot die bel voordeel dat dié en nooddaskaaklike voorborgmaatreel beskou word. Daar was name dus as 'n onnodige voorborgmaatreel om die uitgawes toe te laat nie vir oproep waraby die beskikbaarheid van advokaate gescreel word, is in argument beskryf as "a relic of a bygone era". Vlinder R Benvind: C

"Although there is, in my view, much to be said for the applicant's contention, there is insufficient ground to substitute my opinion for that of the Taxing Master. I would not disturb his decision on this item." D

Behalwe soos aangedeui, bevat die uitsprake wanaan hiervlo word, geen redes waarom daar beslis is dat die betrokke uitgawes nie binne die bepalings van Reg 70 (3) val nie. Ek vind dit moeilik om te begryp waarom oproep van 'n prokureur om 'n beskikbare advokaat te vind, nie kwaliifiseer nie as uitgawes wat redelik word as om 'n oproep in h Hooggeredschot te hanter, kan nie beskryf word as E stappe wat voorspuit uit oorversgigheid, nalaatgheld of dwaling die. Dit is ook nie ongewone stappe wat ongewone uitgawes soos deur die Regt beedel veroorsaak nie. Soos wat die geleerde skrywers Jacobs en Ethers, na my mening tereg, aandui, is dit in 'n Afdeeling mydelik dat 'n party hom in die posisie bevind dat die advokaat wat soos hierdie war die deurlopende rol toepassig vind, dikwels onver- bare advokaat geskeikbaar is nie en dat daar 'n ander beskik- neem van die verhoor beskikbaar het, nie vir die war- aangehaalde werk handel en waarop Cobrett R hom beredp, kan, met die grootste mate van eerbied en sy standpunkt dat kostes die wat tansoorweeg word, onverhaalbaar G tussen party-en-party is nie. Die geleerde skrywers verwys na uitgawes wat aangesaan word voor 'n aksie ingestel is, virgeleose ondernande- linge om die grondslag van die aksie te wysig of om die skik in water gevval daar aan die hand gedoen word dat slegs die party wat ondernadelinge aangewen moet word. Die geleerde skrywers verwys na uitgawes wat aangesaan word voor 'n aksie ingestel is, virgeleose ondernande- ontstaan nie uit die aksie nie en is nie nodig vir die voorsetting daarvan nie. Net so is dit goed te begryp dat waar 'n party nie egeregtig is nie op die regshulp wat hy poog te verkry, hy nie kan verwag om vir die aaboritive optrede verfoede te word nie. Die ander twee uitgespakte

At the commencement of their trial on a charge of murder, the State sought to have evidence given by the accused during an inquest admitted in the trial as prior statements by the accused. The accused were already under suspicion at the time of the inquest and, prior to being questioned, they were informed that they were not obliged to answer incriminating questions. The warning, however, went no further. In a "trial within a trial," indeed warned that they were not obliged to answer incriminating questions. The nature of the charges of the State should have apprised the accused of the H Held, that counsel for the State should have advised him of his privilege of self-incrimination.

Held, further, that care should at least have been taken to ensure that the accused knew which questions might elicit incriminating answers. Held, further, that the provisions of the law applying to questioning in magistrate's courts were also, in terms of s 8 (2) of the Inquiries Act 58 of 1958, applicable to questioning during inquiries.

Held, accordingly, that the evidence in issue was inadmissible for the purpose of the criminal trial.

Criminal Procedure—Evidence—Admissibility of—Evidence given by accused during inquiry—Accused then already under suspicion—Accused persons ought to refuse to answer incriminating questions—Nature of privilege to refuse to answer incriminating questions—Possibly incriminating questions may be asked during trial—Evidence given by accused in subsequent criminal trials in magistrates' courts also not pointed out—Evidence not explained—Possibly incriminating questions also may be asked during trial—Evidence given by accused in response to questions also not admissible in subsequent criminal hearings.

983 February 2-17 VAN RHYN HR

SARAGALIGELA EN 'N ANDER

die goedsondersoek onder verdragtinge, en hulle was wel voor ondervra-  
ging gewaarsku dat hulle nie eerpgsql was om op inkrimineringe te  
antwoord nie. Die warkomplekse het egter nie verdere gestrek nie. In 'n  
tussenveldoor oor die toelatbaarheid van hierdie getuigenis.

By die uitvinding van nuwe verhoede beskuldiges wat nie meer oor geskryf kan word, sou die staar-ge-heit, voorheen ter aanwending tydens 'n ergetlike doodsondersoek aflagte klarings deur die beskuldiges. Die beskuldiges was reeds ten tyde van B

ondervergaging ten tyde van doodsondersoek asgele nie in latere strafsgreelleke verrieginge totelatbaar wees nie.

hore in lan Yoshowe geeld, geeld ook in gevergietlike doods onder-  
soek—Gelijs wat onder verdagting stian moet van reg om te  
swyg op inkrimmerende vreewitting word—Aard van moonlikke  
aanklag moet verdiudelik word en moonlik inkrimmerende vrage  
moet aan hulle uitgeleys word—Indien nie, sal getuens onder A