

THE QUEEN *vs* SWARTZ.

It is beyond the power of Resident Magistrates, under section 45, Act 20, 1856, to sentence, for contempt of Court, prisoners undergoing trial on a substantive charge: that section applies only to bystanders and others not in custody.

This was the review of a sentence for "contempt of court," passed by the Resident Magistrate of George upon a prisoner who was undergoing trial on a charge of assault. During the proceedings he behaved insolently to the Magistrate, and said to him, amongst other things, "You lie." Whereupon the Magistrate, under the 45th section of the Magistrates' Courts Act, sentenced him to a week's imprisonment, for contempt of court. The records, having been sent down to Cape Town, as required by the same section of the Act, came before CONNOR, J., the Judge of the week, who, doubting the power of the Magistrate, under the Act, to commit for contempt a prisoner already in the dock on a substantive charge, transmitted the papers to the Attorney-General, who to-day mentioned the case to the Court, and argued, in substance, that the words of the section are general, "any person," and would include a prisoner in the dock.

CONNOR, J.—But how can such "offender be taken into custody and detained until the rising of the Court," when he is already in custody and undergoing trial?

The Court held that the conviction for contempt should be quashed; the words of the section not applying to a prisoner undergoing trial.

1868.
February 4.
The Queen *vs*.
Swartz.

DICKSON, APPLICANT, *vs*. TOWN COUNCIL OF CAPE TOWN AND ANDREW MCKENZIE, MUNICIPAL CONTRACTOR, RESPONDENTS.

Nuisance. — Interdict granted to prevent the further deposit of town filth in the Capel Ditch.

Gritffih, A.-G., for applicant, moved on notice of motion calling upon respondents to show cause why they should not "be interdicted from depositing, or causing to be deposited, the filth of Cape Town in the Capel Ditch.

Porter, for the respondents, opposed.

From voluminous affidavits read on both sides the following seemed to be the short history of the application:

A ravine, called the Capel Ditch, runs down from Table Mountain, from the direction of Platteklip, crosses Upper Roeland-street in the vicinity of the Cape Town prison,

February 6.
Dickson, Applicant, *vs*. Town Council of Cape Town & Andrew McKenzie, Municipal Contractor, Respondents.