Coram:
AMES-HOFF, J.
JORIS-SEN, J.
ESSER, J.

J. LEWINSON *v.* THE STATE.

LAW No. 17, 1896 (LIQUOR LAW), SECT. 5—SALE OF LIQUOR TO NATIVES—KIND OF LIQUOR.

1897
21 *June.*

Where a person is charged with a contravention of sect. 5 of Law No. 17 of 1896 (dealing with the sale of liquor to natives), it is sufficient to prove that it was intoxicating liquor that was sold, irrespective of the question whether the name and kind of liquor are known.

On a charge of contravening sect. 5, together with sect. 49 of Law No. 17 of 1896, it is not a fatal exception that the accused is described as a licensed liquor dealer by retail where in fact he holds a licence for a bottle store.

THIS was an appeal from the decision of the First Criminal Landdrost at Johannesburg, given on the 22nd March, 1897. The appellant was charged with a contravention of sect. 5 of Law No. 17 of 1896, in that he, in the ki[illegible] of the Natal bottle store, of which he was the licensed holder by retail, had sold to certain two natives (by means of a third person for whose acts he was responsible under sect. 49 of the Law No. 17, 1896) two glasses of liquid, being intoxicating liquor, the name and nature of which are unknown to the prosecutor.

It appeared from the evidence that the bottles in possession of the two natives, and into which they had spat the liquor, had got emptied in a struggle with the appellant, who endeavoured to take the bottles from them. When the bottles were produced in Court they were empty. The appellant alleged that he had sold tobacco and no liquor. An exception was also taken against the summons that the appellant was described as a licensed liquor dealer by retail, whereas he was not such, but held a licence for a bottle store.

The Landdrost dismissed the exception, and found further that the prosecution had clearly proved that intoxicating liquor had been sold and that the appellant was accordingly guilty of the crime with which he was charged.

Against this appeal was brought on the following grounds:—

(1) That the exception should have been allowed and that its dismissal had prejudiced the appellant in his defence.

(2) That sect. 49 of Law 17 of 1896, regard being had to the above, did not apply to the appellant.

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(3) That the *corpus delicti*, when produced in Court, did not contain any intoxicating liquor, and could not be accepted as evidence that liquor had actually been sold. It was further also objected in argument that the name or nature of the liquor was not mentioned in the summons.

Lohman, for the appellant.

Jacobs, for the State.

The Court dismissed the appeal, and expressed the opinion that it was unnecessary to prove the name or the kind of the intoxicating liquor, so long as it was proved that it was indeed intoxicating liquor that was sold.

Attorneys for appellant: *Roux* and *Ballot*.

W. AND A. SWARTZ *v.* THE STATE.

Coram: KOTZÉ, C.J. AMES-HOFF, J. ESSER, J.

RECORD KEPT BY LANDDROST—TOWN REGULATIONS—WALKING ON SIDE PATHS—COLOURED PERSONS.

1897

21 *June.*

The record kept by a Landdrost should state that the witnesses were duly sworn.

Where a coloured person is charged with a contravention of the town regulations in having used the side walks (pavements), there must be sufficient proof that he is a person of colour.

THIS was an appeal from the decision of the Second Judicial Commissioner of Pretoria. The appellants were charged with a contravention of sect. 36 of the Town Regulations, which prohibits persons of colour to use the side walks (pavements) of streets. The only witness for the prosecution was a policeman, who stated that he had on a former occasion warned the appellants not to walk on the pavements and that he knew them to be coloured persons. He had on this second occasion arrested them. The