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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.

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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

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appellant, W. Swartz, stated that he was born in the Cape Colony; that his father was of the same colour as himself; that his grandfather, his mother's father and his mother were all white persons, and that he had paid poll tax. The other appellant was his brother. The record did not show that the witnesses had been sworn.

The Landdrost convicted both appellants and sentenced them to a fine of 5*l.* or three months' imprisonment. Appeal was noted against this conviction on the ground that the law in question did not apply to the appellants, and that there was no evidence against them.

Esselen (with him *Hummel*), for the appellants: The record must show that the witness was properly sworn. (*Queen* v. *Lamla*, 2 E. D. C. 385.) There was no evidence that the appellants are coloured persons.

Rooth, for the State: The fact that the record does not state the witness was sworn is no proof that he was in fact not sworn. It is for the appellants to show that they are not coloured persons, and that they have not done. (See sect. 6 of Law No. 2 of 1883.)

KOTZÉ, C. J.: We think the conviction must be quashed upon the ground that the record does not state that the sole witness against the appellants was duly sworn; and secondly, the appellants allege, and this is not contradicted, that their father, grandfather and mother were white persons. There is therefore a doubt, and, in the absence of further evidence, the Landdrost should have given the benefit of the doubt to the appellants. That the appellants are somewhat of a dark complexion is *per se* not sufficient. The appeal will be allowed.

Attorney for appellants: *Jas. Berrangé*.