

J. FRIEDMAN AND S. SONN *v.* THE STATE.

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

CRIME—BRIBERY OF WITNESSES—ATTEMPT.

Where a person attempts through the offer of money to induce another not to give evidence in a case in which such other is a witness, he commits the crime of "attempt to bribe witnesses."

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21 June.

THIS was an appeal against the decision of the First Criminal Landdrost at Johannesburg. The appellants were charged with having committed the crime of "attempting to bribe witnesses," in that they both and each, or one or other of them, on the 19th January, 1897, wrongfully, unlawfully, fraudulently, and with the view of obstructing justice, attempted to bribe certain two natives Jan and David, and induce them not to give evidence in the case of *The State v. Sonn*—for a contravention of sect. 5 of Law No. 17 of 1896, which case they knew would come before the Court of the First Landdrost for Criminal Cases on or about the 20th of January, 1897, and in which said case they knew that the said Jan and David were witnesses for the prosecution—by taking the said Jan and David to the "Good Luck Bar," Johannesburg, of which the said S. Sonn was the licensed owner, and concealing them there, and subsequently removing them to Elandsfontein and concealing them there in a shop, and by paying each of them 5*l.* in order to induce them not to give any evidence of the truth in the above case, in which said attempt they failed owing to circumstances beyond their control.

From the evidence it appeared that the accused Sonn was charged with a contravention of the liquor law, and that the two natives Jan and David had been employed as "traps" and had trapped him. Subsequently the appellants offered these natives 5*l.* each not to give evidence in the case against Sonn. The Landdrost found both the appellants guilty of the offence charged against them, and sentenced them to three months' imprisonment with hard labour and a fine of 20*l.*, and in case of non-payment an additional month's imprisonment.

An appeal was noted against this conviction *inter alia* upon the ground that attempting to bribe witnesses is not a crime according

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to the laws of this State, and is not even mentioned by them, and that in any event the attempt to bribe witnesses is not punishable by law and is therefore not an offence or crime, and the accused should not have been convicted thereof.

Esselen (with him *De Waal*), for the appellants: The crime of bribing witnesses does not exist. The indictment says "not to testify to the truth." That is vague and obscure. Are they charged because they have concealed others, or because they have bribed them to swear falsely? (*Vide Queen v. Foye & Carlin*, 2 App. Ca. S. C. 121; and *Queen v. Kapland*, 10 Juta, 259.)

Kock, for the State: The attempt to bribe witnesses is indeed a crime. The Extradition Act, sect. 3 (N. 9, 1887), clearly mentions bribery or attempt to bribe witnesses. The accused (appellants) knew that the natives were witnesses. It has been proved that they offered the natives money in order to frustrate the course of justice. That is an attempt to bribe witnesses.

Esselen, in reply.

KOTZÉ, C. J.: We are of opinion that bribing and attempting to bribe witnesses are punishable. It is one thing merely to keep away a witness who has been summoned, which amounts to a contempt of Court, and quite another thing to induce him by means of money to do so, which constitutes bribery or an attempt at bribery. Here there is indeed evidence against both the appellants, and we see no reason for disturbing the finding of the Landdrost. The indictment might have been more elegantly drawn, but it sufficiently sets forth the offence. The conviction will therefore be confirmed and the appeal dismissed.

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