

measure which the Government may adopt upon good grounds. The Government is by the Gold Law empowered, but not obliged, to proclaim a farm, and this includes the exercise by it of its discretion, and the withdrawing of a proclamation before it has come into operation. If I give anyone authority to sell a horse, he has the power of withdrawing from a transaction before sale if he deems such to be in my interest. In this case the Government considered it was in the interests of the State, on account of an apprehension of a breach of the peace, to withdraw the proclamation.

I am therefore of opinion that, when the plaintiff made application for licences and pegged off claims, the farm Luipaardsvlei was not a digging, and that, accordingly, judgment should be pronounced for the defendant with costs.

Attorneys for plaintiff: *Rooth and Wessels.*

Attorneys for defendant: *Stegman and Esselen.*

1895, 1897
BROWN
v.
LEYDS N.O.
Morice, J.

THE STATE v. BRITTON.

RESERVED POINT—THEFT BY MEANS OF EMBEZZLEMENT.

A person, although not in the employment of another, can as agent or mandator commit theft by means of embezzlement.

THIS was an argument on a point reserved. The prisoner was in December, 1896, convicted in the Circuit Court of Johannesburg of the crime of *theft by means of embezzlement*. Morice, J., reserved the point whether the prisoner could be convicted upon the indictment, seeing that he was not a clerk or a servant of the person whose money he had appropriated, nor was he employed in the capacity of clerk or servant of the person in question.

The indictment was in the following terms:—

“That John Britton, a European, at present on bail, is guilty of the crime of *theft by means of embezzlement*, in that on or about the 29th day of November, 1895, at Johannesburg Witwatersrand

Cowan:
KOTZÉ, C.J.
AMES-
HOFF, J.
GREGO-
ROWSKI, J.

1897
1 February.

1897
 THE STATE
 v.
 BRITTON.
 —

Goldfields, South African Republic, he, the said John Britton, having received and accepted commission and authority from Alice Jackson to invest for her and on her behalf the sum of 200*l*. (two hundred pounds sterling) on a mortgage bond for the period of twelve months, commencing from the 1st December, 1895, and ending the 30th November, 1896, at 20 per cent. interest, and the said Alice Jackson having on or about the date above mentioned deposited the sum of one hundred and seventy-eight pounds to the credit of the said John Britton in the Standard Bank of South Africa, Limited, at its Johannesburg branch, which said sum was received by the said John Britton for the purpose aforesaid, he, in violation of his duty in this behalf, did not invest this sum of one hundred and seventy-eight pounds sterling (178*l*.) as aforesaid, nor has he accounted for the same; but on the contrary, unlawfully, wrongfully and fraudulently, and with the intent to benefit himself and to prejudice the said Alice Jackson, and in concealment of the truth, did appropriate to his own use and steal the said sum, and has thereby prejudiced the said Alice Jackson."

Act, for the prisoner: The prisoner was not a clerk. He received no remuneration. He merely acted as a friend in order to invest Mrs. Jackson's money to the best of his ability. He was charged with theft by means of embezzlement, whereas the indictment sets out a theft by means of false representations. There was no relation between the parties such as that of employer, master or trustee.

Barber, for the State, was not called upon.

Korzi, C. J.: We are of opinion that, regard being had to the terms in which the point has been reserved, the Court cannot now go behind it. The indictment sets out that the prisoner was agent and mandatory of the woman whose money was stolen, and theft by means of embezzlement can indeed be committed by an agent or mandatory. The conviction will accordingly be confirmed.
