has no jurisdiction to refer a matter of this kind to the registrar, the order made does not refer to the registrar the question whether security shall or shall not be given, but merely intimates that the registrar must determine the sufficiency of the security. The Court made the main order in the case, viz., that security should be given, and I think it is quite competent for the Court to refer to the registrar the detail of fixing whether the security is sufficient or not for the purpose. It has been the practice throughout South Africa for the last seventy or eighty years, and no sufficient reason has been laid before the Court why we should now depart from it.

CURLEWIS, J., I concur.

Appellant's Attorneys: *Neser & Hopley*; Respondent's Attorneys: *Hofmeyr & Burger.*

REX v. JACOB.

1905. *March* 20. INNES, C.J., and MASON and CURLEWIS, J.J.

Criminal procedure.—Review.—Masters and Servants Act.—Law 13 *of* 1880.—*Intimidation of fellow-servants.—Persuasion not constituting intimidation or threats.*

Where a servant told his fellow-servants not to return to their work, but uttered no definite threats and employed no physical means to prevent them from working, *Held*, that such advice could not be regarded as a threat, nor, on the facts of the case, could the servant's action be treated as an offence within the meaning of sec. 1, ch. 7, of Law 13 of 1880.

This case came for review from the Resident Magistrate of Wolmaranstad.

The facts were as follows: Alfred Thomas, who was a ganger in the employ of William Nicol, a contractor on the railway ordered the prisoner to come to his work one morning at the usual hour and to bring his gang of boys with him. The prisoner replied, "I am not going to work, and my boys will not work until they get their pay." The prisoner then stood in front of his gang, some forty in number, and told the boys under him not to go to work.

Matthews, for the Crown: The accused in this case was charged under sec. 1, ch. 7, of the Masters and Servants Act, which is a reproduction of the Cape Act of similar title, and both Acts appear to have been framed upon 6 Geo. IV, ch. 129, par. 3. There is little or no case law on the subject, but I would like to refer the Court to the cases of *R.* v. *Shepherd* (11 Cox, 325) and *R.* v. *Druitt* (10 Cox, 602). I submit that the action of Jacob in this matter justified the magistrate in convicting him under the section referred to.

Reitz, at the request of the Court, for the accused: The advice which Jacob gave to the boys under him cannot be construed either as intimidation or as a threat. They were at liberty to follow that advice or not as they chose. The accused never attempted to put any physical restraint upon their actions.

INNES, C.J.: This matter came before my brother CURLEWIS as judge of the week. He referred it to the Attorney-General, who now supports the conviction.

The accused was charged with contravening sec. 1, ch. 7, of Law 13 of 1880. That section creates a statutory offence; it makes certain action criminal which would not otherwise be so, and it should, I think, receive a strict interpretation. It provides that any person who shall by violence to the person or property, or by threats, or intimidation, or in way obstruct, or force, or endeavour to force any servant to depart from his service or work . . . shall on conviction be sentenced to imprisonment, &c. These words seem to me to imply that there must be on the part of the person who contravenes this section the application of some sort of duress or obstruction to the servant. And I do not

understand that the English cases which Mr. *Matthews* has quoted militate against such a construction of the section.

"Picketing," in the sense in which the word is used in those cases, is a very different thing from the conduct of the accused in this case. Picketing by a trades union, even though not accompanied by threats, may bring unpleasant consequences to the workman. But in this case we find that the accused was what is called a boss boy, in charge of certain natives; he called them out to their work, he interpreted for them, but he had no power otherwise over them. He could not dismiss them; he could not reduce their pay; he had no authority of that kind over them. What he did was not to obstruct them, not to force them, not to intimidate them, but to persuade and advise them not to go to their work under the circumstances which existed at that time. I do not think that his conduct in so doing amounted to a contravention of the section. That being so, the magistrate was wrong, and the conviction should be set aside. I do not think there is any other section of the Law under which conduct of that kind can be punished. It may or may not be desirable that there should be an amendment of the Law, but that is for the legislature, not for this Court.

MASON, J., I concur.

CURLEWIS, J.: In having this matter referred to the Attorney-General and set down for argument, I thought it necessary to do so on account of a former review case (*Rex* v. *Johannes*), in which the accused was charged under the same section, viz., ch. 7, sec. 1, of Law 13 of 1880, in which the accused was convicted and where the conviction was affirmed by my brother SMITH. I have referred to the record in that case, and find that there was equally in that case an absence of evidence of duress or force as there is here; but I take it that my brother SMITH was moved to confirm that conviction on account of a note which the magistrate had made at the end of his record, in which he stated that he had had a translation of the original Dutch, and that the original Dutch seemed to convey a different meaning to the words as found in the English, "molesting or in any way obstructing another, forcing or endeavouring to force." I have referred to

the original Dutch, and it does not seem to me to convey any different meaning to the English words as quoted in the present Law. As Mr. *Matthews* pointed out, this Law was passed originally during the interim Government of the Transvaal under British administration, and this is taken over from the Cape Act, which again is probably taken over from the English statute referred to by counsel. The Dutch words convey no further meaning than the English words as they appear in the Law before us now. I agree, therefore, in thinking that on this account the conviction should be set aside.

48@1 Sp. 1200.

REX v. JONES.

1905. *March* 20. INNES, C.J., and MASON and CURLEWIS, J.J.

Criminal procedure.—Review.—Ordinance 32 *of* 1902, *sec.* 46.—*Liquor Law.—Attempting to supply liquor.—What constitutes an attempt.*

The accused, having purchased a bottle of liquor, was returning with it to the native "trap boys" who had given him money to buy it, but when he saw the white detectives he dropped the bottle and ran away. *Held*, that he could not be rightly convicted of "attempting" to supply liquor to coloured persons.

Rex v. *Sharpe* ([1903] T.S. 868) followed.

This was a case which came before Mr. Justice MASON for review, and was by him referred to the full Court for argument and decision.

The facts were as follows: Two native trap boys were given money; they gave it to the accused to buy liquor for them; he went and bought a bottle of whisky. On his way back to where he had left the traps he passed the white detectives, who were on the watch, recognised one of them and ran away. When