1890. June 13. 1891. Feb. 23.

Jones, N.O. *vs.* Executors of Jones.

Jones. The action is thus practically a *querela de inofficioso testamento*. As the testator's father, who died eighteen months after the death of his son—the testator—had not initiated or taken any steps to obtain his legitimate portion from the estate of his son (James Wright Jones), and the summons does not contain any allegation to that effect, his executor and heir, David Jones, cannot now initiate the *querela de inofficioso testamento*. This appears clearly from the authorities (*cf. Grot.* 2. 18. § 17, *in fin.*; *Grot.* 2. 24, § 21; *Van Leeuwen, Cens. For.* pt. 1. bk. 3. ch. 4. § 27 and 28; *Roman-Dutch Law* (*Kotzé's Ed.*) p. 358, § 7; *Voet*, 5, 2. 43). Consequently the claim in the summons must be disallowed, with costs.

DE KORTE, J., concurred.

ROTHMAN *vs.* THE STATE.

§ 7, *Law* 5, 1887.—*Contravention of.—Presumption of being in service of licence-holder.*

Where, in an appeal against a conviction for selling liquor to a native without a permit, it was proved that the money paid by the native was found in the till of accused, the Court held *that this laid upon accused the burden of proving that the barmaid who sold the liquor was not in his service, and, in the absence of such proof, upheld the conviction.*

1891. Feb. 5. „ 23.

Rothman *vs* The State.

This was an appeal from the judgment of the Landdrost at Johannesburg, under the following circumstances: Liquor was sold to a native without a permit, and upon entry into the bar the money paid by the native to a girl serving at the bar was found in the till. There was no proof that Rothman or any person in his employ had sold the liquor. The Landdrost found Rothman guilty of contravening § 7 of Law 5, 1887. Appeal was now lodged on the ground that there was nothing to connect Rothman, who held the

liquor-licence, with the sale of liquor to the native without a permit.

Esselen, for the appellant: There has been no proof adduced that the licence-holder—the accused—either himself or by anyone in his service, sold the liquor to the native. (*Cf. Meyer* vs. *The State*, decided in this Court September 15th, 1890.)

Notice had been duly served upon the State Attorney, but no appearance was entered for him.

Cur. adv. vult.

Posteà, February 23rd.

KOTZÉ, C.J.: This case is to be distinguished from that of *The State* vs. *Meyer*, decided on September 15th, 1890. In this case the money was found in the till of Rothman's bar. We must therefore assume *primâ facie* that the young woman who sold the liquor was either in the service or under the orders of Rothman, at the time when the drink was sold. Thus the burden of proof lies upon him to prove that she was not in his service. This he has not done, and consequently the conviction must stand.

JORISSEN and MORICE, JJ., concurred.

SYMONDS *vs.* NEW FLORIDA GOLD MINING CO.

Underwriting.—Estoppel by conduct.—Signature of Trust Deed.—Effect of.

Where, in an action by a company against an underwriter of shares, accompanied by tender of the shares underwritten, the defendant had signed the articles of association, but maintained that his signature was merely pro formâ, *and with a view to assist the company to secure registration, the Court* held *that the defendant could not be heard to allege any intention when signing in conflict with the provisions*