

REX v. JONAS MOROSS (*alias* MOROOSI
DALENE).

1909. July 6. WARD, J.

Criminal procedure.—Review.—Ordinance 3 of 1903, sec. 17.—Unconvicted prisoner.—Escape.

M, an unconvicted prisoner awaiting trial, escaped from custody whilst being conveyed from one gaol to another, and was convicted and sentenced therefor by a resident magistrate under sec. 17 of Ordinance 3 of 1903. *Held*, on review, that an unconvicted prisoner does not come within the provisions of the section, and that the conviction and sentence must be quashed.

Rex v. Kamel ([1907] O.R.C. 80) followed.

The accused was charged before the Acting Resident Magistrate of Senekal with contravening sec. 17 of Ordinance 3 of 1903, in that, being an unconvicted prisoner, he escaped from the custody of Corporal Delport at Gembokfontein, whilst being conveyed from Ficksburg gaol to the gaol at Senekal. He was convicted and sentenced to three months' imprisonment with hard labour.

WARD, J.: It has been held by Mr. Justice FAWKES in the case of *Rex v. Kamel* ([1907] O.R.C. 80) that an unconvicted prisoner escaping from outside the prison does not come within the provisions of the section under which accused is charged. With that I agree, and the conviction and sentence must be quashed.
