

REX v. NAUDE.

1910. June 28. MAASDORP, C.J., and FAWKES and
WARD, JJ.

*Road.—Closing road not proclaimed closed by Governor.—Review.—
Sec. 12 of Ordinance 17 of 1905.—Claim of right.—Mens rea.*

A conviction of contravening sec. 12 of Ordinance 17 of 1905, by closing a public road without having the road proclaimed closed by the Governor, quashed on the ground of absence of *mens rea*, the accused having closed the road in the exercise of what he considered was a legal right.

The accused had been convicted by the special justice of the peace, Luckhoff, of contravening sec. 12 of Ordinance 17 of 1905, which reads as follows :—

No public road, notwithstanding that the same is not marked on the registered diagrams of the respective farms over which it passes, shall be diverted, closed or in any other way interfered with unless the procedure provided in the foregoing sections shall first have been adopted.

The defence set up was that the road in question was not a public road, and that the accused was acting on the instructions of his lessor in refusing to allow any person to use the road on the ground of a claim of right. The accused was sentenced to pay a fine of 5s.

The case came up for review.

MAASDORP, C.J.: The conviction and sentence must be quashed on the ground of absence of *mens rea*, as the act complained of was done in the exercise of what the accused considered to be a legal right. The question may arise later as to whether a contravention of sec. 12 constitutes a criminal offence at all; but we give no ruling on that point now.

FAWKES and WARD, JJ., concurred.