

REX v. BOYSEN AND LOUW.

1910. December 29. FAWKES, J.

*Criminal law.—Review.—Enclosed mining area.*

The words “found without the limits of any enclosed mining area” in sec. 7 of Ordinance 28 of 1907 imply the existence of a mining area enclosed by a wire or other fence.

FAWKES, J.: The charge had been laid under sec. 7 of Ordinance 28 of 1907. The accused had been convicted and sentenced by the special justice of the peace, Zoutpansdrift, to a fine of 10s. each or eight days’ imprisonment in default of payment. Sec. 7 provides that should a coloured person, who is required to register himself under the provisions of sec. 3 of the Ordinance, “be found without the limits of any enclosed mining area not to be in possession of evidence of registration, he shall be liable on proof that he has been employed or has been resident as aforesaid for more than six days to a fine of ten shillings or in default,” &c. The construction to be placed on the words “found without the limits of any enclosed mining area” is not very clear, but I think the words can be explained by the terms of sec. 3, which, in addition to a mine or digging, requires a coloured person entering employment within the limits of the municipalities of Jagersfontein or Koffyfontein to have himself registered. Sec. 7 was intended, I think, to apply to those municipalities and to those mines, where there is a mining area enclosed by a wire or other fence. It cannot apply to a digging, which is defined to mean the proclaimed area of any alluvial digging proclaimed under the mining laws, where there is no area enclosed by any sort of fence.

I sent the case back to the special justice of the peace to take further evidence as to the existence on Diamant of any enclosure. Further evidence was furnished, but this was improperly taken in the absence of the accused, who apparently

could not be found, and was therefore worthless. There is no evidence of the existence of any enclosure on the farm, which is an alluvial digging, and as a matter of fact none, I believe, exists. The difficulty of enforcing the requirements of sec. 3 arises from there being no penalty provided in the Ordinance for a breach of that section.

The conviction and sentence must be quashed.