1911. February 27. Sodha *vs* Rex.

being so, she cannot avail herself of the exemption under sub-sect. (8) (*e*). The appeal must, in my opinion, therefore fail. As regards the point raised by Mr. *Gregorowski,* as to the severity of the sentence, I agree with my brother WESSELS that it is a case in which the Magistrate might well have given the alternative of fine or imprisonment, instead of imposing both fine and imprisonment, and that the sentence should accordingly be altered to one of a fine of £10, or in default one month's imprisonment.

[Appellant's Attorney, M. K. GANDHI.]

[Reported by GEY VAN PITTIUS, Esq., Advocate.]

J. DE VILLIERS, J.P., WESSELS and CURLEWIS, J.J. March 1, 1911.

DOLLIE AND ANOTHER *vs.* PRETORIA MUNICIPALITY.

Asiatic.—Cape Malay.—Cape Boy.—Residence.—Asiatic Bazaar.—Government Notice 273 *of* 1907.—*Ord.* 17 *of* 1905, *sec.* 10.

Cape Boys or Cape Malays are not Asiatics within the meaning of sec. 10 *of Ord.* 17 *of* 1905.

1911. March 1. Dollie and Another *vs.* Pretoria Municipality.

Appeal against a conviction by the Assistant Resident Magistrate, Pretoria.

The appellants, who were Cape Malays, were convicted in the Court below of contravening sec. 6 of Government Notice 273 of 1907 (promulgated under sec. 10 of Ord. 17 of 1905), in that, not being Asiatics or engaged in the services of a local authority, they resided in an Asiatic bazaar.

T. J. Roos (for appellants): The Magistrate came to the conclusion that the appellants were not Asiatics on the strength of the definition of "Asiatic" given in sec. 1 of Act 36 of 1908. This definition, however, expressly excludes Malays. But *see* sec. 1 of Law 3 of 1885, where "Asiatic" is defined as being "a person belonging to one of the native races of Asia." The Malays belong to one of the native races of Asia.

[WESSELS, J.: They came to South Africa 150 years ago.]

The important test is the appearance of the appellants. The Magistrate found that they looked like Asiatics. Asiatics are coloured persons. *Saluger* vs. *Rex* ([1903], T.S., 13.)

R. Gregorowski (for the Municipality) was not called on.

DE VILLIERS, J.P.: It is common cause that the appellants are what is usually known in this country as "Cape boys" or Cape Malays. They were charged with contravening the Municipal Regulations published under Government Notice 273 of 1907, by residing in the Asiatic Bazaar. The sole question to decide is whether they, being Cape boys, are entitled to reside in an Asiatic bazaar. The enabling Ordinance 17 of 1905, sec. 10, gives the Municipality power to set aside bazaars or other areas exclusively for occupation by Asiatics. Mr. *Roos* contends that the appellants must be considered to be Asiatics, and he bases his argument principally upon this. He contends that the Magistrate erred in following the definition of "Asiatic" given in Act 36 of 1908, because that is a special statute dealing with the registration of immigrant Asiatics. I do not think the Court should necessarily follow a definition contained in another Act. But, as has been pointed out from the Bench, when an enabling Ordinance itself, as in this case, does not supply a definition of a term used in that Ordinance, the Court has to determine what is the meaning of the term as used by the Legislature in that particular statute. That is the whole question—what did the Legislature mean by the word "Asiatic" as used in sec. 10 of Ordinance 17 of 1905? In its ordinary signification the word "Asiatic" certainly does not, to my mind, include a "Cape boy." I am strengthened in the opinion that this was also the view of the Legislature, by the fact that in this connection it uses the word "bazaars." To my mind it contemplates what we usually understand by the word "Asiatic," who bring over with them from abroad their customs and habits, and are, therefore, compelled

1911. March 1. — Dollie and Another *vs.* Pretoria Municipality.

to live in Asiatic bazaars. That being so, the appellants are not Asiatics within the meaning of sec. 10, or of the Government Notice, and they were, therefore, rightly convicted. The appeal must be dismissed.

WESSELS, J.: I am of the same opinion. There are certain laws of this country which deal with Asiatics, in order to restrict them to reside in certain places, and not to give them that full freedom that other citizens possess. The Malays—and the appellants in this case—are perhaps Asiatics in the sense that their remoter ancestors came from Asia; but only in that sense. It was never intended by the Legislature that people whose ancestors have been living in South Africa for probably more than a century and a half should be restricted to the locations to which those Indians are confined who have recently come from India. We have to take, therefore, the ordinary meaning of the word "Asiatic." Its ordinary meaning is the meaning given in Act 36 of 1908; that is the ordinary definition which we in South Africa give to the term "Asiatic." The law excludes persons in the Civil Service and those born of Asiatic parents in the South African colonies, and it excludes that very large community which exists particularly in the Cape Province, usually called Malays. Therefore, it would be very wrong of us, if we extended the restrictions, intended by the Legislature for the newly imported coolies and Indians, to the old Malays who have lived in South Africa for a long time. Under these circumstances I think the Magistrate was quite right in holding that the appellants are not what the law considers Asiatics, and are, therefore, not entitled to reside in a location set apart for Asiatics.

CURLEWIS, J.: If we are not to take the special definition given to the word "Asiatic" in Act 36 of 1908, or in any other statute, then, in the absence of any general definition of the term by the legislature we must take it to have been used by the legislature in the ordinary sense in which it is used in South Africa. When we use the word "Asiatic" in South Africa in ordinary conversa-

tion, we never intend to include those persons who are generally spoken of or known as Cape Malays. I do not think the word "Asiatic," as used here, can in any way be considered to include the Cape Malays. Probably if Mr. *Roos'* definition were accepted the Cape Malays would not be thankful to him for having induced us to take that view, because then any Cape Malays who came to the Transvaal would be compelled to live in an Asiatic bazaar.

[Appellants' Attorneys: STEGMANN & ROOS.
Respondent's Attorney's: MACINTOSH & KENNERLEY.]

[Reported by ADOLF DAVIS, Esq, Advocate.]

J. DE VILLIERS, J.P.
WESSELS and
CURLEWIS, J.J.
March 1, 1911.

ROULSTON *vs.* REX.

Intoxicating Liquors.—Offences.—Sale off Licensed Premises.—Identification of Licensed Premises.—Oral Evidence.—Ord. 32 *of* 1902, *sec.* 57.

R, holding a licence to sell intoxicating liquor at premises known as "Bottle Store," situated on erf X, sold intoxicating liquor at premises known as the "Bar," situated upon the same erf as the "Bottle Store":— Held, *that oral evidence was admissible to show what premises were meant by the words "Bottle Store."* Held, *further, that, as such evidence showed that the "Bar" was a different place to the "Bottle Store," R had contravened Ord.* 32 *of* 1902, *sec.* 57.

Appeal against a Conviction by the A.R.M., Volksrust.

The accused was charged with contravening sec. 57, Ord 32 of 1902, in that upon 2nd January, 1911, he sold intoxicating liquor on erf 128 Amersfoort at the premises known as the "Bar," instead of at the premises known as the "Bottle Store," as authorised by his licence. The licence was "for the sale of liquor at the premises known as 'Bottle Store,' situated at erf 128 Amersfoort." The Magistrate admitted oral evidence to show what was meant by "Bottle Store." The accused was convicted and sentenced to pay a fine of £1, or two days' imprisonment with hard labour.