say more than "follow." There again I do not quite agree. I think whether the following is insulting depends largely on the circumstances under which it takes place—the length of time during which it is continued, perhaps the distance, whether the man charged knows the woman, whether he has any relationship with her; and there may be many other points which may affect the question whether the following is insulting. But I certainly think that to follow a strange woman, whether married or single, without any legitimate reason, for a considerable time, and in addition to go up to her and stare into her face, is insulting within the meaning of the sub-section.

When we come to the question whether the following in this case was insulting we must take the facts as the magistrate finds them. That is where it seems to me the case is rather weak. Whether, if we had tried the case in the first instance, we should have decided that the following was insulting, may be questioned. But I do not think it is a case in which we should be justified in interfering with the decision at which the magistrate arrived. The appellant did follow the complainant several times for a considerable period. He waited for her at her house, and then followed her, at a distance of fifteen yards, and at one period he came up to her and stared in her face; and this was at night time. It appears to me that it is impossible for us to say this was not following in such a way as to constitute an insult. Therefore (although, as I have said, the case is rather a weak one), I do not think we should disturb the finding of the magistrate.

[A. D.]

REX v. ROUFFIGNAC.

1914. *January* 30. MASON and BRISTOWE, JJ.

Mines and minerals.—Act 12 *of* 1911, *secs.* 4 *and* 5.—*Powers of Governor-General to make regulations.—Mines, Works and Machinery Regulations,* 1911, *sec.* 176 (2).—*Instruction posted by manager of mine.*

Sec. 4 (*l*) of Act 12 of 1911 authorised the Governor-General to make regulations for the safety and health of persons employed in or about mines. Sec. 176 (2) of the Mines, Works and Machinery Regulations, 1911, so made, provided

penalties for any person who failed to obey any instructions in the interest of safety posted in or about the mine by the manager. *Held*, that sec. 176 (2) was *ultra vires* the powers of the Governor-General and that an instruction so posted by the manager and not approved in accordance with sec. 5 of Act 12 of 1911, was invalid.

Appeal against a conviction by the magistrate at Krugersdorp.

The accused was charged with contravening sec. 176 (2) of the Mines, Works, and Machinery Regulations of 1911, by failing to obey the instructions issued by the manager of the Randfontein Central Gold Mine in connection with the provision of life lines for natives unloading "stulls."

Section 176 (2) of the Mines, Works, and Machinery Regulations provides that any instructions in the interest of safety posted, or caused to be posted by the manager at any place in or about the mine or works shall be guilty of contravention of the regulations and shall be liable on conviction to a fine not exceeding £10 or to imprisonment with or without hard labour for a period not exceeding fourteen days.

The instruction posted by the manager was as follows: "Miners are warned that in no case are natives to be allowed to off-load old "stulls" without having a life rope attached to their bodies and fastened in a secure manner so as to prevent them falling down these slopes in the event of a 'stull' giving way.

"Any disregard of these instructions will be treated as a breach of these regulations."

The accused was convicted of a breach of the said instruction of the manager and fined £10 or fourteen days imprisonment with hard labour. He appealed against this conviction.

Ben Auret, for the accused: Section 176 (2) of the Mines, Works, and Machinery Regulations is *ultra vires* the powers conferred on the Governor-General by sec. 4 of Act 12 of 1911, because he confers on the mine manager powers vested in him. Nor does this instruction fall under sec. 5 of Act 12 of 1911, because it has not been submitted to the Government Mining Engineer and has not been approved of by the Minister of Mines. The manager's instruction is therefore null and void.

J. P. van Heerden, for the Crown, said that he did not support the conviction.

MASON, J.: I think it is only right, in courtesy to the magistrate, that we should give our reasons for believing that the conviction

cannot be supported, though Mr. *van Heerden* rightly, on behalf of the Crown, does not maintain the conviction. The appellant was charged with contravening, substantially, the amended section 176 of the Mining Regulations by failing to comply with a certain notice that in working what are called "stulls" a rope should always be used. Regulation 176 provides that any person who fails to obey any instructions in the interests of safety, posted or caused to be posted by the manager of a mine, shall be guilty of a contravention of the regulations and liable to the penalty provided in the preceding regulation—namely, a fine not exceeding £10, or imprisonment with hard labour for a period not exceeding fourteen days. It is contended, on behalf of the appellant, that this particular "instruction" is invalid, and the grounds for this contention may be shortly stated as follows. Under Act 12 of 1911, by sec. 4, the *Governor-General* can make regulations for various purposes, including the safety of persons. Under the Act these are the general regulations, which everybody has to obey. Under section 5 the manager of a mine may make special rules for the prevention of accidents, but those rules do not come into force till after they have been approved by the Government Mining Engineer and posted for fourteen clear days. Then there is a provision that the Minister may revoke those rules. These particular instructions or rules of the manager, in the case of this particular mine, were not framed under sec. 5 of the Act, and they were not even submitted to the Government Mining Engineer. The question, therefore, is whether the Governor can make a regulation authorising the manager to make rules otherwise than in terms of the Act. It seems to me that the Governor has not that authority. The law says, if the mine manager makes rules, they must be subject to the approval of the Government Mining Engineer, and must be posted for fourteen days before they can take effect. I do not think it is competent to say, "We authorise, by regulation, the mine manager to make rules, contravention of which will be a breach of the regulation, but which need not be approved by the Government Mining Engineer." That seems to me to operate, *pro tanto*, as a repeal of the Act. Further, under section 5, the rules made by the manager only entail a penalty of £5 or in default, fourteen days imprisonment, whereas a breach of this particular regulation entails a penalty of £10 or fourteen days imprisonment; therefore, the regulation would increase the penalty which the statute itself provides for these offences. I do not wish to be understood as say-

ing that a specific order given by a manager to any particular miner, or to any particular class of employees in the mine, may not come within the first part of the regulations and may not be perfectly valid. That of course is a very different thing from a general rule binding on all persons as soon as it is posted up, whether it has been brought to their notice or not. Those are the reasons which have led me to think that the magistrate erred in upholding this particular regulation—because it validates rules made by a mine manager in a way inconsistent with the special provisions of the Act, as to how rules made by a mine manager are to become operative and binding. The conviction and sentence are set aside.

BRISTOWE, J.: I agree.

Attorney for appellant: *Orpen.*

[A. D.]

BAL v. CLARK & PRICE.

1914. *February* 5. MASON, J.

Practice.—Magistrate's Courts.—Execution pending appeal.—Security.—Sufficiency of.—Delegation to Clerk of Court to determine.—Whether an appeal lies from order of a Magistrate.—Powers of Supreme Court.—Mandamus.

Sec. 26 of Proc. 21 of 1902 provides that a magistrate may suspend the execution of a judgment pending appeal, and may order the person in whose favour the suspension has been granted to enter into good and sufficient security to be approved by the magistrate. A magistrate suspended execution against a person subject to his finding security to the satisfaction of the clerk of the court, and such person having failed to find security as aforesaid, the magistrate ordered execution to be issued notwithstanding appeal. *Held*, on an application to stay execution, that the Supreme Court would not interfere with the magistrates courts' practice delegating the power to determine the sufficiency of the security to the clerk of the court. *Held*, further, that the security offered was in fact insufficient.

Quaere whether an appeal lies from a magistrate's order with reference to such security, and whether the Supreme Court—even if no appeal would lie—would not have the power to direct a magistrate to exercise statutory powers which he has failed to exercise.