

REX v. LAPIERRE AND ANOTHER.

1905. *July* 7. FAWKES and WARD, J.J.

Criminal procedure.—Trespass.—Law 11 of 1899, sec. 1.

The expression “private property” in Law 11 of 1899, is used in contradistinction to property to which the public have a common right of user; consequently the property of the Crown, which is not subject to such a right of user, falls within the meaning of the term.

A person found in a hut in a native location on Crown land is not liable to a prosecution under Law 11 of 1899 simply because he has not obtained permission from the Native Commissioner.

The accused were charged before the Relieving Resident Magistrate of Thaba 'Nchu with contravening sec. 1 of Law 11 of 1899, in that they did wrongfully and unlawfully and without lawful reason, enter upon private property without the knowledge or consent of the owner or occupier, to wit, the Thaba 'Nchu native location, without the permission of the Native Commissioner. The evidence showed that the two accused were found in the hut of a half-caste woman in the Thaba 'Nchu location. The location ranger stated that he had not given these men permission to be in the location. There was no evidence that the occupier of the hut did not consent to their being there.

The resident magistrate dismissed the charge as he had a doubt whether a location, being Crown land, could be taken to be private property.

The Attorney-General brought this case in review under section 6 of Ordinance 38 of 1903.

Barclay Lloyd, for the Crown.

FAWKES, J.: The expression “private property” in Law 11 of 1899 is used in contradistinction to property to which the public have a common right of user; consequently the property

of the Crown which is not subject to such a right of user by the public is within the meaning of the term "private property" as used in the law. But a person found in a hut in a native location on Crown land is not liable to a prosecution under Law 11 of 1899 simply because he has not obtained the permission of the Native Commissioner. Once a hut has been allowed to be erected in a location, persons passing over recognised roads or paths to get to such huts for purposes not unlawful are not trespassers under Law 11 of 1899.

WARD, J., concurred.

