

## JOHN M'TATI v. REX.

1908. *March 24.* MAASDORP, C.J., and FAWKES and  
WARD, JJ.

*Liquor Law.—Appeal.—Secs. 42 and 43 of Ordinance 8 of 1903.—  
Coloured person.—Kafir beer (juala).—Obtain.—Ejusdem generis  
construction.*

Where accused was convicted by a lower court of contravening sec. 42 of Ordinance 8 of 1903 in that he had been unlawfully in possession of intoxicating liquor, being a coloured person, *Held*, on appeal, that the conviction and sentence must be quashed on the ground that no evidence had been produced to show that accused was a coloured person.

*Held*, further, that a mixture of golden syrup, karree bush and sour figs is not *juala*; and *Held*, further, that the word *obtain* in sec. 42 may mean *possess*.

The accused had been convicted by the Assistant Resident Magistrate of Bloemfontein under sec. 42 of Ordinance 8 of 1903 of having been unlawfully in possession of intoxicating liquor, being a coloured person. From the evidence it appeared that the police had found in his hut some liquor containing 8 per cent. of alcohol, which had been made by his wife out of golden syrup, karree bush and sour figs.

*Blaine, K.C.*, for the appellant: (1) There is no evidence to show that the accused is a coloured person. See *Rex v. Tomlinson* (22 S.A.L.J. 94). (2) The liquor is Kafir beer (*juala*), the brewing and use of which is protected by sec. 43. *Juala* is a generic term for all intoxicating drinks made by Kafirs; see various Kafir dictionaries. (3) The accused discharged the onus placed upon him by sec. 42, and proved that he had obtained it in a lawful manner. The words "obtain in any other manner" in the first sentence of sec. 42—namely, "no coloured person shall obtain by purchase, barter, or in any other manner any intoxicating liquor"—imply valuable consideration, as they must be interpreted *ejusdem generis*. See

*R. v. Gontshe* (6 E.D.C. 280); *Platnauer v. Rex* ([1904] T.S. 979); *Rex v. Swartbooi* ([1906] E.D.C. 86).

The Court has no power to remit the case on appeal for further evidence. See *Kaled v. Rex* ([1903] T.S. p. 143).

*Lloyd*, for the Crown: The magistrate could take judicial cognisance of the fact that accused was a coloured person. The word *juala* is restricted in its meaning, as it appears in brackets after Kafir beer in sec. 43, and means a particular drink made from grain. The word *giving* in the second part of sec. 42 shows that the words "obtain . . . in any other manner" cannot be interpreted *ejusdem generis*.

*Blaine, K.C.*, in reply.

MAASDORP, C.J.: I do not think this is a case of such importance as to justify us in sending it back to the magistrate even if we had the power to do so. We will quash the conviction on the ground that there is no evidence to show that the accused was a coloured person. As to the question whether the liquor was Kafir beer, we are of opinion that there is evidence on the record as to what *juala* is, namely, that it is made of grain. This is in accordance with our own knowledge derived from previous cases on the subject. I have never in reviewing cases come across *juala* that was not made of grain—generally of Kafir corn. This case is not protected by sec. 43, and the liquor is intoxicating liquor, so that its possession is prohibited. We must consider what is the effect of the following words in sec. 42, "shall obtain by purchase, barter or in any other manner." It has been suggested that they imply "obtain from some one else." The word "obtain" has not this restricted meaning in the dictionary, and from the original derivation of the word we could not arrive at that meaning. Any one who holds anything has obtained it. He may have acquired it through natural agencies. In this case the accused has obtained the liquor. It has also been suggested that the words "obtain . . . in any other manner" in sec. 42 necessitate valuable consideration, and would not include obtain by gift. But in the proviso at the end of the section the permission of the gift of one single drink from

the master shows that that particular sort of obtaining—namely, by gift—is to be included under the words “in any other manner.” As to the exception in favour of Kafir beer, we take it that our law has practically the same intention as the law in the Transvaal, namely, to prevent a native being in possession of any beer other than Kafir beer. If he does not show he has come lawfully by it he is presumed to be guilty. The cases quoted by Mr. *Blaine* have really nothing to do with the matter. They would have fallen under sec. 41 had the word “give” not appeared in that section, and the section would then have been directed against *dealing* in liquor. In that case consideration would have been necessary. It is against such dealing that the Transvaal and Cape law was directed. We are not detracting from those decisions, but they do not apply to this case.

FAWKES and WARD, JJ., concurred.

Appellant's Attorneys: *Marais & De Villiers*.

