

REX v. FRANKIE KEIN.

1909. August 9. MAASDORP, C.J., and WARD, J.

Criminal procedure.—Argument on review.—Peace preservation.—Order to leave the colony.—Disobedience to order.—Magistrate's jurisdiction.

Where an order had been granted in April, 1906, directing 'K to leave the colony on the ground of failure to obtain a permit under the Peace Preservation Ordinance, and a magistrate had convicted and sentenced her to imprisonment and a fine for disobedience thereto, *Held*, that the conviction and sentence must be quashed on the ground that the order was no longer in force, and had therefore not been disobeyed.

The accused in this case had entered the Orange River Colony to join her husband, who was a British subject. She had resided in the colony prior to the war. In April, 1906, the Resident Magistrate of Kroonstad had issued an order under sec. 21 of Ordinance 25 of 1902 directing her to leave the colony within seven days in the event of her failure to obtain written permission from the Colonial Secretary to remain. On the 19th July, 1909, she was convicted of contravening sub-sec. 1 of sec. 22 of Ordinance 25 of 1902, in that she had disobeyed the order to leave the colony, and was sentenced to imprisonment for two months without hard labour and to a fine of £10, or, in default of payment, imprisonment for a further period of two months.

Blaine, K.C., for the accused: Secs. 21 and 22 were only applicable so long as there was political unrest after the war. They have become obsolete owing to the alteration of circumstances.

Lloyd, for the Crown: The order was properly made under the section, and the magistrate had no option but to convict.

MAASDORP, C.J.: The preamble of the Ordinance, part of which reads as follows: "And whereas it is desirable in view of the withdrawal of martial law to make special provision for the maintenance of good order and government and the public safety of this colony during such time as circumstances may require," and the heading of Part II, "Special provisions for public safety," show that the intention of the legislature was that the provisions of the Ordinance should not apply when the peculiar circumstances following upon the war had given place to normal conditions. But the ground on which we base our decision is that the magistrate had not the necessary jurisdiction. A magistrate has no power to sentence a person to imprisonment for a longer period than two years under any head of his jurisdiction, and by parity of reasoning he has no power to issue an order binding a person for a longer period than two years. The order had therefore expired before the conviction of the accused, and she could not be held liable for disobedience thereto. The conviction and sentence must be quashed.

WARD, J., concurred.

Attorneys for the accused: *McIntyre & Watkeys.*
