

SALOMO AND OTHERS v. REX.

1909. November 19. MAASDORP, C.J., and WARD, J.

Criminal procedure.—Trespass.—Claim of right.—Mens rea.

Where S *bond fide* believed that he had a right to reside on the property of B by virtue of a deed of grant, *Held*, on appeal, that as there was no *mens rea*, he had been wrongly convicted of contravening sec. 24, sub-sec. 13, of Ordinance 21 of 1902, and that the conviction and sentence must be quashed.

The appellants had been convicted by the Resident Magistrate of Edenburg under sec. 24, sub-sec. 13, of Ordinance 21 of 1902 of wilfully trespassing on the property of the Bethany mission station and refusing to leave after warning; they had been found guilty and sentenced to a fine of 2s. 6d., or, in default, two days' imprisonment.

Rorich, for the appellants: Appellants claim to have a right to reside on the property by virtue of a grant to native chief Goliath under the Maitland Treaty of 1846. Even if their contention is incorrect, their claim is *bond fide*. There is no *mens rea*, and the matter was one proper for a civil, and not a criminal suit. See *R. v. Douw Willemse* (3 C.T.R. 419); *R. v. R. Ganangan* (7 E.D.C. 124); and *R. v. Bolani* (13 C.L.J. 150). Sub-sec. 12 of sec. 7 of the Cape Law 27 of 1882 is identical in its terms with the section under which the appellants were convicted.

There was no appearance on behalf of the Crown.

MAASDORP, C.J.: The appeal must be upheld and the convictions and sentences quashed.

WARD, J., concurred.

Appellants' Attorneys: *Marais & De Villiers*.