

1880.  
Jan. 12.  
—  
Nieuwoudt vs.  
Registrar of  
Deeds.

DE VILLIERS, C.J.:—I think this is a very proper precaution on the part of the Registrar of Deeds. It is his duty to be very careful in admitting powers of attorney, and I think it is a very wholesome rule that where the parties to such a power live beyond the Colony, the signature of some responsible official, whose position is known to the Registrar of Deeds, should be demanded. I think the application must be refused, but I have no doubt that it will be possible to find someone in Cape Town or elsewhere to attest the signature.

[Applicant's Attorney, C. H. VAN ZYL.]

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THE QUEEN vs. WILLIAM SEPTEMBER.

*The Vagrancy Act (No. 23 of 1879), §§ 2, 9, & 11.—Wandering Abroad.*

*A Magistrate is not empowered by § 11 of the Vagrancy Act to give an alternative sentence of employment.*

*S., a native was found lying in front of a hut at O. He did not live at O., and had been there three days without employment, though there was plenty to be had, and though he had no means of support. He was charged before the Resident Magistrate of O., under the 2nd section of the Vagrancy Act, found guilty, and sentenced to three months' hard labour, unless other employment should be sooner obtained, for the unexpired portion of the sentence. Held, upon review, that S. was rightly convicted under the 2nd section of the Act, but that the Magistrate had no power to inflict upon him an alternative sentence of employment under the 11th section.*

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This was a case which came before the Court for review. The matter was referred for argument to the Attorney-General. It appeared that one William September, a native, had been found lying in front of a hut at Oudtshoorn. He was not a resident of that town, and had been there for three days without obtaining employment, though there was plenty to be had, and he was without means of support. He was charged under the 2nd section of the Vagrancy Act,

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Act 23 of 1879, before the Resident Magistrate of Oudtshoorn, found guilty, and sentenced to three months' hard labour unless other employment should be sooner obtained for the unexpired portion of the sentence. The main points to be decided were whether the prisoner was rightly charged under the 2nd instead of under the 9th section of the Vagrancy Act, and whether the Resident Magistrate had any power under the 11th section of that Act to give an alternative sentence of employment.

*Upington, A. G.* Prisoner had been rightly charged under section 2 of the Act, which section refers to persons wandering abroad and having no visible means of support, or insufficient lawful means of support. There was work to be had at Oudtshoorn; and yet prisoner according to his own admission had no means of support, and had been at Oudtshoorn for three days without permanent employment. He did not belong to Oudtshoorn at all. It is clear therefore that he was wandering away from his ordinary place of residence without any lawful means of support. Prisoner could not have been charged under the 9th section of the Act, which section refers to squatters trespassing upon waste ground, &c., because he had only been at Oudtshoorn for three days, and therefore could hardly be held to be a squatter. The latter part of the sentence inflicted upon prisoner by the Magistrate cannot be defended.

DE VILLIERS, C.J.:—My doubts as to whether this case ought to have been brought under the 9th section have been removed by the argument of the *Attorney-General*. It seems that Mr. Edmeades had given notice under the 9th section to certain persons to remove, but the prisoner in this case was not one of them. The question is whether the prisoner's conduct comes under the second section; I think it does, and that the Magistrate was right in coming to the conclusion that there must be a conviction. But then the Magistrate sentenced the prisoner to three months' hard labour, unless other employment should be sooner obtained at the rate of 20s. per month, with food, for the unexpired portion of the sentence. It is this latter part of the sentence that I am doubtful about. The 11th section of the Act provides that "It shall be lawful for any

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resident magistrate, or special justice of the peace, to adjudge any person convicted under the second and fourth sections of this Act, to a term of service on the public works of this Colony, or to employment under any divisional council, or municipality, or private person, other than the said resident magistrate or special justice by whom such person shall have been convicted, or the person at whose instance such prosecution shall have taken place, who may be willing to employ such person for any term not exceeding that for which he is liable to imprisonment under this Act on that behalf provided, and at such rate of wages as shall in the judgment of the resident magistrate or justice of the peace be sufficient for his maintenance," &c. I do not think that it was ever intended by the legislature that the magistrate should have the power of giving an alternative sentence. The magistrate may either give three months' imprisonment, or else he may try to discover whether there is any person ready to take the prisoner as a servant; and having discovered such a person, he may adjudge the prisoner to a certain term of service. I think the name of the person by whom the prisoner is employed should be specified, as I believe it was intended that the Court should have control over that matter. The sentence of the Magistrate must be upheld, except as to the words "unless other employment shall be sooner obtained," &c.

STOCKENSTRÖM, J., concurred.

Conviction sustained.

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TRUSTEES OF STELLENBOSCH BANK *vs.* HEROLD.

*Contribution.—Liquidation.—Final Liquidation.*

*An unlimited bank became unable to meet its liabilities. It was alleged that this was partly owing to the misconduct of H. the cashier, who was also a shareholder. Those interested subscribed a sum of money to be devoted to the satisfaction of the bank's liabilities. By the terms of a second subscription, the directors bound themselves to pay one half, and certain shareholders the other half, of the running*