

## REX v. JOSEPH M'BATA AND OTHERS

1910. *September 17.* MAASDORP, C.J.*Criminal law.—Review.—Pass Law.—Passing through the country.*

Visiting a neighbouring farm is not passing through the country within the meaning of art. 11 of chap. 133.

The accused had been charged before the special justice of the peace, Vierfontein, with contravening arts. 10, 11 and 39 of pt. 2 of chap. 133 of the Law Book. The articles read as follows:—

(10) Every coloured person coming from beyond the boundaries of the State must be provided with a pass signed by the missionary to whose station he belongs, or by the chief of the place where he resides, or by a competent official, stating the name of the holder of such pass, his place of residence, the object of his journey, his destination, the time allowed, and the number of persons, cattle and other goods which he is taking with him.

(11) Any coloured person within the limits of this State found passing through the country without a pass from a white master, if he is in service, or without a pass from some missionary, landdrost, field-cornet or justice of the peace, or issuer of passes, may and shall be detained by any inhabitant and sent to the field-cornet or justice of the peace or to the landdrost, by whom he may be set free or punished for vagrancy in terms of art. 30.

(39) Any person guilty of, or not acting in accordance with, the provisions of this part shall be liable to a fine not exceeding £5 sterling, or in default of payment to imprisonment for a period not exceeding one month. The penalties already enacted in this part shall not be affected by the provisions of this article.

The case came up for review.

MAASDORP, C.J.: The conviction and sentence are confirmed as regards January, he having no fixed place of abode. The conviction and sentence must be quashed as regards Joseph M'Bata and Jackson Malafan, as it appears from the evidence that they

had merely been to a wedding party on a neighbouring farm. Chap. 133 is directed against vagrancy, and does not apply to natives who have a fixed abode, and are merely on a visit to neighbouring farms. It is possible that such natives may be liable to prosecution for trespassing or some other offence, but they cannot be said to be *passing through* the country in terms of art. 11 of chap. 133.

