should not be very heavy and that £25 will meet the justice of the case.

Judgment will therefore be for the plaintiff for £25 damages and costs.

FAWKES and WARD, JJ., concurred.

1911.
August 26.
" 28.
" 29.
" 30.
" 31.
Sept. 1.
" 2.
" 4.
Nov. 1.

Fraser *vs.* Hertzog.

[Plaintiff's Attorneys, FRASER & SCOTT.
Defendant's Attorneys, STEYN & VORSTER.]

[Reported by R. C. STREETEN, Esq., Advocate.]

MAASDORP C.J. and FAWKES & WARD, JJ. 1st November, 1911

R. *vs.* MOLEMOE.

Criminal law.—Perjury.—Material matter.

Where a witness had given evidence before a Magistrate in a criminal trial from the record of which it clearly appeared that no offence had been legally charged, nor proved to have been committed, although the accused had been convicted: Held, *that the said witness could not lawfully be convicted of perjury in respect of the evidence he had given at the said criminal trial.*

This was an argument on review of a case heard by the A.R.M. of Wepener. The accused had been charged with perjury, and had been convicted on remittal and sentenced to a fine of £10, or in default to three months' imprisonment. The matter in respect of which the perjury was alleged to have been committed was a charge against one Stephen, a fellow servant of the accused in the present case. He had been charged under sec. 24, sub-sec. (3), of the Police Offences Ordinance (No. 21 of 1902), with driving a team of oxen harnessed to a *stone* through a drift without a leader.

1911.
Nov. 1.

R. *vs.* Molemoe

The sub-section reads as follows:—

" Any driver or other person in charge of a *wagon or other vehicle* drawn by oxen . . . . and not driven with reins who shall not have a person leading the team attached to such wagon or other vehicle. . . . . .

1911. Nov. 1. R. vs. Molemoe.

(*c*) When approaching or passing through . . . . any . . . drift."

The above act is constituted an offence under the section. Stephen had been convicted under that sub-section and sentenced to pay a fine.

H. F. Blaine, K.C., for the appellant: The evidence was insufficient to support the verdict, and in some respects it was strongly in favour of the accused. The Magistrate gave no weight to the circumstances in favour of the accused.

[WARD, J.: Was the accused Stephen in the case in which the perjury was alleged to have been committed guilty of any offence? The sub-section under which he was convicted refers only to " a wagon or other vehicle." There was no vehicle in that case.]

S. J. de Jager, Attorney-General, for the Crown.

[MAASDORP, C.J.: See the definition of Perjury in Stephen's Digest of the Criminal Law (sixth edition), p. 106, Art. 148. The charge in the first case was not a good one.]

The question depending in the first case was whether there was a leader. The case has not been upset. Though the judgment may be wrong it stands. There was a judicial proceeding, and the matter of fact was material.

H. F. Blaine, K.C., in reply. There are several decisions upsetting convictions by Magistrates on appeal, even when there was ample evidence for a conviction. See *R.* vs. *Ely* (18 C.T.R. 1016), and *Winnicot* vs. *Rex* (1909, E.D.C. 198).

MAASDORP, C.J.: The Court is of opinion that this conviction must be quashed. According to the charge as laid in the summons it appears that the perjury is alleged to have been committed in a case in which a native was charged with driving through a drift oxen harnessed *to a stone*. The section of the Ordinance under which the charge was laid only applies to the driving of oxen

harnessed to a vehicle, which was neither alleged nor proved. Until the existence of a vehicle has been alleged and proved there can be no ground for the charge. Though a stone might conceivably be used as a vehicle there was no such allegation that it was so used. If this point could not be established it was not material to the issue whether there was a leader for the oxen or not.

If it were necessary to go into the merits of the present case I personally should be prepared to quash the conviction on the argument advanced by Mr. *Blaine*.

Appellant's Attorney, C. J. REITZ.]

MAASDORP, C.J. and FAWKES & WARD, J.J. 3rd November, 1911.

THE BERLIN MISSION SOCIETY *vs.* IZEK BOOM.

Magistrate's Court.—Practice.—Summons.—Ejectment. —Essential requirements.

In a Magistrate's Court summons for ejectment it must be alleged that the defendant is in occupation without right.

Appeal from the decision of the Acting A.R.M. of Edenburg.

The respondent (defendant in the Court below) had excepted to the summons, which was in the following terms:—

"Summon: Izek Boom, of Bethany, district Edenburg, that he appear before the Court of the R.M. of this district, to be holden at Edenburg on the 17th day of October, 1911, next, at 10 o'clock in the forenoon, with his witnesses, if he have any, to show cause why he should not be ordered to quit and deliver up possession of a certain hut and premises occupied by the said defendant, situated on the farm Bethany, No. 365, formerly district Bloemfontein, now district Edenburg, the property of the Berlin Mission Society, by deed of grant dated 21st December, 1881; the said Society being herein represented by the Executive thereof, the members of which