

[FAWKES, J.: Do you suggest he was *functus officio*. Would that not be only on the rising of the Court?

1911.  
February 1.  
R. vs. Epstein.

MAASDORP, C.J.: Or at all events when a new case was dealt with. The schedule to the Magistrates' Court Ordinance, Section 13, requires the sentence to be recorded.]

The recording does not affect the passing of the sentence, which is completed when pronounced. See Wharton Leg. Dic., S.V., Sentence. The Transvaal Crim. Code uses the term pronounced.

*De Jager*, A.G., for the Crown, was not called upon.

MAASDORP, C.J.: If Mr. Rorich's contention were to be upheld it would involve very serious consequences to a great many criminals as the sentence is more frequently altered to the criminal's advantage. In this case the words had hardly been pronounced and, though the permanency of the *res scripta* is often put forward, it is here sought to give more validity to the spoken words than to what has been committed to writing.

FAWKES, J., concurred.

Appeal dismissed.

[Appellant's Attorney, BOTHA & GOODRICK.]

[Reported by P. U. FISCHER, Esq., Advocate.]

MAASDORP, C.J. }  
FAWKES, J. }  
Feb. 1st. 1911. }

R. vs. PIETERSE AND OTHERS.

*Criminal Law.—Trespass by Night within enclosed Yard.—Ordinance 21, 1902*

*A yard is not enclosed in terms of the Police Offences Ordinance where there are no provisions made for closing the openings in the surrounding wall.*

1911.  
February 1.  
R vs. Pieterse  
and Others.

The accused were charged before the R.M., Senekal, with the contravention of section 26 (3) Ordinance 21, 1902 (Police Offences) in that they were found in an enclosed yard by night without lawful excuse and being convicted were sentenced to a fine with an alternative of imprisonment. It appeared that a police constable saw the accused coming from the premises of Spencer and Fisher's store dragging a hand trolley at 12.45 a.m. on New Year's Day. They were then standing in an open gateway. From a diagram put in it appeared that the yard in question was surrounded on four sides by buildings or walls, but had two open gateways of 15 and 9 feet respectively in which no gates were ever placed, and a further opening in a broken wall of about 12 feet.

*P. U. Fischer*, for appellants, raised the point that the yard was not an enclosed one within the meaning of the Ordinance. There was no means of rendering it effectually closed.

[**FAWKES, J.:** You mean that the yard should not constitute a trap?]

Yes. The Act is a penal one and must be construed strictly.

*S. J. de Jager, A.G.*, for the Crown, was heard on the point as to whether the yard was enclosed or not.

**MAASDORP, C.J.:** By no ingenuity could the Court convert a yard which could not be closed into an enclosed yard. It is quite clear the appeal must be allowed.

**FAWKES, J.**, concurred.

[Applicant's Attorneys, FRASER & SCOTT.]

[Reported by P. U. FISCHER, Esq., Advocate.]

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