SEPTEMBER *v.* W. R. VAN DE WAL.

Coram: KOTZÉ, C.J. MORICE, J. GREGOROWSKI, J.

1897
8 *June.*

LAW NO. 4 OF 1885—NATIVE MATTERS—JURISDICTION.

A native, who has been punished with lashes by a Native Commissioner or his representative, has a right to institute a civil action in the Supreme Court for damages on the ground that he has been illegally assaulted.

Law No. 4 of 1885 does not in such cases oust the Supreme Court of its jurisdiction.

Quære, *whether from a criminal sentence pronounced by a Native Commissioner under Law No. 4 of 1885, an appeal lies to the Supreme Court.*

THIS was an appeal from the judgment of Jorissen, J., pronounced in chambers on 14th April, 1897.

The appellant applied for leave to sue *in formâ pauperis* one W. R. Van de Wal, clerk of the Native Commissioner for the district of Lydenburg, in an action for damages on the ground of assault. The appellant was a Kaffir of the Secocoeni location in the district of Lydenburg, under the Chief Toeroemetjani. He alleged that on 6th October, 1896, he had in the said location been assaulted in a harsh and cruel manner by order of the respondent, and had been severely beaten with the trace of some harness, so that his flesh was cut and bled profusely, and that he had given no cause for this ill-treatment. He annexed to his petition a certificate from Dr. Otto Hohls, district surgeon at Pietersburg, who had examined him on the 26th October.

The respondent stated that during the months of October and November he had taken over the duties of the Native Commissioner at Lydenburg, and that in that capacity he, on 6th October, caused his constables to administer ten lashes to the applicant, September, on the ground that September had made false declarations before him, and had further conducted himself in a rude and impertinent manner. The respondent also maintained that there existed no reason for the applicant to institute an action, as the proper course for natives, who considered themselves prejudiced by the acts of officials, to adopt was to complain to the Native Commissioner, or, if necessary, to the Superintendent of Native Affairs. Moreover, the Superintendent of Native Affairs was personally at

1897

SEPTEMBER v. VAN DE WAL.

Secocoeni's location on 1st December to investigate complaints, and the applicant had not appealed to him.

A rule *nisi* was granted, and the application was heard in chambers on 24th March, 1897. On 14th April, 1897, Jorissen, J., gave a written judgment, which also referred to the case of *N'Kwaan* v. *The Superintendent of Native Affairs* (*vide infra*, p. 164). This judgment, so far as it concerns the present case, was as follows: "I take the two cases together, for in both the jurisdiction of the Court was raised in regard to Law No. 4 of 1885, regulating the management of and the legal procedure among the natives. In the case of *Marechane* v *The State* (*a*), in 1882, it was laid down by the Court that in all matters of an administrative character and true public concern the native stands under the control of the Commissioners, the Superintendent of Natives, and ultimately of the State President, and that the Supreme Court is not competent to interfere with such matters. The Native Commissioners may even, in criminal cases, in offences of minor import (see the Schedule annexed to the law), inflict punishments. It is not clear to me whether from such sentences an appeal will lie to the Supreme Court.

"In September's case, however, another question arises, viz., whether a Kaffir, who has been punished with lashes by a Native Commissioner or his representative for alleged disobedience, has the right of instituting a civil action for damages on the ground that he has been illegally assaulted? September maintains this, and now applies for leave *Pro Deo* to institute an action against W. R. Van de Wal, clerk of the Native Commissioner, Abel Erasmus, who has without any cause administered lashes to him. It appears from the affidavits that these lashes have been very severe.

"Van de Wal, the clerk, alleges that he only caused ten lashes to be administered, and this because September made false declarations. This happened on 6th October; but from an affidavit by Dr. Otto Hohls it appears that three weeks afterwards, *i.e.*, on 26th October, 1896, there were still visible on the back and shoulders of the applicant seventeen or eighteen striped marks, caused by a blunt instrument (sjambuck or quincerod). September himself says these lashes were inflicted with a trace from some harness.

(*a*) 2 Kotzé, Rep. (Transvaal), p. 27.—TR.

"I can, therefore, come to no other conclusion than that Van de Wal has indeed exceeded the limits of a minor punishment and has ill-treated the native, September. Meanwhile, it appears that the Superintendent of Natives has interfered in the case, and has approved the conduct of Van de Wal. I therefore do not deem myself entitled to intervene. September can appeal to the State President and request His Honour to grant him relief against the wrong done him. I do not doubt for a moment that the State President, if the facts be laid before him, will order a fresh investigation of the matter.

"The application must accordingly be refused, but without any order in regard to costs."

From this judgment appeal was brought.

Curlewis (with him *Lohman*), for the appellant: The only section which may be cited with a view of excluding the jurisdiction of the Court is sect. 13 of Law No. 4 of 1885. But this section is not applicable in a case like the present. It only refers to instances of rebellion and matters of police.

Jacobs, for the respondent: Jorissen, J., has rightly ruled that the Court has no jurisdiction. It is in reality a matter of police. An official must possess the same power as a Kaffir chief.

The Court held that sect. 3 of Law 4 of 1885 did not apply. The appeal was allowed, and leave given the appellant to sue *in formâ pauperis*, costs to be costs in the cause.

Attorney for the appellant: *J. H. L. Findlay.*

Attorney for respondent: *S. K. H. Lingbeek.*