

R. v. JOHN BRIAN METCALFE WALTON.

CRIMINAL APPEAL CASE No. 26 OF 1942.

Regulation 12 of the Mining Regulations—unauthorised person on mine property.

The appellant was invited by a mine employee to visit him on mine property but did not obtain any other authorisation to be there. He was convicted by the Subordinate Court of a contravention of Regulation 12 of the Mining Regulations but the conviction was quashed on appeal on the ground that the regulation was indefinite and inconclusive as it was too wide, was unreasonable (if applied strictly) and did not specify who could grant an authorisation.

The Mining Ordinance enacted as the Mining Proclamation 1912 was repealed and replaced by the Mining Ordinance (Cap. 91) in 1958. Regulation 1907 of the Mining Regulations made under the new Ordinance reads thus: "No unauthorised person shall enter any part of a mining property in the immediate vicinity of, or within a fence enclosing, any shaft or other mine working, or any plant or machinery". It is still not made clear in the regulation what is meant by the expression "unauthorised person" but see *R. v. Maillos* 1 N.R.L.R. 74 wherein the Court endeavoured to give some definition to this term.

Law, C.J.: In this case the appellant was charged under Regulations 12 and 138 of the Mining Regulations, in that he "on the 22nd day of February, 1942, at Broken Hill in the Broken Hill district being an unauthorised person entered into a part of the property of the Rhodesia Broken Hill Development Co., Ltd., the Broken Hill Mine, such being mining property." The authority for making these regulations is contained in Article 86 of the Mining Proclamation, 1912.

The primary matter for consideration in this appeal is the interpretation of Regulation 12 which reads "no unauthorised person shall enter into any part of a mining property whether surface or underground". It has not been argued, nor do I think it could be successfully contended, that the Broken Hill Mine is not mining property as defined by Regulation 2. The question to be answered for the purposes of Regulation 12 is "who is an unauthorised person?" In the absence of any definition of that expression in the proclamation or regulations an unauthorised person can only be regarded as a person who is not authorised. One is then put on the further inquiry "who is an authorised person and by whom may such authority be given?" Here again, no real assistance can be found from the proclamation or regulations. In the result, therefore, Regulation 12 is indefinite and inconclusive in its language, and falls short of what is claimed to have been its intended purpose of making provision for controlling the comings and goings of all persons except those

immediately concerned with the management or working of a mining property. It seems that it should not be a difficult matter to frame a regulation so as to explain clearly what is meant by the expression "unauthorised person".

On behalf of the Crown reference was made to Regulation 4, which relates to the powers and duties of mining inspectors as to entering and inspecting mining properties, as showing what kind of persons may be regarded as authorised. But, at the best, that regulation is merely an instance and cannot be extended to unspecified cases.

The prosecution attempted to explain that certain members of the management, and those persons only, are entitled to authorise outsiders to enter on mining property. The evidence of Mr. Young, however, is unconvincing in this connection because he endeavours to make exceptions in those cases where it would be manifestly unreasonable to apply such a rigid rule. Under any such rule, for example, no employee could send for a doctor or a priest or for any other person from outside a mining property in the event of an emergency, and to do so would be to court prosecution both for the employee himself as well as for the individual sent for. To construe Regulation 12 in such a sense would be to presume that the Legislature intended what is inconvenient and unreasonable. This is not permissible. It is difficult to agree that a person invited to mining property by an employee is not authorised to be there. In his evidence Dalton makes it quite clear that he invited the appellant on the occasion in question. On the facts, therefore, the appellant appears to have been on the premises lawfully and his presence there cannot be said not to have been authorised.

I find, therefore—

- (1) On the facts, that the appellant was not an unauthorised person on the mining property in question in that he was there on invitation, and
- (2) On the law, that Regulation 12 is indefinite and inconclusive.

In the circumstances I allow the appeal, quash the conviction and set aside the sentence. The fine, if paid, will be refunded.