

R. v. ADOLPH WIESMANN.

CRIMINAL REVIEW CASE No. 34 OF 1938.

Employment of Natives Ordinance (Cap. 62) section 82—conveying natives for service outside Territory—natives originally recruited outside Territory but brought into Territory in transit to destination—no offence under section 82 (b) which requires prior inducement within the Territory.

The facts in this case are apparent from the judgment hereunder. The wording of section 82 of the Ordinance in question is clear and it is evident from the words "so induced" in (b), as the Attorney-General observed (see below), that there must be an inducing to proceed to service beyond the Territory before the offence of conveying to service beyond the Territory can be committed.

The Employment of Natives Ordinance is now Cap. 171 of the Laws. The relative consent is now that of the Minister of Native Affairs.

Francis, C.J.: The record in this case has been transmitted by the Magistrate for review by the High Court.

I caused it to be referred to the Attorney-General with a view to discovering whether he was prepared to support the conviction.

The Attorney-General has replied as follows:

"The evidence in this case was to the effect that the accused recruited certain natives of Northern Rhodesia in Tanganyika and in order to convey them to Mbeya brought them in a lorry into Northern Rhodesia. It was clearly the intention to convey these natives in a lorry back into Tanganyika Territory. The recruiter was convicted under section 82 (b) of the Employment of Natives Ordinance. This section makes it an offence to convey any native who has been induced to proceed beyond the Territory (unless there is a foreign contract of service with such native) without the consent of the Chief Secretary. It appears to me to be quite clear that before any person can be convicted under section 82 (b) some person must have committed an offence under section 82 (a), that is to say, someone must have induced a native to proceed beyond the Territory. In this case the recruiting was achieved in Tanganyika Territory and in my opinion no offence was committed by any person contrary to section 82 (a) of the Ordinance. In these circumstances I do not consider that any offence was committed contrary to section 82 (b) and I am unable to support the conviction.

(Sgd.) H. W. WILSON,
Attorney-General."

As I concur with this opinion in full, it seems unnecessary for me to spend time in writing a judgment in amplification.

For the reason incorporated in the learned Attorney-General's reply the conviction must be quashed and the fine of £25 returned.