

R. v. R. B. MYLIE.

A CRIMINAL REVIEW CASE OF 1933.

Immigration Ordinance (Cap. 22) section 22 (b)—prosecution of person for failing to comply with the conditions under which temporary permit issued under section 20 (1) of the Ordinance—conditions which may be inserted in permit confined to conditions lawfully imposed by regulation under the Ordinance.

Section 20 (1) of the Immigration Ordinance (Cap. 22) provides that the Governor may authorise the issue of a temporary permit to any prohibited immigrant to enter and reside in the Territory upon such conditions as may be lawfully imposed by regulation. Regulation 14 of the Immigration Regulations (Revised Laws of Northern Rhodesia, Vol. III, p. 24 at page 30) regulates such temporary permits. In the present case it was decided that an immigration officer who issues a temporary permit may not impose and endorse upon the permit conditions other than the conditions prescribed in the statutory form of permit.

The Immigration Ordinance has now been repealed and replaced by the Federal Immigration Act No. 37 of 1954. Section 18 (1) of that Act provides for the issue of a temporary permit to a prohibited immigrant "upon prescribed conditions". Prescribed conditions are laid down in Regulation 32 of the Immigration Regulations 1954 published in Federal Government Notice No. 492 of 1954.

Hall, J.: Accused was charged under section 22 (b) of Cap. 22 with failing to comply with or contravening the conditions under which a temporary permit was issued to him under the Immigration Ordinance.

At the top of the form is a place for the insertion of the sum deposited followed by: "(To be refunded on production of this permit when leaving the Territory, and on fulfilment of the other conditions imposed hereunder)". Then follows: "Subject to the conditions stated hereunder, the holder . . . is permitted to enter the Territory of Northern Rhodesia for the purpose of visiting step-brother". Then there is a heading "Conditions" followed by three printed conditions whilst a fourth condition has been added in red ink as follows: "4. The holder is not to seek or obtain employment in Northern Rhodesia." This last condition was, admittedly, added by the Immigration Officer at Livingstone. On the face of the permit, the accused subscribed his agreement to the conditions set forth above his signature.

It is clear, in my opinion, that the words "other conditions" in brackets at the head of the form refer to the conditions printed below *other than* the deposit and no others.

Accused was found by the police at Nkana working as handyman on the mine—whether for reward or not is not shown. Hence the prosecution,

Under section 20 (1) of Cap. 22, the Governor may authorise the issue of a temporary permit to any prohibited immigrant to enter and reside in the Territory upon such conditions as may be lawfully imposed by regulations. The added condition 4 is not statutory, and, in my view, should not have been written on the permit. It has no force.

It is suggested that, inasmuch as the permit had only been issued for the purpose of visiting, an implied condition of the permit had been disobeyed by the holder obtaining work. I am unable to agree with this contention. Suppose, for example (and examples could be multiplied *ad infinitum*) a sister gets a permit to visit her brother at Livingstone, and whilst there, does sewing for the unemployed, whether with or without reward, is she liable to be prosecuted for a breach of the conditions of the permit? In my view, decidedly no.

In view of my decision *supra*, other points need not be considered. I, accordingly, order that the accused be found not guilty and discharged.