

R. v. LABSON JESA.

A CRIMINAL REVIEW CASE OF 1937.

Deportation—deportee leaving area to which deported—prosecution and conviction for so leaving—“Fresh Warrant” should be signed by convicting Magistrate.

Where a person deported within the Territory leaves the area to which deported while the order of deportation made by the Governor is still in force, without the written consent of the Governor, such person commits an offence and may be imprisoned for not exceeding six months and deported “on a fresh warrant under the original order or under a new order” (Penal Code section 35 (3)).

In the case under review, the Magistrate raised the question as to who is empowered to issue what is referred to in the subsection as a “fresh warrant”, and the High Court decided that the word “fresh” in section 35 (3) of the Penal Code is redundant; the Magistrate before whom a deportee who has absconded is brought may upon conviction issue a warrant (under the authority of the original Order of the Governor) directing the deportee to be returned to the area to which he was originally deported for the remainder of the term directed in the Governor’s order; alternatively, the Magistrate may recommend that a new order of deportation for a fresh period be made by the Governor.

See also *R. v. Nelson Siame* 2 N.R.L.R. p. 148.

Resident Magistrate, Ndola: The accused pleaded “Guilty” to leaving the area within the Territory to which he had been deported without the written consent of the Governor and was sentenced to one month I.H.L., a recommendation being added that this native be again deported on a fresh warrant under the original order to the area in question.

As will be seen from my note in the body of the record there is no evidence that the accused left the area for any nefarious purpose and my object in imposing a sentence of one month I.H.L. is in order to provide for the detention of this native (a) while I obtain a ruling as to the proper person to sign the “fresh warrant” referred to in the last line of section 35 (3) of the Penal Code, (b) while he receives treatment in Ndola Hospital for gonorrhoea.

With regard to (a), I incline to the view that the “fresh warrant” may be signed by the presiding officer of the convicting Court, the reason for my view being that there is already in existence an *Order* for Deportation made by the Governor under section 34 (5); this Order being still in force there seems no need to apply to the Governor for a fresh warrant under the latter’s hand to enforce such Order, but some written authority is evidently considered necessary for the detention of the deportee while

arrangements are made for him to be returned to the prescribed area and for him to be guarded during the journey thereto; it would seem that section 35 (3) empowers the convicting Court to issue the fresh warrant authorising such detention and enforced return to the area in question.

The Court may, however, instead of issuing such fresh warrant, consider that a new Order of Deportation should be made (e.g., where a deportee who has been ordered to be deported for five years leaves the prescribed area without permission and is not discovered until perhaps a year or two years has elapsed, thus reducing in effect the period of five years for which he was ordered to be deported); in this case it is necessary, as I read the subsection, for the Court to *recommend* that a new Order be made and for such Order (which would prescribe a fresh period expiring at a date later than that in the original Order) to be signed by the Governor.

Francis, J.: The use of the adjective "fresh" in the expression "fresh warrant" Penal Code section 35 (3) seems a solecism, in that it is wrongly used and consequently confusing. A deportee is removed and detained under a Governor's deportation order, and not under a warrant; accordingly the script in my view should read "deported on a warrant issued by the convicting magistrate under the authority of the original order".

I agree with the Resident Magistrate.