

R. v. MWILA.

CRIMINAL REVIEW CASE NO. 41 OF 1938.

Penal Code section 317—uttering as and for a subsisting and effectual document a document the operation of which has ceased by effluxion of time—Native Tax receipt issued under the Native Tax Ordinance (Cap. 65) for the year 1935 tendered after alteration of year as such receipt for year 1937—conviction under section 317—conviction upheld.

The facts appear from the judgment hereunder. Since the date of this judgment the Native Tax Ordinance (Cap. 65) has been replaced (in respect of native tax payable for the years 1939 and after) by the Native Tax Ordinance, Cap. 161, section 14 (1) (b) of which makes it an offence punishable, on conviction for a first offence under the section by a fine not exceeding £5 and for a subsequent offence under the section by a fine not exceeding £15 or to imprisonment for a term not exceeding three months to evade or attempt to evade payment of the tax by any means whatsoever.

Robinson, J.: This case has been sent to the High Court for review as it is said to be in the nature of a test case.

The facts shortly are that the accused came to the District Office at Kasama on the 25th March and produced to the native tax clerk a tax receipt which purported to be for the year 1937. It obviously was not for 1937, the "7" having been clearly substituted in indelible pencil. Suspicions were aroused, but when pressed, the accused very definitely persisted in his story that he had paid his tax for 1937 and the produced document was the receipt for that year. At a later stage he admitted the produced document was the 1935 receipt and asked to be allowed to go to his village to get the 1937 receipt which was there. Still later he admitted he had never paid the 1937 tax and paid it then and there at the office.

The result, therefore, is that the accused produced a 1935 tax receipt on which the dates had been altered, crudely, to 1937. He then said he had paid the 1937 tax and that was the receipt. If all had gone as he had hoped he would have avoided paying the 1937 tax altogether.

Clearly some offence has been committed and the only question for the High Court is whether the accused has been rightly charged under section 317, Penal Code.

In my opinion the charge can correctly fit the facts of this case. The relevant parts of section 317 are as follows:

"Any person who knowingly utters as and for a subsisting and effectual document, any document the operation of which has ceased by effluxion of time, is guilty of an offence of the same kind and is liable to the same punishment, as if he had forged the document."

I am satisfied the words " any document " are wide enough to include a false document. I would have preferred the charge to have been laid *contra* section 316. The document was clearly false, see section 310 (b). The evidence shows the accused knew all about it and it was fraudulent (see section 311) because there was in existence at the relevant time the Administrative Officer and through him the Government capable of being defrauded thereby. Section 317 is more clumsy in that the dual meaning of the produced document has to be kept in mind. In its proved true capacity as a 1935 receipt its operation as a receipt for 1937 has ceased by effluxion of time; in its false capacity, it was uttered as and for a subsisting and effectual document. I do not propose to disturb the finding, conviction or sentence.

If, as I think was at one time contemplated, the charge had been laid *contra* section 312, Penal Code, the Crown would have had to be able to prove that the accused himself made the alteration. " Uttering " was the more convenient charge under the circumstances, and, as I said *supra*, other cases with similar facts should be brought *contra* section 316, Penal Code.