

R. v. DUFTON MWAHAILA.

CRIMINAL REVIEW CASE No. 163 OF 1939.

Public mischief—common law misdemeanour—false statement to police.

The facts and the law are fully set out in the judgment hereunder.

The present case was followed in *R. v. Morton Musonda* 4 N.R.L.R. 246.

Giving false information to a public servant is also an offence under section 106A of the Penal Code, subject to the informant intending to cause or knowing that his action is likely to cause the results therein mentioned.

See *R. v. Likwi Chinyama and Chatito Maginisi* 5 N.R.L.R. 375.

Robinson, A.C.J.: This case is of interest because it is probably the first of its kind to be brought in the Territory.

The facts shortly are that the accused was being transferred from Fort Jameson to Lusaka for duty. His goods were being transported by Messrs. Thatcher, Hobson and Co. Ltd. When he delivered his effects to the carriers at Fort Jameson he emphasised that one of the wooden boxes contained a gramophone. When the goods were redelivered to him at Lusaka, he at once complained that the wooden box alleged to have contained the gramophone, now only contained earth. The goods were waiting at Lusaka for about a week before accused collected them. The matter was reported to the police and the accused made a statement to them in which he said "I do not definitely suspect any person, but I think it was stolen during the week it was awaiting my collecting it at Thatcher's Garage, Lusaka". Thereupon, the evidence is, the police investigated it as a case of theft and a great deal of police time and trouble, both at Lusaka and Fort Jameson, was taken on it. The upshot was that it was discovered that the accused had given the gramophone to a friend at Fort Jameson before he left for Lusaka. He was in debt and the probable reason for his action was the hope of getting compensation from the carriers.

The accused was prosecuted before the Court on a charge of unlawfully effecting a public mischief in that he did wilfully mislead the police and caused officers of the Northern Rhodesia Police stationed in Lusaka and Fort Jameson to devote time and trouble to an investigation of theft which time and trouble should never have been expended.

Public mischief is a misdemeanour at Common Law and the liability for an offence against the Common Law is preserved by section 3 (1) of the Penal Code. Very similar facts as those in this case were discussed in *The King v. Elizabeth Manley* (1933) 1 K.B. 529. The first question which the Court asked itself was whether it is true at the present day to

say that there is a misdemeanour of committing an act tending to the public mischief. The question was answered in the affirmative, the Court coming to the conclusion that the law remains as it was stated to be by LAWRENCE, J. in *Rex v. Higgins* 2 East 5:

“All offences of a public nature, that is, all such acts or attempts as tend to the prejudice of the community are indictable.”

The second question was whether the acts done constituted a public mischief and the Court decided that at least two ingredients of public mischief or prejudice to the community were: (1) When officers of the police force were led to devote their time and service to the investigation of an idle charge, and (2) when members of the public were put in peril of suspicion and arrest.

I confirm the conviction.