R. v. MACHAI AND CHIEMBE.

CRIMINAL REVIEW CASE NO. 118 OF 1940.

Penal Code section 214—whether act must be negligent—effect of marginal notes and chapter headings.

In this case Chiembe persuaded Machai to introduce some substance into the drinking water of another native. This water was drunk by the wife of the other native and it caused her to vomit, If the heading of Chapter XXIII of the Penal Code and the marginal note of section 214 are taken into consideration it would appear that as the act was not reckless or negligent the accused would be entitled to be acquitted but the High Court held on revision that the section must be taken as it stands and that neither the chapter heading nor the marginal note have the effect of limiting the wording of the section. It is probable that in a similar case now the accused could be charged under section 214A of the Penal Code which was added by Ordinance 26 of 1940 and came into operation after this case had been decided.

Law, C.J.: In this case both accused were found guilty of unlawfully doing an act, *contra* section 214 Penal Code, by which act harm was caused to a native female Chilombo. That section provides for the unlawful doing (or omission) of an act which is not specified in the preceding section 213. The marginal note to section 214, read with that section itself, states that the section is applicable to cases of negligent acts causing harm other than those specified in section 213.

2. In England, marginal notes are disregarded and treated as being nothing more than *temporanea exposito*. The reason for that rule appears to be that marginal notes and punctuation do not really form part of an Act because—according to former practice which existed up to the year 1849—at one stage of a Bill in Parliament it was ingrossed upon one or more Rolls of Parliament without marginal notes or punctuation. Though this practice has since changed the Rule nevertheless appears to have been preserved. (Beale's *Cardinal Rules of Legal Interpretation*, 1924, 3rd Edition, pp. 300 and 301; *Maxwell on the Interpretation of Statutes*, 1896, 3rd Edition, pp. 58 and 59.) In this connection it is interesting to, observe that, in the case of *Bushell* v. *Hammond*, 1904, 73 L.J. K.B. p. 1005, COLLINS, M.R. remarked in his judgment (p. 1007) "the side note, also, although it forms no part of the section, is of some assistance, inasmuch as it shows the drift of the section".

3. As regards Northern Rhodesia, Clause 18 of the Royal Instructions (Vol. 4, Laws of Northern Rhodesia, 1934, p. 1287 at p. 1292)[1] provides that when an Ordinance *shall have been* passed, it shall be transmitted with a marginal summary thereof. This does not suggest that an Ordinance shall contain a marginal summary *before* being passed, though

[1] Now at p. 9 of Appendix 4 to the Laws.—*Editor.*

it is the practice in this Territory—so I would understand—to include marginal notes as part of every Bill. A similar provision in the Royal Instructions for Northern Nigeria is referred to in the case of *Bakare Ajakiye* v. *Lieutenant Governor, Southern Provinces* (1929) A.C. (P.C.), p. 679 at p. 684. But VISCOUNT SUMNER, who delivered the judgment of their Lordships, remarked (at p. 686) " as for the marginal captions they are not to be taken to hold that the rules referred to are anything but directions as to the form to be adopted and the mechanical framework to be used in drafting Ordinances ". The rules referred to by the learned Judge are evidently the Royal Instructions on the subject.

4. For the foregoing reasons it would seem that the English Rule of construction in this matter should be followed in this Territory. In these circumstances, section 214 must be regarded as an entirely separate section providing for an offence distinct from those offences included in section 213, and not as a section in extension of section 213 having the effect of adding other offences to those specified in section 213. It was most important and necessary carefully to consider the effect of the marginal note to section 214 because the heading to Chapter XXIII suggests that all offences thereunder involve criminal recklessness and negligence. Had such a construction been correct the two accused in this case would have been entitled to be acquitted, because they were charged with doing an act unlawfully which act they pleaded (in effect) they had done deliberately. There was no question of their having done it recklessly or negligently or of their having been so charged.

5. For the foregoing reasons I consider that the accused were properly convicted. I have also had the benefit of the views of the Acting Solicitor-General, for whose carefully discussed opinion I am much indebted and who agrees that the conviction was right.