

R. v. KANEU CHIPATA.

CRIMINAL REVIEW CASE **No. 243** OF **1941.**

Employment of Natives Ordinance sections 64 and 72—employee absent from work without leave—form of complaint under section 64.

In this case the accused was absent from his work without leave and his employer made a complaint to the Court under section 64 of the Employment of Natives Ordinance that the accused had neglected to fulfil his contract of service. The Court considered that pecuniary compensation would not meet the circumstances and invoked section 72 (1) (d) and rescinded the contract and fined the accused 5s. or fourteen days I.H.L. in default of payment of the fine. The Court then applied to the High Court under section 196 of the Criminal Procedure Code (which section has now been repealed) for the High Court's opinion on the following points: (a) Whether section 72 could be invoked for breaches of contract when no specific penal section is provided by the Ordinance, and (b) Whether upon a complaint laid under section 64 the proceedings should take a criminal or civil form. The decision of the High Court is set out in the order reported below.

Law, C.J.: The charge against accused, as worded in the Statement of Offence, was "neglect to fulfil a contract of service". This was an offence under section 74 (4), as originally enacted, but ceased to be an offence by reason of section 14, Ordinance 27/1940. The particulars of offence were to the effect that on a certain day the accused absented himself from work without permission, etc. This also was a separate offence, formerly, under section 74 (2) which, again, ceased to be an offence because of section 14, Ordinance 27/1940.

2. Although the original section 74 (2) and (4) have been repealed and although no penalty may now be imposed for such transgressions as offences, nevertheless section 64 had been allowed to stand entitling an employer to make a complaint against his servant for neglect or refusal to fulfil the contract of service which exists between them or for other misconduct. And what is more, section 72 (1) permits a Magistrate to take action on such a complaint, and under section 72 (1) (d) to impose a fine on the servant to the extent of £20 or a sentence of three months in default; far heavier penalties than could have been imposed under section 74 (2) and (4). The Magistrate has acted under sections 64 and 72 (1) (d). In the absence of argument to the contrary I decline to say that his action or conclusions were wrong, and I do not therefore propose to interfere with his order.¹

1 As regards the two points referred to the High Court they are answered as follows:

- (a) Yes.
- (5) Criminal form.

4. I have assumed that the first four lines of section 72 (1) are sense. It occurs to me, however, that if the Ordinance had not been passed there would be no authority for section 64, that is to say, to file a complaint. In such circumstances, section 72 (1) would be a dead letter and no action could be taken under section 72 (1) (d).