[COURT OF APPEAL]

Freetown
Aug. 12,
1963.

ATTORNEY-GENERAL . . . . . *Appellant*

v.

ABU KABIA . . . . . *Respondent*

Ames Ag.P.,
Dove-Edwin
J.A.,
R. B. Marke
P.J.

[Criminal Appeal 16/63]

Interpretation of Statutes—Whether provision in statute repealed by provision in later statute—Criminal law—Reckless driving—Whether offence triable by magistrate—Road Traffic Act (*Cap.* 132, *Laws of Sierra Leone*, 1960) *s.* 40—*Criminal Procedure Act* (*Cap.* 39, *Laws of Sierra Leone*, 1960) *s.* 110.

Respondent was charged before a magistrate with an offence contrary to section 40 (1) of the Road Traffic Act. The magistrate began the hearing as a preliminary investigation with a view to committing respondent for trial, but, during the course of the investigation, with respondent's consent, he proceeded to hear and finally determine the case in a summary manner. He found respondent guilty of reckless driving and sentenced him to a fine of £50 or four months' imprisonment.

Against this conviction, respondent appealed to the Supreme Court on the ground that the magistrate had exceeded his jurisdiction by trying the charge summarily. Respondent relied on section 40 (2) of the Road Traffic Act which states: "An offence against this section shall not be triable by a magistrate."

The Crown argued that this subsection had been impliedly repealed by section 110 (1) of the Criminal Procedure Act which provides:

> "If, during the course of a hearing in any case in which depositions are being taken down with a view to the committal for trial of the accused, the court shall conclude that . . . the offence is one which . . . can be suitably punished by a sentence of imprisonment for a term not exceeding two years with hard labour or a fine not exceeding two hundred pounds . . . the court may, notwithstanding the provision of . . . any other law to the contrary . . . proceed to hear and finally determine the case in a summary manner . . .
>
> "Provided that the court shall not try in a summary manner under this section any of the offences specified in the Third Schedule of this Ordinance."

The Supreme Court allowed respondent's appeal and acquitted and discharged him on the ground that the magistrate had erred in conferring upon himself jurisdiction to try the charge summarily. Against the decision, the Attorney-General appealed.

Held, dismissing the appeal, that, where there are general words in a later Act capable of reasonable and sensible application without extending them too subjects specially dealt with by earlier legislation, the earlier and special legislation is not indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so.

Case referred to: *Seward* v. *The Vera Cruz* (1884) 10 App.Cas. 59.

Constant S. Davies (Acting Senior Crown Counsel) for the appellant.
No appearance for the respondent.

DOVE-EDWIN J.A. The Attorney-General has appealed to this court against a decision by the Supreme Court (in its appellate jurisdiction) allowing the appeal of the respondent in this court.

The facts briefly stated are that Shaka Dumbuya and the respondent in this court were charged before a magistrate with an offence contrary to section 40 (1) of Cap. 132 (the Road Traffic Ordinance). The magistrate began the hearing as a preliminary investigation with a view to the committal for trial of the accused. In the course of that investigation, and with the consent of the accused, he proceeded to hear and finally determined the case in a summary manner: found no prima facie case against Shaka Dumbuya and acquitted and discharged him. The case continued against the respondent in this court. The magistrate found him not guilty of the offence of causing death by dangerous driving but found him guilty of reckless driving and sentenced him to a fine of £50 or four months' imprisonment.

Against that conviction, the respondent in this court appealed to the Supreme Court on seven grounds but argued only the second and third grounds of his appeal, which were as follows:

> " 2. The learned magistrate erred in law and in excess of jurisdiction when he proceeded to try the same charge summarily.
>
> " 3. As a matter of law the accused/appellant submits that there has been a breach of the imperative provisions of section 40 (2) of the Road Traffic Ordinance and that the discretion vested by section 40 (3) of the said Ordinance is not a discretion vested in a magistrate."

At the hearing of that appeal before the Supreme Court counsel for the respondent in this court argued that by section 40 (2) offences under section 40 of the Road Traffic Ordinance " shall not be triable by a magistrate," and further that the provision of section 40 (2) was not cured by section 110 (1) of Cap. 39.

For the Crown, it was argued that section 40 (2) was ousted by section 110 (1) and the Crown relied on the words—" notwithstanding . . . any other law to the contrary " in section 110 (1), and further on the fact that the offence of causing death by dangerous driving was not one of those offences specified in the Third Schedule to section 110, as not triable under section 110 of Cap. 39.

The Supreme Court, however, allowed the appeal by the respondent in this court and acquitted and discharged him (with consequential directions) on the ground that " the magistrate erred in conferring upon himself jurisdiction in a matter in which he lacked one."

From that decision the Attorney-General has appealed to this court on a question of law on the ground:

> " That the learned trial judge (probably meaning thereby the judge on appeal) erred in law in holding that the trial magistrate lacked jurisdiction and consequently that the trial was a nullity."

In this court, Crown Counsel repeated the arguments which had been submitted by the Crown in Supreme Court. The respondent did not appear and was not represented.

It may be convenient at this stage to set out the provisions of the two Ordinances:

Section 110:

> " (1) If, during the course of a hearing in any case in which depositions are being taken down with a view to the committal for trial of the accused, the court shall conclude that, having regard to the circumstances of the case, the offence is one which, if proved, can be suitably punished by a

sentence of imprisonment for a term not exceeding two years with hard labour or a fine not exceeding two hundred pounds or both such imprisonment and such fine, the court may, notwithstanding the provisions of section 39 of the Interpretation Ordinance or any other law to the contrary, with the consent of the accused obtained before he is called upon for his defence but not otherwise, proceed to hear and finally determine the case in a summary manner, and may impose a sentence of imprisonment for a term not exceeding two years with hard labour or a fine of two hundred pounds, or both such fine and imprisonment:

"Provided that the court shall not try in a summary manner under this section any of the offences specified in the Third Schedule to this Ordinance."

The words "notwithstanding the provisions of section 39 of the Interpretation Ordinance or any other law to the contrary," were added to the Ordinance by way of amendment by legislation No. 38 of 1959 which came into operation on December 31, 1959.

The Road Traffic Ordinance which was legislation No. 14 of 1959 and came into operation on November 30, 1959, provides as follows: "40 (2) An offence against this section shall not be triable by a magistrate." The main point for consideration in this is whether the words "notwithstanding the . . . any other law to the contrary" (which for convenience we shall in this judgment refer to as the omnibus clause), have indirectly or impliedly repealed, altered or derogated from the earlier legislation in section 40 (2) of the Road Traffic Ordinance.

Selborne L.C., in *Seward* v. *The Vera Cruz* (1884) 10 App.Cas. 59 at p. 68, lays down the principle as follows:

". . . Where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so."

The Third Schedule to Cap. 39, it will be observed, specifies those offences which can be tried only on information in the Supreme Court to the exclusion of such offences as larceny and offences under the Prevention of Corruption Ordinance, Cap. 33—to mention a few—which are triable summarily or on information. So that when the legislature used the phrase "notwithstanding any law to the contrary" the law in that phrase was meant to include not the whole ambit of the criminal law but only that portion of it that provided for the trial of cases both summarily or on information.

Maxwell, Interpretation of Statutes, 11th ed., p. 169, puts the matter fully and clearly by saying:

"Having already given its attention to the particular subject and provided for it, the legislature is reasonably presumed not to alter that special provision by a subsequent general enactment unless that intention be manifested in explicit language or there be something which shows that the attention of the legislature had been turned to the special Act and that the general one was intended to embrace the special cases provided for by the previous one or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act. In

the absence of these conditions, the general statute is read as silently excluding from its operation the cases which have been provided for by the special Act."

For the reasons stated, we would dismiss this appeal.

Freetown
Aug. 12,
1963.

Ames Ag.P.,
Dove-Edwin
J.A.,
R. B. Marke
P.J.

[COURT OF APPEAL]

ATTORNEY-GENERAL . . . . . *Appellant*

v.

BAIMBA LIMBA . . . . . *Respondent*

[Criminal Appeal 15/63]

Interpretation of statutes—Whether requirements of section 110 *of Criminal Procedure Act* (*Cap.* 39, *Laws of Sierra Leone,* 1960) *same as those of section* 18 *of Summary Conviction Offences Act* (*Cap.* 37, *Laws of Sierra Leone,* 1960)—*"Having regard to the circumstances of the case"—"If he shall consider it expedient so to do"—Circumstances under which magistrate can try case summarily.*

Respondent was convicted in a magistrate's court in a summary trial on a charge of malicious wounding, contrary to section 20 of the Offences against the Person Act, 1861. He appealed to the Supreme Court on the ground that the magistrate had no jurisdiction to try the charge, and relied on section 110 (1) of the Criminal Procedure Act, which provides: "If, during the course of a hearing in which depositions are being taken down with a view to the committal for trial of the accused, the court shall conclude that, having regard to the circumstances of the case, the offence is one which . . . can be suitably punished by a sentence . . . not exceeding two years . . . the court may . . . determine the case in a summary manner. . . ."

The Crown relied on section 18 of the Summary Conviction Offences Act, which states: "The magistrate shall have jurisdiction, if, having regard to the circumstances of the case, he shall consider it expedient so to do, to try summarily any person charged with unlawful and malicious wounding. . . ."

The Supreme Court (Bankole Jones C.J.) allowed the appeal and quashed the conviction. The Chief Justice said, inter alia: "I find that in both section 110 (1) of Cap. 39 and section 18 of Cap. 37 there are the identical words 'having regard to the circumstances of the case.' What I take this expression to mean is that no magistrate can have regard to the circumstances of the case if he has not first heard some evidence on oath before he can 'conclude' or form an 'opinion' that the case was one which can be tried summarily." The Attorney-General appealed against this decision.

Held, dismissing the appeal, (1) that a magistrate, without starting a preliminary inquiry, can acquire jurisdiction to try a person summarly under section 18 of the Summary Conviction Offences Act if (a) he has regard to the circumstances of the case and (b) he considers it expedient to try the charge summarily; and

(2) That there was nothing in the record to show that the requirements of section 18 of the Summary Conviction Offences Act had been complied with.

Constant S. Davies (Acting Senior Crown Counsel) for the appellant.
No appearance for the respondent.