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.

AMES AG.P. The 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, inter alia, that the magistrate had no jurisdiction to try the charge, and the appeal was allowed on that ground and the conviction was quashed. Against that decision the Attorney-General has made this appeal. The respondent was not able to be served, his whereabouts not being known.

The argument before us turns on the interpretation of section 110 of the Criminal Procedure Act, Cap. 39, and section 18 of the Summary Conviction Offences Act, Cap. 37, as it did in the court below.

The offence created by section 20 of the Offences against the Person Act is an indictable misdemeanour, with a maximum penalty of five years' imprisonment. Indictable misdemeanours with such a penalty are ordinarily, and apart from other provisions, tried in this country upon information in the Supreme Court after a preliminary inquiry and a committal for trial in a magistrate's court, as in Part III of the Criminal Procedure Act.

That need not always happen. Section 110, which is in Part III of the Criminal Procedure Act, provides as follows:

> " 110. (1) 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, 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 £200 or both such imprisonment and such fine, the court may, notwithstanding the provisions of section 39 of the Interpretation Act 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 £200, or both such fine and such 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 Act."

The Third Schedule sets out eight categories of offences (which do not include malicious wounding) to which the section does not apply, and so they must always be tried upon information in the Supreme Court. Otherwise section 110 is a general provision and applies to any sort of indictable offence, including an offence against section 20 of the Offences against the Person Act.

Section 18 of the Summary Conviction Offences Act is as follows:

> " 18. 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, or inflicting bodily harm, not amounting to felony, which may, in his opinion, be adequately punished by a sentence of imprisonment, with or without hard labour, for a period not exceeding six months, or by a fine, not exceeding £20."

This is a particular provision which applies only to charges of unlawful and malicious wounding and inflicting bodily harm and to no other sort of offence.

The learned Attorney-General relied on section 18, under which he said the magistrates' court had jurisdiction, and (in the court below) the appellant (here the absent respondent) relied on section 110. Section 110 was not

followed in the magistrates' court, where the trial started and ended as a summary trial under Part II of the Criminal Procedure Act.

The reasons for allowing the appeal in the court below are to be seen in the following passage from the judgment of the learned judge (now Chief Justice):

> "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 only difference between both sections relates to the maximum penalty that a summary court can impose for the offence in question. I find that the procedure laid down in section 110 of Cap. 39 must be complied with whenever a magistrate invokes section 18 of Cap. 37 for the purpose of vesting jurisdiction on himself to try a case of malicious wounding, namely, he must first start the hearing as a preliminary inquiry, before he makes up his mind whether or not to try it summarily."

But, with all respect, this is to say that a magistrate cannot acquire jurisdiction under the particular section 18 unless he has already acquired it under the general section 110, because if he starts a preliminary inquiry, and finds it to be a case which could well be dealt with by him summarily and obtains the consent of the accused, he has acquired jurisdiction, and so what need has he for section 18?

We have already said that jurisdiction to try an offence of malicious wounding summarily can be acquired in that way under section 110. But, in our opinion, it can also be acquired by complying with the provisions of section 18.

Section 18 is independent of section 110. It has its sine qua non, which is "if, having regard to the circumstances of the case, the magistrate shall consider it expedient" and so on. How is he to have regard to them? The section leaves it open to him. He may, for example, examine the charge, and inquire of the prosecution what is alleged to have happened; or the prosecution may suggest it is expedient and state the circumstances, or the accused may have suggested it; or it may be some other way. But however it may be done, he must (a) have regard to the circumstances and (b) consider it expedient. If he does (a) but not (b), he will not try the charge summarily but hold a preliminary inquiry (although it may occasionally turn out after all that during the preliminary inquiry he follows section 110). If he does both (a) and (b), then, in our opinion, he has jurisdiction under the section to try the charge summarily, without any need for the consent of the accused (as is necessary under the general section 110).

Now what happened in this case? There is absolutely nothing in the record (and there should be something) to show that the magistrates applied their minds to the provisions and requirements of section 18. For anything which appears to the contrary, they had no knowledge of the section's existence. How, then, can we hold that they had regard to the circumstances and considered it expedient and so on, and thereby acquired jurisdiction? We have used the plural here, because the case was before more than one magistrates' court. It came first before the Senior Police Magistrate, who transferred it to

court No. 4, where it was tried summarily by two J.P.s. Section 18 refers not to a magistrates' court but to the magistrate. Consequently, if a case goes before more than one magistrate, it is the magistrate who tries the case who has to comply with section 18, if he is to acquire jurisdiction to try the charge summarily. As already said, we cannot hold that it was complied with.

We think that the appeal was rightly allowed in the court below, although we think so for different reasons, and we dismiss this appeal against the decision of that court.

C. A.
1963
ATT.-GEN. v. BAIMBA LIMBA
Ames Ag.P.

[COURT OF APPEAL]

Freetown
Aug. 12, 1963.
Ames Ag.P., Dove-Edwin J.A., E. F. Luke Ag.P.J.

REGINA . . . . . *Appellant*

v.

AMADU BUNDUKA CHIRM . . . . . *Respondent*

[Criminal Appeal 18/63]

Criminal Procedure—Information—Accused committed for trial at September sessions—Information quashed—Decision reversed on appeal—Accused brought to trial at November sessions on new information—Whether this could be done without first obtaining order of judge—Criminal Procedure Act (*Cap.* 39, *Laws of Sierra Leone*, 1960), *s.* 125.

Respondent was charged with an offence under the Perjury Act and three offences under the Larceny Act. After the preliminary inquiry, the magistrate discharged him on the charges under the Larceny Act and committed him for trial at the September sessions, 1962, on the charge under the Perjury Act. The Crown then filed an information against respondent in the Supreme Court charging him with three offences under the Larceny Act but abandoning the charge under the Perjury Act on which he had been committed. At the trial before a judge of the Supreme Court, an objection was taken by respondent to the information, and the judge held that the information was bad but stated a case on his ruling to the Court of Appeal.

The Court of Appeal held that the quashing of the information was wrong. After this decision, the Acting Attorney-General in November filed a new information in exactly the same terms against respondent. When he appeared before another judge of the Supreme Court, he raised a preliminary objection to the new information on the ground that, since he had been committed for trial at the September sessions, he could not be tried at the November sessions in the absence of an order by the court pursuant to section 125 of the Criminal Procedure Act. The court (Marke P.J.) agreed with this objection and held that respondent was not properly before him. He then stated a case for the Court of Appeal.

Held, that, in the circumstances of this case, respondent could be brought to trial in the November sessions without obtaining an order by the court pursuant to section 125 of the Criminal Procedure Act.

Nicholas E. Browne-Marke for the appellant.
Edward J. McCormack for the respondent.

DOVE-EDWIN J.A. This is a case stated by Marke P.J. who asked this court to answer the following three questions: