

DAVIES (M.) v. REGEM

Supreme Court (Tew, C.J.): May 26th, 1931

- [1] Courts — magistrates' courts — procedure — preliminary investigation — summary conviction offences — hearing must commence as preliminary investigation with taking of depositions before conversion to summary trial under Summary Conviction Offences Ordinance (cap. 201), s. 22: A magistrate may only try an offence summarily under the Summary Conviction Offences Ordinance (cap. 201), s. 21, if he follows the correct procedure, set out in s. 22 of the Ordinance, *i.e.* he should begin by taking depositions with a view to committal for trial and when he has decided to try the case summarily, he should call upon the accused to plead, inform him of his decision to try the case summarily, and inform him of his right to recall witnesses for cross-examination (page 239, lines 6—32). 5 10
- [2] Courts — magistrates' courts — procedure — summary trial — summary conviction offences — hearing must commence as preliminary investigation with taking of depositions before conversion to summary trial under Summary Conviction Offences Ordinance (cap. 201), s. 22: See [1] above. 15
- [3] Courts — magistrates' courts — procedure — summary trial — summary conviction offences — magistrate deciding to try must inform accused and observe procedure of Summary Conviction Offences Ordinance (cap. 201), s. 22: See [1] above. 20
- [4] Criminal Procedure — preliminary investigation — summary conviction offences — hearing must commence as preliminary investigation with taking of depositions before conversion to summary trial under Summary Conviction Offences Ordinance (cap. 201), s. 22: see [1] above. 25
- [5] Criminal Procedure — summary trial — summary conviction offences — hearing must commence as preliminary investigation with taking of depositions before conversion to summary trial under Summary Conviction Offences Ordinance (cap. 201), s. 22: See [1] above. 30
- [6] Criminal Procedure — summary trial — summary conviction offences — magistrate deciding to try must inform accused and observe procedure of Summary Conviction Offences Ordinance (cap. 201), s. 22: See [1] above. 30
- [7] Statutes — interpretation — structure and parts of statute — marginal notes — useful guide to intention of legislature provided other indications to same effect: It is permissible to refer to a marginal note to a piece of legislation as a guide to the intention of the legislature, provided that there are other indications of its intention to the same effect within the statute (page 239, lines 33—39). 35

The appellant was charged in the Police Magistrate's Court, Freetown, with unlawful wounding. 40

After taking the depositions the magistrate decided that the case was not serious and that he would try it summarily under the Summary Conviction Offences Ordinance (*cap.* 201), s. 21. The appellant was convicted and sentenced to payment of a fine or, alternatively, to three months' imprisonment with hard labour.

On appeal to the Supreme Court against both conviction and sentence, the appellant contended that the magistrate had had no jurisdiction to try the case summarily under the Summary Conviction Offences Ordinance (*cap.* 201), s. 21, since he had not followed the correct procedure as prescribed by that section and s. 22, *i.e.*, that the magistrate should begin by taking depositions with a view to committal for trial and that, having decided to try the case summarily, he should call upon the accused to plead, inform him of his decision to try the case summarily, and inform him of his right to recall witnesses. Junior Crown Counsel contended that the magistrate had a discretion either to commit the case or try it summarily, and he had exercised that discretion.

The appeal was allowed.

Legislation construed:

Summary Conviction Offences Ordinance (Laws of Sierra Leone, 1925, *cap.* 201), s. 21:

The relevant terms of this section are set out at page 238, line 39—page 239, line 5.

s.22: The relevant terms of this section are set out at page 239, lines 6—18.

O. During for the appellant;

Cromie, Junior Crown Counsel, for the Crown.

TEW, C.J.:

The appellant was charged before the acting police magistrate on March 24th last with unlawfully wounding one Thomas Davies and was sentenced to a fine of £10 or, in default, three months' imprisonment with hard labour. He has appealed against both conviction and sentence.

It was argued for the appellant that the magistrate had no jurisdiction to try summarily an offence falling within s. 21 of the Summary Conviction Offences Ordinance (*cap.* 201), under which the charge was framed, in view of the wording of that section and of s. 22. These sections read as follows:

"21. 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 twenty pounds.

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22. If at any time during the course of the hearing of the evidence for the prosecution in a charge under the last preceding section, depositions in which are being taken down with a view to the committal for trial of the accused, the Magistrate shall conclude that, having regard to the circumstances of the case, the offence is one which, if proved, may be adequately punished by the powers of summary punishment hereby conferred upon him, he shall there and then call upon the accused to plead, and shall forthwith inform him of his right to recall any or all of the witnesses for the prosecution, who shall have been heard, and to subject them to any further cross-examination, as if such witnesses had not previously been cross-examined by him."

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I am of opinion that this argument is sound. It might be, and indeed was, argued that the words in s. 22 "depositions in which are being taken down with a view to the committal of the accused" show that two classes of cases are contemplated, *viz.*, those dealt with summarily at the outset and those in which the magistrate begins to conduct a preliminary investigation. I think, however, that those words, if not altogether redundant, merely qualify the words that precede them and are not inconsistent with the view that in all charges under s. 21 the magistrate should begin to take depositions. The words "having regard to the circumstances of the case," which occur in both sections, support this view, for the magistrate, in his judicial capacity, could know nothing about the circumstances of the case until he has heard part of the evidence.

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Lastly, it may be mentioned that the marginal note to s. 22 is "procedure under last section." If there were no other indication of the intention of the legislature than this marginal note, then it would not be a reliable guide by itself; but where there are other indications to the same effect, I see no reason why the court should not look to it for assistance: see *Maxwell on the Interpretation of Statutes*, 5th ed., at 68 (1912).

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I am of opinion that the magistrate acted without jurisdiction in trying this case summarily and that the conviction must be

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quashed. The trial being a nullity there is no reason why the same or a similar charge based on the same facts should not again be preferred against the appellant.

Appeal allowed.

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ABOUD v. MANDI

Supreme Court (Tew, C.J.): June 15th, 1931

- 10 [1] British Commonwealth — protectorates — status — protectorates not within British dominions: The word “dominions” in the Supreme Court Rules (*cap.* 205), O.XI, r. 5 does not include a Protectorate and so when the defendant to a writ of summons, who is not a British subject, is resident in the Gambia Protectorate, notice of the writ and not the writ itself should be served upon him (page 242, lines 32–41).
- 15 [2] Civil Procedure — writ of summons — service outside jurisdiction — notice of writ, not writ itself, to be served on defendant, not British subject, within a Protectorate — Protectorate not within British dominions: See [1] above.
- 20 [3] Courts — Supreme Court — jurisdiction — civil jurisdiction — contracts — court has jurisdiction over contract to be performed within Sierra Leone: The general rule that a debtor must follow his creditor and pay where his creditor resides applies to a contract whereby one party agrees to sell the other's goods abroad and remit the proceeds of sale to him; and so, in the absence of a definite agreement by the parties as to the mode of payment, when the creditor's country of residence is
- 25 Sierra Leone remittance should be made there, bringing the contract within the jurisdiction of her courts (page 242, lines 11–31).
- 30 [4] International Trade — conflict of laws — jurisdiction — contracts — Sierra Leone courts have jurisdiction over contracts to be performed there — unless contrary provision, agreement to remit to seller in Sierra Leone purchase price of goods sold abroad is performance in Sierra Leone: See [3] above.

The plaintiff brought against the defendant an action for breach of contract.

35 The plaintiff, who was resident in Sierra Leone, made a contract with the defendant, a foreigner, whereby the defendant agreed to sell the plaintiff's goods abroad and to remit the proceeds of sale to him. The defendant usually remitted the money to Freetown although on one occasion the plaintiff had received payment in the Gambia.

40 When the plaintiff instituted the present proceedings for breach of contract he obtained leave to issue the writ and serve it at