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J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CRIMINAL APPEAL 178/70

BEFORE: The Hon. Mr. Justice Eccleston (Presiding)

The Hon. Mr. Justice Fox

The Hon. Mr. Justice Smith

R E G I N A      v.      D A V I D G R I F F I T H S

Mr. H. Small for the Appellant

Miss J. Bennett for the Crown.

12th JANUARY, 1971

ECCLESTON, J.A.,

This appellant was charged on an Information for unlawfully assaulting Susan Haynes, she being a female, contrary to <sup>S.</sup> ~~Section~~ <sup>Sec.</sup> 35 of ~~Chapter~~ <sup>Chap.</sup> 268.

On ~~the 1st~~ of July, 1970 an order was made by the Resident Magistrate for the parish of Manchester that the appellant be tried on an indictment for assault at common law. On this indictment he was convicted and was sentenced to pay a fine of 20 dollars or be imprisoned for thirty days with hard labour.

At the end of the Crown's case Mr. Ricketts who appeared for the appellant in the court below took the point that the indictment ought to be dismissed because an order was made for trial on indictment on an Information prepared under <sup>S.</sup> ~~Section~~ <sup>Sec.</sup> 35 of ~~Chapter~~ <sup>Chap.</sup> 268. That information, he said, was for a summary offence triable before Justices of the Peace, and ~~that Information~~ was entirely outside the jurisdiction of the Court then sitting. That Court could not order an indictment on that information because it was removing the trial from the Petty Session's jurisdiction to the Resident Magistrate's jurisdiction, and that could not be done, ~~on that information.~~

Without Mr. Small, for the appellant, having had the necessity to elucidate further, the Crown has conceded the point.

An order for indictment is contained in the procedure laid down in <sup>S.</sup> ~~Section~~ <sup>Sec.</sup> 272 of ~~Chapter~~ <sup>Chap.</sup> 179, <sup>MAGISTRATES</sup> ~~The~~ Judicature (Resident Magistrate's <sup>Jurisdiction</sup> ~~Jurisdiction~~) Law, in which it is stated - "On a person being brought or appearing before a Magistrate in Court or in Chambers, charged on Information

and Complaint with any indictable offence, the Magistrate shall, after such enquiry as it may seem to him necessary in order to ascertain . . . whether the offence charged is within his jurisdiction and can be adequately punished by him under his powers, make an order which shall be endorsed on the Information signed by the Magistrate that the accused person shall be tried on a day to be named in the order in the court, or that a preliminary investigation shall be held with a view to a committal to the Circuit Court."

It would seem that the Resident Magistrate in making his order made an order under that section, but it is to be noticed that the section particularly refers to a person charged on Information and Complaint with any indictable offence, and the offence with which the appellant was charged on the information was not an indictable offence but rather a summary offence. In the circumstances, there was no power to order the indictment hence the trial was a nullity.

The appeal is allowed, the conviction quashed and the sentence set aside.