

isdiction to try the accused was absolute without the consent of the accused. The accused was tried and convicted by the Magistrate.

The first question reserved for the opinion of the Court was, whether the magistrate had the right to refuse to allow the accused to elect to be tried by a jury and to try him summarily without his consent.

The case was heard by MEREDITH, C.J.O. MACLAREN, MAGEE, and HODGINS, J.J.A., and LENNOX, J.

H. E. Rose, K.C., for the accused.

E. Bayly, K.C., for the Attorney-General.

The judgment of the Court was delivered by MEREDITH, C.J.O.:— . . . The jurisdiction to try summarily conferred by sec. 773 of the Criminal Code is, by the terms of the section, "subject to the subsequent provisions of this Part," one of which (sec. 778(2)) is: "If the charge is not one that can be tried summarily without the consent of the accused, the magistrate shall state to the accused . . . that he has the option to be forthwith tried by the magistrate . . . or to remain in custody or on bail . . . to be tried in the ordinary way . . ."

The ruling of the Police Magistrate was erroneous unless the charge against the accused is "one that can be tried summarily without the consent of the accused," within the meaning of sub-sec. 2 of sec. 778. . . .

The word "absolute," in sec. 773, is used, I think, in the sense of "unconditional," that is to say, not dependent upon the conditions precedent to the right to exercise the jurisdiction which are prescribed by the Act having been complied with; and the words referring to the consent of the accused were added *ex abundanti cautela*. . . .

In my opinion, the jurisdiction of the Magistrate to try summarily, so far as it depends upon any of the provisions of Part 16, depends upon the consent of the accused as to all of the offences mentioned in sec. 773, except those as to which, and the cases in which, it is expressly provided that jurisdiction does not depend upon the consent of the person charged.

Having come to the conclusion that the first question should be answered in the negative, it is unnecessary to answer the second and third questions.

The result is, that a new trial must be granted in order that the case may be dealt with as provided by sec. 778 and in accordance with the answer to the first question.