

In the Matter of an Appeal from the
District Court Holden at Rabaul.

THOMAS SHON SUN MEN

Appellant

v.

TOPOTCL OF TINGENAGALIP

and

TOGARANGOL of TINGENAGALIP

Respondents

REASONS FOR JUDGMENT

These were appeals from decisions of the Magistrate at Rabaul dismissing informations alleging wilful damage to property. The same considerations apply to both cases.

The parties accused of the offence objected to the jurisdiction of the Court upon the ground that in each case there was involved a bona fide dispute as to the title to the land. The Magistrate thereupon held that he had no jurisdiction and dismissed the informations. It was not suggested by the appellant that the Magistrate was in any way in error in deciding that he could not deal with the cases summarily but difficulty arises because the same objection to jurisdiction would not apply if the Magistrate had proceeded to deal with the charges as indictable offences. It does not appear from the record precisely why it was assumed on the hearing that the matters were to be dealt with summarily. It may be that whoever was conducting the proceedings before the Magistrate launched his case on that footing and the Magistrate was never asked to deal with the matter as an indictable offence. But whatever the position may have been in fact the concern of the Crown in this case is that the orders dismissing the informations might be taken as dismissing not only the summary proceedings but also the charge alleging what is in fact an indictable offence. I do not think that this is really the true position since it comes down to a matter of words and it is clear from the record that there has been no adjudication on the merits of the case.

The form of information used contains no summons to appear before the Magistrate which rather suggests that the two defendants were brought to the Court in custody. As far as I can see the form of information used would have been equally applicable to either jurisdiction exercisable by the Magistrate and I can see no reason why he should not have taken the course indicated under Section 444 Sub-section (3) of the Criminal Code. I think that in all the circumstances of the case the most convenient course is for me to send the papers back to the Magistrate so that he may deal with the case upon the same informations but not in his summary jurisdiction but by way of committal proceedings as an indictable offence arising under Section 469 of the Criminal Code.

Chief Justice.

Mann, C.J.