

R. v. KASONDE.

CRIMINAL REVIEW CASE No. 91 OF 1938.

Preliminary inquiry—murder—charge reduced during course of proceedings to manslaughter—charge dealt with by Subordinate Court summarily—plea should be taken before such summary adjudication.

The judgment in this case draws attention to the need to charge the accused and to record his plea where a Subordinate Court having held a preliminary inquiry decides to exercise its powers under section 210 of the Criminal Procedure Code and to deal with the charge summarily. It will be noticed that section 210 provides that the Subordinate Court may, in certain circumstances and *subject to the provisions of Part VI of the Criminal Procedure Code*, hear and finally determine the matter summarily; Part VI requires the substance of the charge to be stated to the accused person by the Court and for the accused person to be called upon to plead thereto (Criminal Procedure Code, 2, 187).

A Subordinate Court has no longer jurisdiction to deal summarily with a case of manslaughter. See also *R. v. Kafungwa*, p. 60 *post*.

Francis, C.J.: There is a difference between this case and *Rex v. Changala and Two Others, Broken Hill*. In this case, although the preliminary inquiry commenced on the basis of a charge of murder, there was during the course of the proceedings an amendment of the charge to one of manslaughter, upon which basis the accused entered into his defence.

Directly the Magistrate decides to deal with a case summarily, he should charge the accused and record his plea. It does not appear to have been done in this case—but the omission, in my view in the circumstances of this case, is not vital, and does not occasion a failure of justice.

A copy of the Order in *Rex v. Changala*¹ should be sent to the Magistrate.

¹ Reported at p.30 *post*.