

*Reasons for the Report of the Lords of the  
Judicial Committee of the Privy Council  
on the Appeal of The Scottish Union and  
National Insurance Company v. Alfred  
Pawsey and Company, from the Supreme  
Court of Judicature of Jamaica; delivered  
the 16th October, 1908.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD ATKINSON.

LORD COLLINS.

SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

At the close of the arguments in this case, on the 4th August last, their Lordships intimated that they would humbly advise His Majesty that the Appeal should be dismissed with costs. It remains to state, somewhat more fully than could then be done, the reasons which led their Lordships to tender that advice.

The action out of which the Appeal arises was brought in the Supreme Court of Jamaica, by the Respondents, against the Appellants, upon four policies of fire insurance, issued by the Appellants in favour of the Respondents, the subject-matter insured being the stock-in-trade in the premises No. 104 Harbour Street, Kingston, and adjoining premises. Each of the first three policies contained a clause to the effect that the policy did not cover "loss or " damage by fire occasioned by or happening

“ through . . . . earthquakes.” The fourth policy contained a clause to the effect that the policy did not cover “ loss or damage by fire “ during (unless it be proved by the insured “ that the loss or damage was not occasioned “ thereby) or in consequence of . . . . earth- “ quake.” The Appellants denied liability.

The action was tried at Mandeville (the venue having been changed from Kingston on the application of the Appellants) before Lumb, J. and a special jury.

At the trial it was not disputed that the property insured was destroyed by fire, on the 14th January 1907. The principal question, stated in its broadest form, was whether the fire that did the damage was occasioned by earthquake, so as to fall within the clauses of the policies protecting the Appellants from liability for damage caused by such fires.

Upon this question the learned Judge placed upon the Appellants the burden of establishing the affirmative, and that ruling seems to have been accepted at the trial. Nor was it disputed on the argument of this Appeal so far as the first three policies are concerned. As to them, therefore, there is no question before their Lordships of the burden of proof. Objection was taken on the argument of this Appeal to the ruling as applied to the fourth policy. And it may be convenient to deal with this point at once.

The learned Judge at the trial, in dealing with the burden of proof, treated all the four policies alike, placing the burden upon the Appellants. It was contended that in this there was misdirection as to the fourth policy ; that as to it the proper direction was that, if the loss by fire occurred during the earthquake, the burden lay upon the Respondents to show that the earthquake was not the cause.

Their Lordships are of opinion that the contention of the Appellants on this point is correct, and that the proper ruling would have been that suggested. But the difference between the one ruling and the other is material only if the loss by fire occurred during the earthquake, and whether it did so or not was a question for the jury. That question was left to the jury, and left with a proper direction, and answered in the negative. The misdirection complained of thus became inoperative.

The trial lasted for sixteen days, and much evidence was called on both sides. At the close of the trial the questions left by the learned Judge to the jury and the answers of the jury thereto were as follows:—

1. Was the fire which destroyed the Respondents' property occasioned by or did it happen through an earthquake? No.
2. Did the fire which destroyed the Respondents' property occur during or in consequence of an earthquake? No.
3. Was there any intervening force sufficient of itself to cause the fire to destroy the Respondents' property? The Jury did not answer this question.

Upon these findings judgment was entered for the Respondents.

The Appellants moved the Supreme Court to set aside the verdict and judgment, and to order a new trial or to enter judgment for the Appellants. The motion was heard before the learned Chief Justice and Lumb and Vickers, JJ.; and after argument the motion was dismissed. Against that judgment the present appeal has been brought, in which the Appellants ask that a new trial should be ordered.

Certain facts not in dispute must be kept in mind in order to appreciate the matters which are the subject of controversy.

Harbour Street, on the south side of which the Respondents' premises were situated, is a broad street nearly fifty feet wide, running east and west. It is crossed at right angles by King Street at a point some distance to the west, and by Church Street at a point a short distance to the east of the Respondents' premises, both King Street and Church Street being streets of about the same width as Harbour Street.

On the day on which the Respondents' property was burned, the 14th January 1907, a violent shock of earthquake occurred causing widespread destruction in Kingston. The hour is accepted by both sides as 3.30 p.m., and the duration of the shock is stated by witnesses as about half-a-minute. During the night and day that followed minor shocks seem to have been perceived, but the substantial mischief was done by the first shock, and it is the only one with which the present Appeal is directly concerned.

In the afternoon of the 14th January, near the time of the great earthquake shock, three fires broke out in Kingston. One was in Princess Street, a considerable distance to the west of the Respondents' premises. Nothing turns upon this fire for the purposes of the present Appeal. Another fire broke out in No. 87, King Street, a house on the west side of that street near its northern end. This lay to the north and a little to the west of the Respondents' premises, at a distance (according to evidence which does not appear to have been disputed) of about a quarter of a mile. A third fire broke out in the premises No. 92, Harbour Street, known as the Army and Navy Stores, lying six numbers to

the east of the Respondents' premises, but separated therefrom (between Nos. 100 and 102) by the width of Church Street, which crosses at that point.

These last-mentioned two fires and the questions arising as to the origin of each and the connection of either or both with the destruction of the Respondents' premises formed the subject of inquiry at the trial, and are the matter for consideration upon this Appeal.

The verdict of the jury was in favour of the Respondents, and the substantial ground of appeal is that that verdict was wrong. The rule acted upon by this Board, as well as by other appellate tribunals, in cases where the verdict of a jury is thus impugned, is clear and well settled. It is not enough to show that adverse criticism may justly be applied to the verdict or to the evidence upon which it was based. It is not enough to show that a contrary verdict might well have been found. It is not enough that those sitting in appeal should consider that such a contrary verdict would have been preferable to that actually returned. It is for the jury to decide questions of fact, and their decision upon such questions cannot be interfered with by an appellate tribunal unless it be shown that that decision was one which could not reasonably have been arrived at upon the evidence before the jury. That is the test to be applied in the present case; and this was clearly recognized by the learned Counsel for the Appellants.

On behalf of the Appellants it was contended, first, that the fire which destroyed the Respondents' property was due to the extension of the Harbour Street conflagration which broke out in No. 92 of that street. It was contended, secondly, that the Harbour Street fire arose independently of any other fire, and that it was caused by earthquake. It was contended,

thirdly, that, even if the first contention failed, and if it could be supposed that the fire which destroyed the property insured came from the extension of the King Street fire, still that fire was a fire caused by earthquake.

The Respondents denied each of the allegations of the Appellants. They further contended affirmatively that the fire which destroyed the property insured either was or might have been caused by an extension of the King Street fire, and that that fire was not an earthquake fire, but had broken out before the shock occurred.

Three questions thus arose—first, where did the fire come from which destroyed the property insured? Secondly, what was the origin of the Harbour Street fire? Thirdly, what was the origin of the King Street fire?

As to the first of these questions, three answers have been suggested, and each has credible evidence to support it. The view primarily contended for by the Appellants was that the Harbour Street fire, originating in the Army and Navy Stores, travelled westward along the south side of Harbour Street, crossing Church Street on its way, and so reached the Respondents' premises in a direct line. That this was what happened is mainly supported by the evidence of Robert Jones, but other witnesses go far to corroborate him. The letters written immediately afterwards by the resident member of the Respondents' firm, to his partners in England, express the same view. But this is of the less importance, because the writer was not speaking of matters within his own personal knowledge. If the jury accepted this view (whether they did so or not it is impossible to say), they certainly acted not unreasonably.

The second answer to the question under consideration is that the Harbour Street fire

was checked in its direct progress westward by the width of Church Street and by the overthrow, by earthquake, of the house on the west of that street; that the fire found its way to a building known as the Beehive at the corner on the north of Harbour Street and east of Church Street; and that from the Beehive the fire spread obliquely to the insured property. This account of the matter is supported mainly by the evidence of the witness John MacDonald. If the jury accepted this account, it could not be said they acted unreasonably. But this is of the less importance, because the result is the same, whether this view or the first should be accepted. The matter is, however, of weight as showing the obscurity which surrounds the most elementary facts of the case.

A third answer to the question is that the fire which destroyed the insured property was not, or may not have been, due to the spread from the east of that Harbour Street fire which began in the Army and Navy Stores, but was or may have been due to the spread from the north of the King Street fire. The King Street fire was in full blaze half-an-hour to three-quarters-of-an-hour (the witnesses vary) before that in the Army and Navy Stores was first seen. There was evidence from which the jury might have considered that the King Street fire spread rapidly towards the south; that it did so spread sooner or later seems clear. And there was the positive evidence of Herbert Mackenzie that the fire from the north had reached De Sousa's premises in Water Lane, and that these were in a blaze by the time when the Respondents' premises took fire. De Sousa's premises appear to have been within 60 yards to the due north of the Respondents, the intermediate buildings, according to MacDonald's evidence, having fallen

in the earthquake. Mackenzie's evidence on this subject receives substantial corroboration from that of other witnesses. And their Lordships cannot say that the jury may not have been justified in accepting it. And, if so, it follows, in their Lordships' opinion, that the jury were not unreasonable in concluding, if they did so conclude, that the destruction of the insured property was due, or might well have been due, to the spread of the King Street fire, or to it and the Harbour Street fire conjointly.

The second question relates to the origin of the Harbour Street fire, whether it was a fire occasioned by the earthquake. The earthquake shock is admitted on both sides to have occurred at 3.30. The outbreak of the Harbour Street fire is put by various witnesses at an interval of half to three-quarters of an hour after the shock. It cannot therefore, in their Lordships' opinion, be said that the fire followed the earthquake shock so quickly as to lead to any very strong presumption that the one event was the cause of the other.

Apart from any such presumption the case of the Appellants on this point rests entirely upon the theory that the fire in the Army and Navy Stores began with the ignition of certain boxes of matches in those stores. The stores were overthrown by the earthquake; and the evidence is that there were standing upon a shelf in the stores, near where the fire was first perceived, 10 or 12 parcels each containing a gross of boxes of safety matches. It was contended that some of the matches must be presumed to have come in contact with some of the prepared surface, in consequence of the fall of the shelf when the premises were wrecked. This, however, is necessarily a somewhat speculative view. Their Lordships



think it impossible to say that the jury were bound to accept it as conclusively correct. They might well have been of opinion that that view was insufficiently supported, and that the origin of the fire was not accounted for.

The third question for consideration is whether the jury were bound to find that the King Street fire was occasioned by the earthquake, a question which has to be dealt with in case the jury may have been of opinion that the damage to the property insured resulted from the spread of that fire.

Their Lordships are of opinion that the jury might reasonably have formed the opinion that the King Street fire had broken out before the earthquake shock, or, at least, that it was not conclusively shown to have resulted from that shock. The difference in time between the accounts given of that fire by different witnesses is only a few minutes, for there is no doubt that within a very few minutes after the shock, if not a few minutes before it, the premises No. 87 King Street were in full blaze. There was direct evidence, especially that of Mrs. Calnek, that the fire was seen before the earthquake. It was said for the Appellants that her evidence was so inherently improbable that it ought to have been rejected altogether; but it did not stand alone. The evidence of Duperly is not open to the same criticism; the evidence of the witnesses from a distance, who say that they saw smoke rising before the earthquake shock, demanded the most serious consideration of the jury; and more than one of the other witnesses tended to confirm the view that the fire preceded the earthquake.

The evidence relied upon on behalf of the Appellants to show that the fire followed the earthquake, was very important, and if the jury

accepted it, it would be impossible to say that their doing so was unreasonable. But it was not in all points evidence of a wholly satisfactory character, and their Lordships are of opinion that on the whole of the evidence the jury might reasonably have found that the fire was not shown to have resulted from the earthquake.

The result is that, in their Lordships' opinion, the jury might reasonably have considered that the fire which destroyed the Respondents' property was due to the spread of the Harbour Street fire, or that it was due to the spread of the King Street fire, or that it was uncertain to which it was due, or whether to both.

Their Lordships are further of opinion that the jury might reasonably have thought that the Harbour Street fire was not shown to have resulted from the earthquake.

They also think that, on the materials before them, the jury might reasonably have held that the King Street fire broke out before the earthquake.

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