

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.
(ASSIZE COURT OF COLOMBO).

BETWEEN—

ALEXANDER KENNEDY - *Appellant*

— AND —

THE KING - - - - *Respondent.*

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CASE FOR THE APPELLANT.

RECORD.

1. This is an appeal by special leave from the conviction of the Appellant on the 20th October, 1934, by the Supreme Court of the Island of Ceylon (Assize Court of Colombo) sitting in its Original Criminal Jurisdiction with a special jury of seven jurors.

2. After the preliminary proceedings in the Police Court of Colombo the Appellant was committed for trial to the Supreme Court of Colombo on the 12th July, 1934, on the following indictment :—

(1) That on or about the 29th September, 1933, he did at Colombo, commit mischief by fire knowing it to be likely that he would thereby cause the destruction of a building, to wit "The Times Building", in the Fort, Colombo, which building was ordinarily used as a place for the custody of property and that he had thereby committed an offence punishable under Section 419 of the Ceylon Penal Code.

(2) That at the time and place aforesaid he did commit mischief by fire, intending thereby to cause damage to property, to wit, leather, boots, shoes and other shop goods exceeding Rs.100 in value and that he had thereby committed an offence punishable under Section 418 of the Ceylon Penal Code.

3. The trial of the Appellant upon the above charges, to both of which he pleaded not guilty, took place on the 3rd September, 1934,

and following days before Mr. Justice Drieberg of the Supreme Court of the Island of Ceylon. On the 20th October, 1934, the jury unanimously found the Appellant guilty on both counts of the indictment, whereupon the Judge sentenced him to a term of six years rigorous imprisonment on each count, both sentences to run concurrently.

Vol. I,
pp. 525-6.

4. The Appellant had for many years carried on business at Colombo in shoes, skins and men's outfittings on a large scale, having gone out to Ceylon from England in 1909. Since 1920, he had traded under the name of "Kennedy & Co" of which firm he was the sole owner.

Vol. I,
pp. 354-5.
Vol. I. p. 371.

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5. For the purpose of his business the Appellant occupied part of the basement, part of the ground floor and part of the first floor of a building belonging to and in part occupied by the "Times of Ceylon" (hereinafter referred to as "The Times Building"). The basement was used by the Appellant as a store, the ground floor and the first floor as a shop. The building had been erected in 1931. It was a solid construction of steel and re-inforced concrete, the interior partition walls being made of brick. The windows on the ground floor of the Appellant's shop were of plate glass. The main entrance in the front of the shop was by a glass door opening off a concrete floored verandah. There were two other entrances upon the ground floor, one on each side of the shop—one opening into Duke Street and the other through the vestibule into Princes Street (hereinafter referred to respectively as the Duke Street door and the Vestibule door). Access from the ground floor of the shop to that part of the basement occupied by the Appellant was by means of a spiral staircase; access for goods was by means of a steep chute.

Vol. III,
pp. 11-12.
Vol. I,
pp. 266-272.

Vol. I, p. 355.

Vol. I, p. 444.

Vol. I, p. 447.

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6. Certain preliminary facts to which witnesses upon both sides testified were common to the case both of the prosecution and the Defence. They may be summarised as follows:—

Vol. I, p. 203.
Vol. I,
pp. 213-4.
Vol. I,
pp. 364-5.
Vol. I,
pp. 409-10.

During the evening of 29th September, 1933, the Appellant was engaged in supervising the equipment of new premises at another building known as the Colombo Stores to which he intended removing his business on or about the 1st October, 1933. He was engaged upon this work until about 10.25 p.m. During the same time at The Times Building one R. Hossen a salesman in the Appellant's employment and a number of coolies were engaged in taking down stocks from the shelves in preparation for the removal of the Appellant's business. This work was being supervised by the Appellant's wife. At about 10.25 p.m. the Appellant returned to The Times Building and dismissed all the coolies except two with whom he returned to the Colombo

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Stores. The Appellant completed his arrangements at the Colombo Stores by about 10.40 p.m., when for the second time he returned to The Times Building which he reached about 10.50 p.m. There were then present on the ground floor of the Appellant's shop the Appellant, his wife and the salesman Hossen. Standing outside the vestibule door of the Appellant's shop was one Zain Mahat, a night watchman in the employment of "The Times of Ceylon", who was waiting for the Appellant and his wife to leave in order to lock up the building. The Appellant's chauffeur, with the Appellant's car, was also waiting for the Appellant in the neighbourhood of the shop. After his return the Appellant sent Hossen to buy a bottle of soda water. While Hossen was buying the bottle of soda water, the Appellant and his wife stood outside the Vestibule Door talking to the night watchman. The lights on the ground floor were still on, and passers-by could see the movements of anyone on the ground floor of the shop. When Hossen returned, the Appellant went inside the shop, drank the soda water and dismissed Hossen. The Appellant's wife remained outside the Vestibule Door talking to the night watchman. While they were so talking and a few minutes after the Appellant had entered the shop, there was a loud explosion. The explosion was stated by some witnesses to have taken place before 11 p.m. The latest time at which it was put was 11.5 p.m.

Vol. I, p. 214.
Vol. I, p. 424.

7. From the evidence called by the prosecution and by the defence it appeared that the force of this explosion was enormous. Brick walls both in the basement and on the ground floor of the Appellant's premises were blown down. Large sections of the re-inforced concrete slabs forming the ceiling of the basement and the ground floor of the shop were shattered. The concrete floor of the verandah was cracked. The plate glass windows were broken, and the steel door of the Duke Street entrance to the shop was blown into the roadway.

Vol. I, p. 226.
Vol. I,
pp. 217-8.
Vol. I, p. 292.

8. The allegations made by the prosecution may be summarised as follows :—

(a) That the Appellant after drinking the bottle of soda water referred to above, descended by the spiral staircase into the basement of the building carrying a suitcase containing two two-gallon tins of petrol one empty and the other full.

(b) That the Appellant poured the contents of the full tin upon the floor of the basement with the intention of setting fire to certain stock in the basement.

Vol. I, p. 273.
Vol. I,
pp. 336-7.
Vol. I,
pp. 444-5.
Vol. I,
pp. 449-50.
Vol. I,
pp. 459-462.
Vol. I,
p. 521.

(c) That either before or after the explosion the Appellant screwed the cap on the petrol tin, replaced the tin in the suitcase and brought the suitcase up to the ground floor of the shop where he placed it near the Vestibule Door.

(d) That after the explosion the Appellant returned to the ground floor by way of the spiral staircase and made his escape from the building through the Duke Street door.

9. In the Appellant's submission, there was no evidence to support the allegations summarised in the last preceding paragraph. On the contrary, the evidence called completely negated the case 10 made by the prosecution.

10. The following facts were relied upon by the prosecution in support of the allegations summarised in paragraph 8 hereof :—

Vol. I,
pp. 241-248.

(a) On the morning after the explosion a suitcase containing a petrol tin was found among the debris on the ground floor near the Vestibule Door. Another petrol tin was found beside the suitcase. The caps were screwed upon both these tins. One of the tins contained about 5 c.cs. of petrol, the other contained a small quantity of a watery non-inflammable liquid. These facts were relied upon as proof that the explosion had been 20 caused by two gallons of petrol.

Vol. I,
pp. 298-9.

Vol. I, p. 214.

(b) After the explosion according to the evidence of the watchman Zain Mahat the Appellant was seen coming out of The Times Building through the Duke Street door. This fact was relied upon as proof that at the time of the explosion the Appellant was present in the basement of the building.

11. As to the above allegations the Appellant humbly submits :—

Vol. I, p. 493.

(a) That there was uncontradicted evidence to prove that the explosion could not have been caused by two gallons of 30 petrol. One Alexander Bruce a chemist called for the defence gave evidence that about 80-120 gallons of petrol would have been required to produce the damage actually resulting from the explosion, and that such a quantity of petrol could not have been exploded in the basement. He estimated that the explosion of two gallons of petrol in the basement would have produced a pressure of about $31\frac{1}{2}$ pounds per square inch. He further estimated that a pressure of 200 pounds per square inch would have been required to blow up the roof of the basement. One H. H. Reid an architect called for the defence gave evidence that 40 a pressure varying from 86 pounds per square inch in parts of

Vol. I, p. 485.

Vol. I, p. 513.

Vol. I, p. 447.

the basement to 356 pounds per square inch in other parts of the basement would have been required to produce the damage actually resulting from the explosion. His evidence was confirmed by that of another architect, one Robert Hall who was also called for the defence and who positively stated that "two gallons of petrol could not have done it." Of the expert witnesses called for the Prosecution one J. V. Collins, an analyst expressed the opinion that the explosion of two gallons of petrol in the most favourable theoretical conditions would produce a maximum pressure of 32 pounds per square inch, and that a minimum period of ten minutes would have been required to vapourise that quantity of petrol. In the circumstances assumed by the prosecution he did not think that a pressure of 32 pounds per square inch could have been produced. One J. A. Grey an engineer called by the prosecution estimated the pressure likely to be produced by two gallons of petrol at from 20-30 pounds per square inch. This witness admitted that the experiments which he had conducted for the purpose of this case had no bearing whatever upon the ratio of two gallons of petrol to the cubic contents of the basement of the Appellant's premises. One W. Small an architect called for the prosecution estimated that a pressure of two pounds per square inch would have been sufficient to crack the floor of the verandah. He said that he could not calculate the pressure required to break the re-inforced concrete floor of the shop.

Vol. I,
pp. 460-2.
Vol. I, p. 470.
Vol. I,
pp. 306-7.
Vol. I, p. 308.
Vol. I, p. 307.
Vol. I, p. 317.
Vol. I, p. 321.
Vol. I,
pp. 272-3.
Vol. I, p. 275.

(b) That the evidence of Zain Mahat referred to in paragraph 10 (b) hereof did not support the allegation that the Appellant was present in the basement at the time of the explosion. The evidence of Zain Mahat was consistent with the Appellant having approached the Duke Street door from the ground floor of the shop and not from the basement by way of the spiral staircase. One I. D. Merry, a young and athletic police officer called by the prosecution gave evidence that it was extremely hard if not impossible to get from the basement to the Duke Street door by way of the spiral staircase by reason of the collapse of an inner wall of the building which blocked the spiral staircase. Further there was reliable evidence that if the Appellant had been present in the basement at the time of the explosion he could not have survived. The witnesses Hall and Bruce gave evidence that if the Appellant had been in the basement he would certainly have been killed. The witness Small stated that he could not answer the question whether a human being in the basement would

Vol. I,
pp. 336-7.
Vol. I, p. 462.
Vol. I, p. 497.
Vol. I, p. 274

Vol. I, p. 312.

Vol. I,
pp. 54, 223,
229, 425, 473.

Vol. II,
pp. 130, 135.
Vol. I,
pp. 260, 300.

have been blown to pulp. The witness Collins was asked whether there would have been anything left of the Appellant if at the time of the explosion he had been stooping over the explosive mixture trying to set fire to it. He replied that he did not know. The Appellant in fact escaped from the explosion with superficial injuries, his hands, head, face and right ankle were burnt. Both elbows, both ankles and his right knee were slightly grazed but he was otherwise uninjured. Except for a rent in his coat and some burns on his socks the Appellant's clothes suffered no damage.

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Vol. I, p. 530.
Vol. I, p. 579.

Vol. I, p. 339.
Vol. I, p. 530.

Vol. I, p. 429.
Vol. I, p. 435.

Vol. I, p. 581.

12. In support of the allegations summarised in paragraph 8 hereof, the prosecution also endeavoured to prove that the Appellant's shoes, when examined after the explosion, smelt of petrol. Upon this point the learned Judge directed the Jury that there was no evidence upon which they could act. In further support of these allegations, the prosecution relied upon the evidence of Dr. A. M. De Silva that certain burns sustained by the Appellant were consistent with his hands having been immersed in some inflammable stuff such as petrol. There was a conflict of medical evidence as to the nature of these burns. The learned Judge 20 directed the Jury that this evidence would only serve to confirm an opinion derived from other evidence as to the Appellant's connection with the explosion, and that of itself it had no necessary probative effect.

Vol. I, p. 530.

13. The prosecution further relied upon the fact that the Appellant had purchased two tins of petrol on the 23rd August 1933 as evidence of preparations upon his part for committing mischief by fire as alleged by the prosecution.

14. In the Appellant's submission there was no evidence to prove that these petrol tins had ever been introduced into The Times 30 Building. On the contrary the evidence conclusively proved that the two tins purchased by the Appellant had passed from his possession long before the 29th September, 1933, the day of the explosion.

15. The evidence regarding the purchase of petrol by the Appellant may be summarised as follows:—

Vol. I,
pp. 233-235.

(a) Fernando, a garage cashier, called by the prosecution, stated that on a date in 1933 which he could not remember, Hossen, an employee of the Appellant, purchased two tins of petrol at his garage. He further stated that Hossen informed him that he was the Appellant's employee. This witness did 40 not identify the tins found on the Appellant's premises as those which he had sold to Hossen.

(b) Hossen, who was called by the prosecution, stated that on a date previous to the fire he was instructed by the Appellant to purchase two tins of petrol and that he was further instructed by the Appellant to say that the tins were required for the Appellant's use.

Vol. I,
pp. 199-201.
Vol. I, p. 207.

10 (c) Perera, a tanner, who was called by the prosecution, stated that at a date previous to the fire he called upon the Appellant and that the Appellant told him he had purchased some petrol to clean a quantity of discoloured skins which he had been keeping in storage. Perera further stated that in the course of this conversation he (Perera) had advised the Appellant that petrol was injurious for use on skins and that it would be better to have the skins treated in his tannery and that the Appellant agreed to send him the skins. This witness further stated that on the same occasion he had asked the Appellant to give him the two tins of petrol as he was accustomed to make long journeys by car up country for which he needed supplies of petrol in tins, and that the Appellant thereupon give him the two tins of petrol.

Vol. I,
pp. 120-122.

20 (d) One Steuart, a police officer called by the prosecution, stated that he had visited Perera at his house on the 7th or 8th October, 1933, and that Perera showed him the two tins which he (Perera) said that he had received from the Appellant.

Vol. I,
pp. 236-7.

16. As to the suitcase found in The Times Building after the explosion the Appellant submits that there was no evidence connecting him with the said suitcase. The evidence on this point may be summarised as follows :—

30 (a) Menon, an assistant in the Appellant's shop, called as a witness by the defence, stated that on the 15th July, 1933, a customer deposited with him a suitcase to be kept until called for, and that this suitcase corresponded in size with that produced by the prosecution. He stated that he had placed it in a cupboard near the Vestibule Door. The position in which the suitcase containing the petrol tins was found after the explosion was consistent with its being the same suitcase as that described by this witness. The evidence of this witness was corroborated by Classen, the Appellant's head clerk and book-keeper who was called as a witness by the prosecution.

Vol. I, p. 439.

Vol. I, p. 155.

40 (b) Owen, a tailor, called as a witness by the prosecution, stated that it was usual for customers in Ceylon to deposit goods with shopkeepers, that customers had frequently deposited suitcases at his shop, and that he had goods which had been lying

Vol. I, p. 231.

- Vol. I, p. 438. there for some six or seven months. His evidence was corroborated by Brougham, a witness called by the defence.
- Vol. I, p. 530. 17. As evidence of motive it was contended by the prosecution that the Appellant was in urgent need of money to pay off the overdrafts upon his accounts with the National Bank of India and that the purpose of his setting fire to his stock as alleged was to recover money upon certain policies of insurance effected by him with the Commercial Union Assurance Company, the Manchester Assurance Company and the Caledonian Insurance Company. It was further contended by the prosecution that the Appellant had prepared fictitious records of non-existent stocks of skins for the purpose of making fraudulent claims upon the policies mentioned above. In the Appellant's submission there was no evidence to support these contentions. 10
- Vol. II, p. 145.
Vol. II, p. 155.
Vol. II, p. 166.
Vol. II, p. 176.
- Vol. II, p. 36.
Vol. II, p. 37.
- Vol. II, pp. 29-34. 18. As to the Appellant's financial position, his assets at the date of the explosion largely exceeded his liabilities. The Appellant's stock (excluding the skins referred to in the preceding paragraph hereof) was valued by the insurance assessor at Rs. 468,000 as at the date of the explosion. On this date the total of the overdrafts upon his accounts with the National Bank of India was Rs.126,440. These overdrafts had been reduced by the Appellant from a figure of Rs.145,295 since the 1st January 1933. The evidence of Graham, the manager of the Colombo Branch of the National Bank of India, called by the prosecution, was that the Appellant had ample security for his overdrafts and that he (Graham) had no want of confidence in the Appellant. One Watkins, a chartered accountant called by the prosecution, stated that the Appellant's balance sheets did not disclose an unusual position considering the time. He also stated that the Appellant could have raised money if necessary by reducing his gross profits and by increasing his turnover. 20
- Vol. I, p. 145.
Vol. II, p. 25.
- Vol. I, pp. 65-72.
- Vol. I, pp. 112-113.
- Vol. I, p. 125. 19. As to the allegation that the Appellant's records of skins in stock were fictitious, overwhelming evidence to the contrary was given by witnesses called by the prosecution. Perera stated that he had seen large quantities of skins at the Appellant's bungalow. His evidence was corroborated by that of the Appellant's wife. Classen stated that large stocks of skins had been transferred from the Appellant's bungalow to The Times Building in July 1933, and that it had taken several days to bring the stocks in. His evidence on this point was corroborated by Ogle, one of the Appellant's employees called by the prosecution. Walsalam, the Appellant's storekeeper called by the prosecution stated that in addition to some 50 or 60 parcels of skins there were thousands of skins lying loose on the 30
- Vol. I, p. 152.
- Vol. I, p. 172.
- Vol. I, pp. 164-5. 40

shelves of the basement. The evidence of this witness was corroborated by Sangaran, a packer in the Appellant's employment, called by the prosecution.

Vol. I,
pp. 193-4.

20. At the trial the Appellant was called as a witness

(a) He described his movements on the day of the explosion. He stated that after the witness Hossen had left the building in the circumstances described in paragraph 6 hereof, he went to his desk to get the key of the door; that he went to the door, put the key in the lock, and then went to the switchboard to turn out the lights. This switchboard was fixed to a pillar upon the ground floor of the shop, and consisted of a main switch and a series of tumbler switches. The Appellant stated that he extinguished the tumbler switches with his left hand and that as he was turning off the main switch there was a blinding flash. His next recollection was that he was lying on the ground and that his ankles were burning. He had a faint recollection of fighting his way through flames. He could not recollect whether he had left the building through the Duke Street door, or through one of the broken windows of the shop. He denied having visited the basement at any time on the 29th September.

Vol. I,
pp. 364-6.

Vol. I, p. 326.

Vol. I, p. 366.

Vol. I, p. 366.

(b) He dealt with the purchase of two tins of petrol on the 23rd August, 1933. He stated that in connection with his business in skins he was in the habit of using petrol for cleaning skins which were partly discoloured; that on his return from a voyage to Europe in July 1933, he found that some of the skins which he kept in his bungalow had been damaged during the monsoon, and that about the 23rd August 1933 he sent Hossen to buy two tins of petrol for cleaning the skins. He corroborated the evidence of Perera summarised in paragraph 15 hereof, and stated that he had given the two tins of petrol to him in the circumstances described by that witness. He denied that the suitcase produced by the prosecution was his property, and he confirmed the evidence of Owen and Brougham as to the practice of customers in Ceylon leaving goods with shopkeepers for custody.

Vol. I,
pp. 362-3

Vol. I, p. 367.

(c) He denied the suggestion he had fabricated evidence of non-existent stocks of skins. He explained that since he had commenced trading on his own account in 1920, he had put all his savings into purchase of skins, and that he had invested his sister's savings in similar purchases. His evidence on this point was corroborated by his wife.

Vol. I, p. 357.

Vol. I, p. 415.

Vol. I, p. 471.
Vol. I,
pp. 516-7.

Vol. III, p. 14.

Vol. I, p. 496.

Vol. I, p. 410.

Vol. I, p. 419.

Vol. I,
pp. 154, 159,
166-7, 170, 174.
Vol. I,
pp. 150-1, 163,
167-8, 173, 177,
185, 188, 331,
335.

Vol. I,
pp. 527-603

Vol. I, p. 602.
Vol. I, p. 573.

Vol. I, p. 602.

21. A theory as to the cause of the explosion was put forward by the defence and was supported by reliable evidence. It was suggested that the explosion might have occurred as the result of an escape of gas coming in contact with a spark from one of the switches. It appeared that the gas which operated the machinery of "The Times of Ceylon" was carried in a pipe through that part of the basement which was occupied by the Appellant. The pillar upon which the switch board was placed was the continuation of a similar pillar in the basement of the building. According to the evidence of Bruce, if there had been a leak of gas from this pipe 10 some 1,350 cubic feet of gas might have been stored in the girders of the basement ceiling and this gas might have been exploded by a flash from one of the switches. The damage arising from the explosion could have been caused by about 330 cubic feet of gas. The Appellant's wife had noticed the smell of gas on the evening of the explosion. She stated that she had noticed the same smell on previous occasions and had endeavoured to locate its origin. Other witnesses on previous occasions had noticed a similar smell in the basement. Several witnesses also deposed to the fact that the electric installation in the Appellant's premises was defective and that on different occasions bulbs had burst and the circuit fuse had 20 blown out.

22. At the close of the Appellant's case Mr. Justice Drieberg in his summing up directed the Jury upon the questions at issue. In the Appellant's submission the summing up of the learned Judge contained the following serious misdirections by which the Appellant was gravely prejudiced:—

(1) as to the effect of the evidence of Zain Mahat. The learned Judge instructed the Jury that if they believed Zain Mahat's evidence that the Appellant after the explosion emerged from the Duke Street door, they must find that the Appellant 30 had been in the basement at the time of the explosion. The evidence of Zain Mahat on this point was consistent, and in view of the evidence of the Police Officer Merry, was only consistent with the Appellant having been on the ground floor of the shop;

(2) in telling them that they must choose between the evidence given by Zain Mahat and the evidence given by the Appellant upon the point mentioned in the preceding subparagraph hereof, and that if Zain Mahat's evidence was 40 accepted, there were strong indications of the guilt of the Appellant;

(3) in telling them that the Appellant was under an obligation to explain his presence in the basement when there was in fact no evidence that he had been in the basement at any material time;

Vol. I, p. 602

(4) in telling them that the evidence for the Prosecution was such that they should convict the Appellant unless they were satisfied that there was a reasonable probability of his evidence being true;

Vol. I,
pp. 529-30
Vol. I,
pp. 601-2.

10 (5) as to the effect of the expert evidence. The learned Judge instructed the jury that in deciding the question whether the Appellant had taken into the basement the petrol tins referred to in paragraph 16 hereof they might disregard the expert evidence as to the amount of petrol required to produce the explosion. In the Appellant's submission this expert evidence was relevant to prove that the Appellant had not taken these petrol tins into the basement;

Vol. I,
pp. 593-4.

20 (6) in telling the Jury that if they thought the evidence connected the Appellant with the two gallons of petrol it was unnecessary for them to be convinced that two gallons of petrol were used;

Vol. I, p. 600.

(7) in telling them that they should form their own opinion upon the questions at issue and should look to the expert evidence only for a confirmation of their own opinion;

Vol. I, p. 586

(8) in telling them that the survival of the Appellant with only slight injuries was not a circumstance adverse to the Prosecution's case that he was present in the basement at the time of the explosion.

Vol. I, p. 599.

30 23. In the Appellant's submission the learned Judge's summing up was further gravely defective in that he failed to direct the Jury that there was no evidence upon the points referred to in paragraphs 10, 13, 16 and 17 hereof and in that he failed to draw the Jury's attention to the relevant passages in the expert evidence or to the improbabilities inherent in the case for the Prosecution. These improbabilities may be summarised as follows:—

40 (a) that the Appellant should have set fire to his stock in the circumstances described in paragraph 6 hereof, namely at a time when the watchman and the Appellant's wife were standing in the Vestibule outside the entrance to the shop; when his chauffeur was in the street outside the shop; when the shop was so illuminated that the Appellant's movements on the ground floor could have been discerned by any passer-by;

(b) that the Appellant could have carried out the operations alleged by the Prosecution in the short space of time during which, according to the evidence of Zain Mahat, Hossen and the Appellant's wife, he was alone in the building, or that two gallons of petrol could have vaporised in the same space of time.

24. As stated in paragraph 17 hereof, the Appellant's goods were insured with three Insurance Companies namely, the Commercial Union Assurance Company, the Manchester Assurance Company and the Caledonian Insurance Company. The policies of the Commercial Union Assurance Company were re-insured to the extent of Rs. 50,000 by the Royal Exchange Assurance Corporation and to an unknown extent by the Liverpool and London and Globe Insurance Company. All the above mentioned Companies, together with a number of other Insurance Companies transacting fire insurance business in the Island of Ceylon are, through their respective agents, members of the Ceylon Fire Insurance Association. The objects of this Association are to secure joint action on the part of the Fire Insurance Companies doing business in Ceylon in all matters affecting their interests and to enforce rules for the working of fire insurance business generally in Ceylon.

Vol. I, p. 611.
Vol. I, p. 618.
Vol. I, p. 632.
Vol. I, p. 533.

Vol. I,
pp. 626-7.

Vol. I, p. 625.

25. Of the seven jurors empanelled, the following four were in the employment of Companies or firms which acted as agents or sub-agents for Fire Insurance Companies transacting business in the island of Ceylon. The employers of these jurymen were members of the said Fire Insurance Association.

Vol. I,
pp. 617-8.

(1) Kenneth Walsham Taylor, foreman of the Jury, was a director of Messrs. Mackwoods Limited. This Company were at the time of the trial agents for The Royal Exchange Assurance Corporation ;

Vol. I, p. 630.

(2) Edgar Henry Temple was employed by the British Ceylon Corporation Limited. This Company were at the time of the trial sub-agents in Ceylon for the Liverpool and London and Globe Insurance Company ;

Vol. I, p. 613.

(3) Albert Edward Woodall was employed by the Colombo Commercial Company Limited. This Company were at the time of the trial agents for the London and Lancashire Insurance Company Limited and the Thames & Mersey Marine Insurance Company Limited ;

Vol. I, p. 613.

(4) Walter Richard Alexander McLellan was employed by Messrs. Leechman & Company. This Company were at the time of the trial agents for (1) The Norwich Union Fire Insur-

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ance Society Limited (2) The New Zealand Insurance Company Limited (3) The London and Scottish Assurance Corporation Limited (4) The Norwich & London Accident Insurance Association;

10 (5) A fifth juror, Ferguson Robert Cheves, was the superintendent of the Sapumalkande Estate in Ceylon which was the property of the Lunuwa Tea and Rubber Estates Limited. The local agents of the said Lunuwa Company were Messrs. Harrisons and Crosfield Limited who were also agents for the Manchester Assurance Company, being one of the Companies insuring the Appellant's stock.

Vol. I, p. 619.

Vol. I,
pp. 610-613.

26. The said Jurors by their affidavits filed in answer to the matters summarised in the last preceding paragraph hereof admit that they were employed by firms or companies transacting fire insurance as alleged but further state that they worked in departments of the said firms or companies which were not engaged in the business of fire insurance.

Vol. I,
pp. 619, 628-9,
635.

27. The Appellant did not challenge the said Jurors because neither he nor his counsel nor the Proctor entrusted with his defence was aware either before or during the trial that the said Jurors were in the employment of firms or companies engaged in Insurance business and interested, as aforesaid, in the policies of Insurance covering the Appellant's stocks, and members of the Ceylon Fire Insurance Association.

Vol. I,
pp. 607-8.
Vol. I,
pp. 616-7.

28. In the Appellant's submission the aforementioned facts establish that the said Jurors were by reason of their interest and bias unfit to try the Appellant and that in the circumstances he was deprived of the substance and the appearance of a fair trial.

30 29. The Appellant submits that his conviction by the Supreme Court of the Island of Ceylon was wrong, and that the verdict of the Jury ought to be set aside and the sentence passed upon him be quashed for the following among other

REASONS.

- (1) Because there was no evidence to support the verdict of the Jury.
- (2) Because the case for the Prosecution was that the explosion resulted from the ignition of two gallons of petrol and the expert evidence called upon both sides demonstrated that the explosion could not have been produced by two gallons of petrol.

- (3) Because the case for the Prosecution was that the Appellant was in the basement at the time of the explosion and there was no evidence to support this Case.
- (4) Because it would have been impossible for the Appellant to have committed mischief by fire in the circumstances of time and place alleged by the Prosecution.
- (5) Because the learned Judge's summing up contained serious misdirections and was gravely 10 defective.
- (6) Because the constitution of the Jury was such as to deprive the Appellant of a fair and impartial trial.
- (7) Because the whole trial was so unsatisfactory that the verdict of the Jury cannot stand.
- (8) Because the proceedings at the trial were vitiated and erroneous and the conviction of and the sentence passed on the Appellant constitute a violation of the principles of natural justice.

WALTER MONCKTON, 20
C. JOHN COLOMBOS,
B. J. M. MacKENNA.

No. 69 of 1935.

In the Privy Council.

ON APPEAL

**FROM THE SUPREME COURT OF THE
ISLAND OF CEYLON.
(Assize Court of Colombo).**

KENNEDY

v.

THE KING.

**C A S E
FOR THE APPELLANT.**

SANDERSON LEE & Co.,
Basildon House,
7-11, Moorgate, E.C.2.