

In the Privy Council.

No. 69 of 1935.

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

BETWEEN

ALEXANDER KENNEDY - - - - - *Appellant*

AND

THE KING - - - - - *Respondent.*

RECORD OF PROCEEDINGS.

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In the Privy Council.

No. 69 of 1935.

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

BETWEEN
ALEXANDER KENNEDY - - - - - *Appellant*
AND
THE KING - - - - - *Respondent.*

RECORD OF PROCEEDINGS.

VOL. I.—PROCEEDINGS.

No. 1.
Charge Sheet.

*In the Police
Court of
Colombo.*

10713

IN THE POLICE COURT OF COLOMBO.

This 3rd day of April, 1934.

I, G. H. FERGUSON, Acting Deputy Inspector-General of Police, C.I.D. in terms of section 148 (b) of the "The Criminal Procedure Code, 1898," hereby report to the court that :—

No. 1.
Charge
Sheet,
3rd April,
1934.

10

Alexander Kennedy of Monsoon Lodge,
Colpetty,

did on or about the 29th day of September, 1933, at the premises known as "The Times Buildings," in the Fort, Colombo, within the jurisdiction of this court, commit mischief by fire, intending to cause, or knowing it to be likely that he will thereby cause damage to property to the amount of one hundred rupees or upwards, and thereby committed an offence punishable under section 418 of the Ceylon Penal Code.

2. That on or about the 14th day of November 1933, at Colombo, and in the course of the same transaction as set out in count 1 above, he

*In the Police
Court of
Colombo.*

No. 1.
Charge
Sheet,
3rd April,
1934—con-
tinued.

did attempt to deceive the Caledonian Insurance Company, the Manchester Assurance Company and the Commercial Union Assurance Company Limited, by falsely representing to the said companies that he had suffered damage to the extent of Rs.480,353/07 as a result of a fire occasioned by a cause unknown in the said Times Buildings and thereby dishonestly to induce the said Companies to deliver to him a sum of Rs.480,353/07, which sum he did claim as being due on the following Insurance policies, to wit :— No. 9246849 of the Manchester Insurance Company, No. F.588529 of the Caledonian Insurance Company, and Nos. 15117330 and 15412505 of the Commercial Union Assurance Company Limited, and in such attempt he 19 did an act towards the commission of the said offence, to wit—did deliver to the said companies through his agent, Elizabeth Kennedy, four claims in respect of the said Insurance policies, and thereby committed an offence punishable under sections 403 and 490 of the Ceylon Penal Code.

Sgd. G. H. FERGUSON,
Deputy Inspector General Police.

No. 2.
Notes of
Police
Magistrate
in prelimin-
ary investi-
gation,
3rd April,
1934.

No. 2.

Notes of Police Magistrate in Preliminary Investigation (including Statement of Accused).

Move for a warrant of arrest. 20

Issue warrant for 4.4.34.

Sgd. E. H. R. TENISON,
Police Magistrate,
3.4.

Accused present. Charge is read and explained.
Under section 187 of the Criminal Procedure Code.
From Non-summary-form.

Accused states :—

Statement recorded.

Certified bail Rs. 30,000/30,000. 30

Inquiry 11.4.34.

Sgd. E. H. R. TENISON,
P.M.

Statement of Accused.

Name of Accused :—Alexander Kennedy.

The particulars of the offence charged are explained to the accused as follows :—

Section 418 C.P.C.
Section 403/490 C.P.C.

The accused is addressed as follows :—

“ I am prepared to hear any statement which you wish to make. Anything you say will be written down and will be read at your trial. You may give the names of any persons whom you wish to be summoned to give evidence and state what each can prove.”

The accused states :—

I am not guilty.

I cannot state the names of my witnesses at the moment.

I hereby certify that the above record was taken in my presence, and contains accurately the whole of the statement of the accused.

Date :—3.4.34.

Sgd. E. H. R. TENISON,
Police Magistrate.
3.4.34.

20 11.4.34.

Accused :—A. Kennedy.

Present.

Mr. R. L. Pereira, K.C. for accused.

Mr. Van Geysel, instructed by Mr. Percy Cooke and Mr. J. W. Wijesinghe.

*In the Police
Court of
Colombo.*

No. 2.
Notes of
Police
Magistrate
in preliminary
investigation,
3rd April,
1934—*con-
tinued.*
Statement
of Accused.

11th April,
1934.

No. 3.**Evidence for the Prosecution.**

ZAIN MAHATH Affirmed : 47, Watcher, Kennedy's shop.
Times Building, Slave Island.

30 On the date of this fire I was on duty. I did my usual night round. Started at 10.40 p.m. Started from the basement in the Times. That is next door to Kennedy's. Also next door to switch-room. It was locked. I noticed nothing unusual. No unusual smells. From the 1st floor I went up by 2nd floor and then to the top. Came down again. Arrived at Despatch Department at 5 to 11. Leaving my hurricane lamp and the tell-tale clock I went to Kennedys part via Inquiry Office. No one was at the entrance.

No. 3.
Evidence for
Prosecution.

(a) Zain
Mahath.
Examina-
tion.

*In the Police
Court of
Colombo.*

No. 3.

Evidence for
Prosecution.

(a) Zain
Mahath.
Examina-
tion—con-
tinued.

Mr. Kennedy was in the shop. Lights were on. I saw a Malay man who was a salesman at Kennedys saying he was going out to get soda. Just then Mr. and Mrs. Kennedy came out. Mr. Kennedy spoke to me and Mr. Kennedy said as soon as I have drunk that, we will go. Soda was brought. It was taken in. I saw the Malay man go towards the shop. I did not see him go out. Mr. Kennedy was inside the shop. Mrs. K. and I were outside. When I was talking to Mr. Kennedy I heard a loud explosion. All the lights went out. I jumped on to the main street, and went to Despatch department. That gate was locked. I ran and opened that gate and shouted to Deen Miskeen, another watcher who was asleep. Asked him to phone the police and Fire brigade. I came back running to Main Street. On the way I saw Mr. Kennedy jumping out of a small door from a door. This door covers the "chute." That is kept locked after they leave the premises. I did not see if the door fell down. The door was on the pavement. It is made of expanded metal and plank. Mr. Kennedy was bleeding from left side of the face. I asked him what happened. He said "I do not know." He went towards Gaffor's Building. A large crowd collected. I can't say who I noticed. I blew the whistle and stood in front of the building. The heat was very great. Along with the explosion the lights went out. I do not know the cause of the fire. 10

20

Cross-exa-
mination.

CROSS-EXAMINED.

I saw Mr. Kennedy stepping out of the chute quickly. The door is in 2 sections, padlocked. It is still outside the building. The wooden shutter was blown off the hinges. There was only one explosion. I heard no smaller one before this one. I saw the Malay man going into the shop on the Firt side. That is where I saw Mrs. Kennedy. The door on the Pettah side was closed. Mr. Kennedy was changing over his establishment over to the Colombo Stores Building. There was large parcels of shoes on the floor. I saw a little blood on the left side of the clothes. I did not notice that they were burnt at that time. Ground floor is level with the street. I saw fire. I can't say from where the flames came. All the shop was on fire. I do not know that there is a gas pipe running in the basement. There are a large number of pipes. I did not see certain sections of piping removed. Debris has been removed. The switch room is separated from Kennedy's by a wall. The wall came down. 30

(Sgd.) E. H. R. TENISON.

P.M.

11. 4. 34.

(*This Witness was recalled, see page 48*).

(b) Deen
Miskin.
Examina-
tion.

DEEN MISKIN. Affirmed. 46, Watcher, Times Building, Maradana. 40

On the night of the fire I was on duty from 12 midnight till 8 a.m. next morning. I was lying down in the Despatch Department. Last witness was there. He came back from his round at 11 p.m. He left the lantern and clock and went to the front of the building via the passage.

About 5 minutes later I heard a loud explosion. The lights went out along with the noise. He came round and shouted. "On fire phone up." I found the gate open when I came out. I phone the police and fire brigade. I do not know what last witness did after that.

In the Police Court of Colombo.

No. 3.
Evidence for Prosecution.

CROSS-EXAMINED.

Nil.

(Sgd.) E. H. R. TENISON,
P.M.

(b) Deen Miskin.
Examination—continued.

11. 4. 34.

10 S. P. OWEN. Sworn: 53, Tailor, Chatham Street, Colombo.

(c) S. P. Owen.
Examination.

On the night of this fire just prior to the fire I was standing by the Apothecary's shop. I heard this explosion in Times Building. I went there. Flames were then going up the left wall, shop windows were blown out, goods and fittings were burning furiously. I arrived on the scene within $\frac{1}{4}$ minute. I found a lady (Mrs. Kennedy) and the driver of Mr. Kennedy's car and another man, outside the shop. I went to the lady and asked "What happened." She said my husband is in the shop and I think he must be dead. I sent a man to the fire alarm by the Apothecaries and break the glass. I then said I would try and get Mr. Kennedy. I went into the building by the passage and shouted "Kennedy," Kennedy, Kennedy—
20 3 times. I came out again to get a handkerchief over my face as it was difficult to breathe. I went in again by the passage. Then I came to front verandah. I tried to get into the shop through the blown out window. I got one leg over. Heat was so intense, I could not get further, but shouted "Kennedy." I stood on the ledge. Then I went to the left where it was dark and full of smoke. This is roadway into the rest of Times building. I fell over things which had blown out of the windows. Fumes were very bad. I saw no signs and heard nothing. As I came out and got near the shop, I saw Mr. Kennedy come from behind staggering through the smoke.
3) He was then on the verandah, at the corner. He was dazed, practically in a state of collapse. Skin of his hands hanging in festoons and his face was burnt. His socks were charred and ankles burnt. I took him in his car to Grand Oriental Hotel for medical aid, then to General Hospital. I spoke to him. He spoke first and said "What has happened." I said "do not worry." I said "Don't talk." Come away to the car. I asked him how it happened. He said, I put my hand to the switch. There was a big flash, I do not know anything else. Up to the time I heard the explosion to the time Mr. Kennedy left the building was 6 minutes, I saw the doctor at the hospital. I told him that I did not know whether the case was burning or burning and electric shock. I said this as he said he
40 put his hand on the switch.

*In the Police
Court of
Colombo.*

CROSS-EXAMINED.

No. 3.
Evidence for
Prosecution.

(c) S. P.
Owen.
Cross-exa-
mination.

I know the smell of gas. There was an overpowering smell. The smell choked you. There was very heavy smoke. The gas had the same effect as coal gas. The smell was in my throat and nostrils for hours afterwards. Mr. Kennedy was in a white cotton suit. His socks had big holes. I remember some scorch marks in places on the suit. His hands were badly burnt.

(Sgd.) E. H. R. TENISON,
P.M.

11. 4. 34. 10

(d) Stephen
Wickrama-
singhe.
Examina-
tion.

STEPHEN WICKRAMASINGHE. Affirmed. 33, Car Driver,
St. Sebastian.

I worked under Mr. Kennedy for 6 years. On night of this fire, I was outside the Times building with the car. I saw Mrs. Kennedy there about 11 p.m. I know Hossan there. I saw him bringing a bottle of soda there that night. He opened it and gave it Mr. Kennedy, and went away towards Pettah. After he had gone I saw the Times watcher (1st witness) there for a short time. After Hossan had left Mr. Kennedy closed all the doors and before he left he went to put off the lights. That is what I think. I saw him go into the shop. After he had gone in, after 2 or 3 minutes I heard an explosion. I can't say what happened to the lights. I know Mr. Owen. I saw him coming. When the shop was on fire Mrs. Kennedy tried to go in. I pulled her and prevented her from going. I put her in the car and removed it to a side. I did not see Mr. Kennedy leave the building. I saw him accompanied by Mr. Owen and later I took them to G.O.H. and General hospital. Mr. Kennedy usually has a small attache case. No I did not see it that night. A few days before the fire I brought Mr. Kennedy to Times Building. I brought a bag, as I did not I can't remember bringing a heavy suit case at any time. I made a statement. Having taken Mr. Kennedy to General Hospital. I brought Mr. Ogle and took him to General hospital. Mr. Kennedy has two cars, a Mercedes Benz and a Lagunda. For the Mercedes we use "A" Mobiloil. For the Lagunda we use "BB" Mobiloil. 30

Cross-exa-
mination.

CROSS-EXAMINED.

The suit case Mr. Kennedy carries is about the size of a piece of foolscap, a little bigger, about 4 inches high, He always carries that.

Sgd. E. H. R. TENISON,
P.M.
11. 4. 34.

(e) H. R.
Ogle.
Examina-
tion.

H. R. OGLE. Sworn : 45, Assistant, Kennedy & Co.

I am a salaried Assistant. On the night of this fire, I was at the Colombo Stores. I did not go to the old premises after lunch. I look after the ladies' Department—on 1st floor. Our goods were prepared for removal. 40

We keep no petrol or methylated spirits in the shop. We keep a "Cinderella dry cleaner" non-inflammable. I have nothing to do with Mr. Kennedy's skin trade. In January 1933 I helped Mr. Kennedy to check the whole stock. Did not check skins. Mr. Kennedy uses jute hessian for parcelling up skins. All this is done in the store at the bungalow. I have seen no red petrol tins at Mr. Kennedy's bungalow, nor at the old shop. I know what they look like. All Mr. Kennedy's assistants and labourers are loyal men. None of them wanted to do him any harm. I am a non-smoker—nor does Mr. Kennedy. At least not to my knowledge. I do not know if any of the other assistants smoke. Prior to this fire there was a fuze in the basement. The Times Electrician told me about it. A bulb fell out I believe. I am not aware of this personally.

In the Police Court of Colombo.

No. 3.
Evidence for Prosecution.

(e) H. R. Ogle.
Examination—continued.

CROSS-EXAMINED.

Cross-examination.

We had quite a large stock of shoes. In September last we had about 30,000 pairs of shoes. The actual stock was worth about Rs. 470,000/-. An expert came from Calcutta after the fire. He gave me his personal assurance that all was in order—that is Mr. Ross. The firms books have been audited by Duncan Watkins. Our books were with the auditors at the time of the fire. There were a few books in the safe. Not seriously damaged. The 470,000/- is apart from furniture and fittings. Our stock was insured for Rs.480,000/- I believe. This fire has handicapped the business very considerably. Mr. Kennedy had engaged Colombo Stores premises. The floor space of the Colombo Stores was about 4 times that of the Times. We are handicapped—financially crippled. The policies did not cover loss of profit. Even if we had been paid by the Insurance we still stand to lose. Our business was a large one. The gas supply to the Times ran through our basement. 70 feet of it. That piping has been removed by the Gas Co.—Mr. Kennedy has been consulting an expert Mr. Campbell, who investigated the "Atlantide" disaster.

RE-EXAMINED.

Re-examination.

The stock was our general stock not the skins. There were skins in the basement. We had been in the Times building 2 years. I know of no trouble with the 70 feet of gas pipes in this time.

Sgd. E. H. R. TENISON,

P.M.
11.4.34.

(The Witness was recalled, see page 48.)

T. J. WALSALAM: Sworn: 24, Assistant, Kennedy's, Bambalapitiya.

(f) T. J. Walsalam.
Examination.

I am Mr. Kennedy's Storekeeper Since 1.11.31. On the night of the fire I was working in the basement till 5 p.m. Mr. John and Sangaram were working with me. I can't say whether that left the basement. I can't remember if I left before them. Before I left the basement all the lights were put out. I can't say if anyone worked after I left. I can't remember if

*In the Police
Court of
Colombo.*

No. 3.

Evidence for
Prosecution.

(f) T. J.
Walsalam.
Examina-
tion—con-
tinued.

the chute door was open or shut when I left. From the basement I went to the 1st floor. Left there about 6 or 6.15 p.m. I left for home at 6.30 p.m. I did not notice any smell in the basement when I was there. I know what petrol and coal gas smell like. I do not keep any stock books. When new goods arrive they are opened in the basement; and sent to the various departments. The goods which Departments no longer want are brought to the basement. The goods are kept on the shelves—not kept on the floor. Basement was practically full. No large tins or boxes there. Empty packing cases are sent to Mr. Kennedy's bungalow. I have nothing to do with Mr. Kennedy's business. We keep leather for repair purposes in the basement. There were many parcels of skins brought from Mr. Kennedy's bungalow to the store. Nicely wrapped up. I do not remember how many parcels.

To COURT :—A cooly puts them on the shelves, under my supervision. There were about 50 or 60 parcels of different sizes—biggest about 3 feet in length. They appeared to be postal parcels. No petrol or methylated spirits is used in the basement. Before this fire there was trouble with the lights. The lamp fused and burst whilst it was hanging and fell in pieces. I do not smoke. No one smokes in the basement. Parcels are despatched and sealed in the basement. Sangaram works there. I can't say whether he seals it or not. I have never seen any matches in the basement, if sealing has to be done, I do not know where the matches come from. There were loose skins—crocodiles, fox and willow calf. A few hundreds. I have no idea how the fire occurred. There is a store. It is in the basement. Corners are rounded off. I have not been to the basement since the explosion. I did not go upstairs after the fire. I must have been the last to leave the basement. I go up the Spiral stair-case. Beside it is a chute. Old stock is not brought back to the basement. The shoes brought back were in good condition. Parcels for delivery in Ceylon are not sealed. Foreign parcels are sealed. We keep a lighted candle and the wax is melted.

Sgd. E. H. R. TENISON,

P.M.
11.4.34.

(g) L. John.
Examina-
tion.

L. JOHN—Sworn : Clerk, Kennedy & Co.

For last 6 years I have been under Mr. Kennedy. I do typing, repairs and packing and I work in the basement. At foot of spiral staircase my table is 4 feet away. On the day of this fire I worked in the basement with last witness and Sangaran. I left at 5 p.m. I was the last person to leave. Lights were out. I put the lights out. The switches are next to my table. We had some trouble with the lights very often. The last time before the fire. I can't say when. I do not know the smell of gas or petrol. I noticed no peculiar smell in the basement. I do not smoke. The sealing of parcels is done in the basement near my table. Sangaran does this. No sealing was done on this day. Materials for sealing kept on ground floor. Sealing wax, matches and candles. There were some loose skins in the basement.

They are used for repairs. There were roughly more than 100. Basement was very full of goods. On the shelves and racks, also on the floor. There were also some parcels of skins wrapped in jute hessian. About 30 parcels. About 3½ feet in length. Post parcels. Whilst we three were in the basement no one else came. I have never seen petrol tins in the basement. When I come up the spiral staircase I asked Sangaran if the door at the top of chute was open. The door was closed. I tried it and the door covering the expanded metal. The doors were closed. Then I went to the ladies' Department and worked there till 6 p.m. Then went to ground floor and typed some letters for Mr. Kennedy till about 8.30 p.m. I then went home. I typed some mail letters. (Shewn file 8) I typed the letter Page 55. I know Mr. Kennedy's signature. This is his. Page 56 forms part of the same letter, also I typewrote the letter of page 57; also letter on page 53, continued 54. I identify Mr. Kennedy's signature. I also typed letter on page 42. I identify Mr. Kennedy's signature. I also typed letter on page 26 and I identify Mr. Kennedy's signature. I have no idea of the cause of the fire. (File labelled P41).

*In the Police
Court of
Colombo.*

*No. 3.
Evidence for
Prosecution.*

*(g) L. John.
Examina-
tion—con-
tinued.*

CROSS-EXAMINED.

Nil.

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Sgd. E. H. R. TENISON,

P.M.

11.4.34.

N. K. SANGARAN. Affirmed : 43, Packer, Kennedy & Co.

I work in the store and have been employed under Mr. Kennedy 13½ years. I know the expanding metal gate leading to the chute. The gate is opened to receive and put out things. I can't say how many times a month. It is kept locked. On the inside is a wooden door. I open it. I shut it. On the day of the fire I was working in the basement with Walsalam and John. Worked there till 5 p.m. I was the last to leave. I can't remember who put the lights out. When I left the basement I did nothing else. I shut the door over the expanding metal gate. I padlocked it. It had not been opened that day. I locked both doors. From there you pass through another door to the head of the stairs. I locked that door and handed it to Mr. Kennedy. I then went to the ladies department. I seal parcel in the basement. I use sealing wax and a box of matches. I did no sealing on the day of the fire. A clerk keeps the materials for sealing. I take off a shirt to work, and put on another and hang the other on a peg. We have a shop umbrella. It is kept in the basement near where I keep my shirt. I do not know the smell of gas or petrol. I smelt no unusual smell when I left. Now I cannot say. All of the other labourers use this umbrella. They don't have their own umbrellas. After the basement I worked in Gentlemens' Department on ground floor. 4 or 5 others working there. Raman, Supramaniam, Velu, Kesavan. We took down the things from the rack and arranged them in order. Worked till 10 p.m. Finished all the work then. We were asked to go. I waited a little and went. I went

*(h) N. K.
Sangaran.
Examina-
tion.*

*In the Police
Court of
Colombo.*

No. 3.

Evidence for
Prosecution.

(h) N. K.
Sangaran.
Examina-
tion—con-
tinued.

to the basement and brought my shirt and the umbrella. Raman went with me. He went to get his shirt. Went at about a little after 10 p.m. No peculiar smell then. Noticed nothing unusual then. I was last to leave. Raman left before me. Raman had put the lights on and I put them off. I came up and went home. All the labourers went home then. I can't say the time Mr. Kennedy remained in the shop. Now I cannot say if Hossan stayed behind. 5 of us left. Towards Pettah I did not notice the time by Khan Clock Tower. There were loose skins in the basement. There were also some parcels of skins. Wrapped in paper and stitched in jute hessian. I do not know the number. Over 35. The parcels were up to 22 lbs. That was the biggest. I have seen no petrol tins in the basement. I do not know the cause of the fire. 10

Cross-exa-
mination.

CROSS-EXAMINED.

I remember when Kennedys moved from Bristol Buildings to Old Times Building. Shifting in previous cases done at night. No lorries used so far as I remember. Things were being prepared to be shifted. Shelves in Colombo Stores were not ready. So shifting was delayed.

Re-exa-
mination.

RE-EXAMINED.

I cannot say when the parcels of skins were brought to the store.

Sgd. E. H. R. TENISON, 20
P.M.
11.4.34.

(i) Raman
son of Velu.
Examina-
tion.

RAMAN SON OF VELU. Affirmed : 32, Labourer, Kennedy & Co.

I worked for Mr. Kennedy for past 10 years. I worked on ground floor. On the day of the fire I worked on ground and 1st floors. I do not know the time when people from the basement came up. After 5.30 p.m. they came and helped us. 6 of us worked. Sangaran, Kesava, Velu and Supramaniam and myself and Hossan. Worked till 10 p.m. Finished then. Rested for some time. Mr. Kennedy came from new shop and asked us to leave, taking our things. I took my things from the basement. Sangaran and 30 Supramaniam (alias Aiyappen) also went. I took my umbrella and the other two took the company's umbrella's. Sangaran took his shirt. I was wearing my shirt. I know the smell of gas and petrol. I did not smell anything at this time. I put the lights on in the basement. I came up last. I put the lights out. All 5 of us went out together, towards Main Street. It was about 10.30 p.m. I saw the Khan Clock Tower. I have no idea of the cause of the fire.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON, 40
P.M.
11.4.34.

SUPRAMANIAM *alias* AIYAPPEN. Affirmed : 22, Labourer. Kennedy & Co., Kochchikade. *In the Police Court of Colombo.*

On the night of this fire I was working in the ground floor with Raman, Sangaran, Velu, Kesavan and Mr. Hossan. Finished at 10 p.m. All boxes taken down. We went out. I did not go anywhere else in the shop. I was dressed up. I did not go to the basement. I did not see anyone else go. I have not seen any petrol tins in the shop. When I left the shop 5 of us went towards Clock Tower. Time was after 10 p.m. It was 10.30 p.m. *No. 3. Evidence for Prosecution. (j) Supramaniam alias Aiyappen. Examination.*

10

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
P.M.

11.4.34.

KESAVAN SON OF KRISHNAN. Affirmed : 21, Labourer. Kennedy & Co. *(k) Kesavan son of Krishnan. Examination.*

I work in Ladies' Department 1st Floor. On the day of the fire I assisted on 1st floor, with 4 others. Finished work after 10 p.m. All the boxes on the floor. I left after 10 p.m. We left together in direction of the Pettah. It was 10.30 p.m. By Clock Tower (Khan) Mr. Hossan and Mr. Kennedy were in the shop and Mrs. Kennedy. No one else. I have seen no petrol tins in the shop. I have no idea of the cause of the fire.

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CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
P.M.

11.4.34.

VELU SON OF UNICONER. Affirmed : 20, Labourer, Kennedy & Co., Kochchikade. *(l) Velu son of Uniconer. Examination.*

I work in Ladies' Department. On the day of the fire I went and helped on Ground Floor with 5 others. Finished about 10.30 p.m. We all left together. I know nothing about the cause of the fire. We went in direction of Pettah.

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CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
P.M.

11.4.34.

In the Police Court of Colombo. B. P. JAYAKODY. Sworn: 31, Manager, Outfitting Department, Kennedy & Co.

No. 3.
Evidence for Prosecution.

I have been employed there 3 years. On the day of the fire I was working. Helped to put goods on ground from shelves. Left at 7 p.m. Work was not finished. I left by front door. I have no idea of the cause of the fire.

(m) B. P. Jayakody. Examination.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
P.M.

10

11.4.34.

(n) R. Hos-
san. Examination.

R. HOSSAN. Affirmed: 55, Salesman. Kennedy & Co., Slave Island.

I have been employed 13 years. Worked with him when he was employed by Smith Campbells. On the day of the fire I was working on the ground floor arranging the shoe boxes. Coolies were helping me. Sangaran came and helped after 8 p.m. They worked till 10.30 p.m. (about). The labourers all left together. I was left in the shop. Mr. Kennedy came from the new shop about 10.30 p.m. Two coolies came. Then all the coolies went. Mr. Kennedy and Mrs. Kennedy and I were left. I left the shop. 5 or 6 minutes to 11 p.m. I went to get a bottle of soda water. I got it from a boutique-keeper at Main Street—York Street Junction. I brought it to the shop. It was opened at boutique. I poured it in a glass in the passage and handed it to Mr. Kennedy at the door into his shop. Mr. Kennedy drank it. I left the bottle and glass near the door. Up to the time I left neither I, Mr. or Mrs. Kennedy went to the basement. I know the smell of coal gas or petrol. Not only on that day, but two or three days I had smelt gas. I can't say from where the smell came from. I smelt coal gas. I mentioned it to no one. The smell got no worse. There is nothing wrong with my sense of smell. Between the time the labourers left and I went for the soda water bottle, I was arranging boxes. About 3,000. I was just looking round. The road door was shut at 5 p.m. When I gave the soda and put the bottle down all the lights were on. I left after putting the soda water down. I left by the passage. I did not pass anyone. Mrs. Kennedy was near Mr. Kennedy. I did not see the Times Watcher. I did not see Mr. Kennedy's driver. I left the shop at 5 to 11 p.m. and went towards Pettah. I was waiting for a rickshaw in Lotus Road. Nothing happened. I heard an explosion when I was at that spot. I cannot say from where it came. I saw no fire. I can't say from what building the explosion came. I saw one or two fellows running slowly. I know the door which is at top of spiral staircase. It was locked. I saw Sangaran locking it. I got into the rickshaw and went away home. About 2 or 3 months before the fire I went to Mr. Kennedy's bungalow to obtain leave. I had fever. I saw Mr. Kennedy there. Mr. Kennedy said all right, don't stay too long.

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Just as I was going he called me and said go and get two tins of petrol. He told me to pay. He gave me money to pay for it. I went to Walkers, Colpetty. They had got no tins. They said come at 2 p.m. I went back at 2 p.m. They gave me the two tins. They looked like new ones. They were ready filled. I put them in a rickshaw to Mr. Kennedy's bungalow and Mr. Kennedy asked me to leave them aside. (On the verandah.) I do not know what he wanted the petrol for. I delivered the tins near about 2 p.m. I then went on leave and took 3 days. I have never bought petrol for Mr. Kennedy before. I have never seen any petrol tins in the shop before. I have no idea of the cause of the fire.

In the Police Court of Colombo.
 No. 3.
 Evidence for Prosecution.
 (n) R. Hosan.
 Examination—continued.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
 P.M.

11.4.34.

Further enquiry 12.4.34.

Sgd. E. H. R. TENISON,
 P.M.

11.4.34.

20 12.4.34.

Accused : A. Kennedy.

Present.

Mr. R. L. Pereira for accused.

Mr. Van Geysel.

Mr. Wijesinghe.

12th April,
1934.

DR. C. S. PEIRIS. Sworn : Admitting Medical Officer, General Hospital. (o) Dr. C. S.

On night of 29th September I was admitting Officer, Mr. Kennedy was brought to the hospital at 11.30 p.m. Another European gentleman accompanied him. I do not know name. That gentleman told me that Mr. Kennedy had accidentally burnt himself as a result of an electrical explosion at the Times building. I rushed him to the ward. I produce the hospital ticket P1 (returned). (Copy to be sent to Court.)

Peiris.
Examination.

CROSS-EXAMINED.

Mr. Kennedy was discharged on 6.11.33.

Cross-examination.

Sgd. E. H. R. TENISON,
 P.M.

12.4.34.

*In the Police
Court of
Colombo.*

No. 3.

Evidence for
Prosecution.

(p) Miss E.
Catto.
Examina-
tion.

MISS E. CATTO. Sworn : Night Sister, General Hospital.

On 29.9.33 I was on night duty when Mr. Kennedy was admitted. I asked him how it happened. He replied that he went back to turn off the light and a flash occurred.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
P.M.

12.4.34.

(q) K. M.
Abubukker.
Examina-
tion.

K. M. ABUBUKKER. Affirmed :—23. Cashier, Hamedia Tea Rooms, 10 Bristol Buildings.

On night of Times Building fire a clerk at Kennedy & Co. came and asked me for soda. He purchased a bottle of soda and took a tumbler at about 11 p.m. He did not bring them back. Some time after that I heard the explosion. It was about 10 minutes after.

CROSS-EXAMINED.

Cross-exa-
mination.

I heard one explosion only. There were one or two people about. My boutique was closed. I was seated outside and the man came and asked for soda. The door was open and I got the soda.

Sgd. E. H. R. TENISON, 20
P.M.

12.4.34.

(r) A. James
Perera.
Examina-
tion.

A. JAMES PERERA. Affirmed : 49, Attendant, General Hospital.

I remember when Mr. Kennedy came to hospital. I came on duty 7 a.m. next morning. The night attendant gave over the clothes Mr. Kennedy was wearing when admitted. I told the ward cooly to wash the clothes and give them to the Sister. I asked him to wash everything except the shoes. This is the usual practise when any patient is brought with bloodstained clothes.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
P.M.

12.4.34.

(s) Govin-
dan son of
Ramasamy.
Examina-
tion.

GOVINDAN SON OF RAMASAMY. Affirmed : 27, Labourer,
General Hospital.

I remember Mr. Kennedy coming to hospital. I washed his clothes. Last witness gave me the clothes. I did not wash his shoes. I can identify the clothes. There was a white coat, white trousers, white shirting banian,

collar, pair of socks (Khaki or red). P2 is the coat (shown) P3 are trousers (shown) P4 is the collar (shown) P5 are 2 white handkerchiefs (shown) P6 is the shirt (shown) P7 is the pair of socks (shown). They had blood on them. P8 is the pair of shoes (shown).

*In the Police
Court of
Colombo.*

No. 3.
Evidence for
Prosecution.

CROSS-EXAMINED.

The socks have been burnt. One was torn. The other has sort of burns. There was blood on the socks. I washed them in water and Jeyes fluid. There was dry blood on the trousers when I washed them next morning. Coat and trousers very much stained. Shirt was not stained so much. Shoes were in the room. They were not handed to me. There was only one button on the coat.

(s) Govin-
dan son of
Ramasamy.
Cross-exa-
mination.

Sgd. E. H. R. TENISON,
P.M.

12.4.34.

J. S. CLASSEN. Sworn—44, Clerk, Kennedy & Co.

(t) J. S.
Classen.
Examina-
tion.

I have been employed under Mr. Kennedy last 6 years. I work on ground floor. On the day of this fire I was working on ground floor until 6.30 p.m. I then went to Colombo Stores (new shop). Returned between 8.30 and 9 p.m. I left for home a few minutes after 9 p.m. Hossan and 5 coolies, Mrs. Kennedy. Front door (Main Street) was shut. Chute doors were shut. I went out through side door. Sealing of parcels is done in the basement. I keep the material on the ground floor. On the day of the fire I can't say of any sealing was done. I keep particulars for making up the invoices for shipments of skins. There had been trouble with the electric lights, the more recent one being 1½ months before. The Times Electrician put that right. (Shown file marked Skins stock in Basement). This is in my handwriting. To enter particulars I got the notes from Mr. Kennedy (P 39). I merely copy the particulars. I can't speak re details. I entered up the file from time to time. Mr. Kennedy was on leave. I believe he returned in February 1933. I began entering this file after beginning of July 1933. I can't say date of last entry.

CROSS-EXAMINED.

Cross-exa-
mination.

There were several thousands of skins in stock. From where sent out. There is a page showing the skins despatched. A 22 lbs. parcel contained about 230 Talagoya skins on an average. There were several parcels altogether.

RE-EXAMINED.

Re-exa-
mination.

The skins were brought at different times. I can't say any particular date. They were brought to the store and taken to Mr. Kennedy's bungalow as required. Items marked T.C. are distinguishing marks Mr. Kennedy had for his own records. I do not know what T.C. means.

Sgd. E. H. R. TENISON,
P.M.

12. 4. 34.

*In the Police
Court of
Colombo.*

No. 3.
Evidence for
Prosecution.

(u) E. I. R.
Johar.
Examina-
tion.

E. I. R. JOHAR. Affirmed :—22, Fireman, Slave Island.

I was on duty during this fire. On the early morning of the day after the fire I was instructed by the 2nd officer to collect debris. I started searching from near show case on ground floor. I was searching with long sticks (preventer). I found a heap of smoke coming from a heap. I pulled with the preventer. A red painted tin came out from the heap. There was another tin inside a suit case. That came out when I pulled. The 2nd tin came with the suit case. Both came from the same spot. The suit case was damaged. One side was burnt. There was Jute hessian inside and I reported this to the second officer Mr. Hamideen and he informed the Chief Officer. After that an European Police Sergeant was brought and tins were shown and we attended to our work. There were other tins beside these petrol tins. I paid no attention to those. I reported this. The suit case was one like this (P 9). I can't say it was this one. It was like it. The Jute hessian was like this (P 12) shown. I found this about 5 and 6 a.m. I did not point out the places to Mr. Ferguson and Mr. Merry. I pointed the place to Mr. Hamideen. The two petrol tins marked P 10 and P 11. 10

Cross-exa-
mination.

CROSS-EXAMINED.

I have not brought a "Preventer" to Court. It is a rod with hooks. 20
When I was pulling one tin came out with pieces of burnt shirt and other rags. I cannot say whether the tin was charred or not. I pulled it and went and reported it. Now I cannot say P 10 and P 11 are the tins, owing to lapse of time. Also owing to lapse of time I cannot definitely say this was the suit case. I did not unscrew the top of the petrol tin. (Top unscrewed in Court). Witness puts his finger inside and replies. It smells like rust). The Superintendent supervised the work. He was not there when I discovered the tins. We put out the fire and went away. Next day it was reported there was another fire, but we found none. I found these tins in a corner where there was a rack. All things were down. There was no 30
door. All the walls had come down. At the back there is a door. It is difficult to describe the exact place. If an inspection is made I can point out the place.

Sgd. E. H. R. TENNISON,
P.M.
12. 4. 34.

(v) A. N.
Ahmadeen.
Examina-
tion.

A. N. AHAMADEEN. Affirmed. Foreman, Fire Brigade.

I was on duty putting out this fire. I instructed last witness between 5 and 6 a.m. next day that whilst he was putting out the fire, to search and see if there was anything still burning. He had to search the ground 40
floor. When he was searching he came and told me he found a suit case with two petrol tins. He said he was using the preventer. One tin suddenly came out. So he kept it as it was and informed me. He told me the suit case contained some petrol tins. One tin was inside the suit case—a leather one ; there was a heap of debris there. The petrol tin

in the suit case was wrapped in Hessian. I at once informed the Superintendent. Mr. Weerasinghe reported this to a Police Officer. A Police Officer removed the suit case and tins. There were some other tins near the same spot. A tin (P 14) shown was also there. P 14 was about 3 yards away from the suit case. I pointed out the place where the tins were to Mr. Ferguson and to Mr. Merry. P 9 is the suit case. P 10 and P 11 are like the petrol tins.

*In the Police
Court of
Colombo.*

—
No. 3.
Evidence for
Prosecution.

CROSS-EXAMINED.

10 I cannot say whether this was the same jute Hessian. I can identify the two petrol tins, by the way they were burnt. I cannot remember finding 2 dozen other suit cases. There were some. I did not count them. I did not touch the tins. I cannot say if they were empty or full. (At this stage witness is asked to unscrew one of the petrol tins and states contents. Look like water.) Apart from two petrol tins, I found a Mobiloil tin, and some small tins. There was some small tins. I cannot say the exact number. 3 or 4. Square tins. I cannot say what happened to the tins. There were some boot polish tins in the basement.

—
(v) A. N.
Ahamadeen.
Cross-exa-
mination.

Sgd. E. H. R. TENISON,
P.M.
12.4.34.

20

J. R. G. BANTOCK. Affirmed: Superintendent of Police, Crimes.

(w) J. R. G.
Bantock.
Examina-
tion.

On 30.9.34 I went to General Hospital 9 a.m. I took charge of Mr. Kennedy's clothes. They were one pair white trousers, white coat, 1 white collar, 1 white shirt, 2 whitish coloured socks, 2 white handkerchiefs. These were all wet. And one pair brown shoes. These were not wet. I brought them to the Times Building, where I arrived at 10.10 a.m. and handed them over to Mr. Collins, Assistant Government Analyst.

CROSS-EXAMINED.

Cross-exa-
mination.

30 I do not remember seeing a triangular rent on side of coat. Coat appears new. It was wet when I took charge of it. Shoes appeared abraded now. I have no note of what they were like when I took charge of them. The socks had holes as if burnt. I did not notice any holes on the trousers. The socks being least thick would be more likely to burn than the trousers. The coat shows no sign of this.

RE-EXAMINED.

Re-exa-
mination.

40 I identify the clothes as the one I took charge of. If there were spots of petrol on the socks and they came in contact with fire, the socks would burn. If petrol was poured from a height it would probably splash up. If I bend down my socks would be bare. If I stood up the trousers would be covered.

Sgd. E. H. R. TENISON,
Police Magistrate.
12.4.34.

*In the Police
Court of
Colombo.*

No. 3.
Evidence for
Prosecution.

(x) R. Batie.
Examina-
tion.

R. BATIE. Sworn : 32, Installation Manager, Kolonnawa.

We have 2 kinds of petrol tins. (Shewn P19.) This is an old pattern tin. I produced the tin P19. They have a rim round top edge. New pattern tin has no edge. We have been importing the new pattern tins since 1930. We imported them previously 10 years ago, but they were all recalled. The new ones have been available for past four years. (Shewn P10 and P11.) These are the new pattern tins. P10 was made in 1930 and P11 was made in July 1931. When any Shell Installation wants tin, they put an order through the Head Office which eventually come to us. Any tins sent out are put in charge of the drivers of lorry who take a statement showing the places they deliver them to and times of delivery. I can't remember now receiving a phone message from Walkers, Colpetty, to send any tins. Since August 1933 to October, I have a list of empty new pattern tins issued from Kolonnawa. I produced it P18. 10

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
P.M.
12.4.34.

(y) James
Gray.
Examina-
tion.

JAMES GRAY. Sworn : Factory Engineer, 51 Steuart Place, Colombo. 20

I am in charge of Government Factory. I have carried out experiments on the bursting power which petrol would exert. I found out the breaking pressure of kerosine oil tins. I subjected the tins to hydraulic pressure. The seams began to rupture at 11 lbs. per square inch. I carried out dozens of tests. In some cases I put 1.5 and in other 1.75 cubic centimetres of petrol, an average of 1.6 c.c., I produce one of these tins P25 and another P26. 1.6 c.c. is about 30 to 40 drops of petrol. That amount of petrol mixed with air exerts a minimum pressure of 11 lbs. per square inch. The pressure in P25 may have risen considerably higher. These experiments were carried out at atmospheric pressure. The contents of the tins are 4 gallons of air. The explosion is caused by using dry fuse with a prime of black gun powder when fuse is lit, first of all you hear a small noise inside the tin, then the tin swells out visibly and finally explodes with loud report. It appears as though the action of the explosion was progressive. 30

Cross-exa-
mination.

CROSS-EXAMINED.

I used black powder. I do not know that black powder is invariably used for blasting. I do not claim to be an expert on rock blasting. It is possible that 1 gallon of petrol gives off 54 cubic feet of gas. I do not know the No. of cubic feet of space in this building. I do not know Mr. Campbell. 40

RE-EXAMINED.

The amount of powder I used would have no effect on the tin if exploded. I burst three tins using the fuse only. The object of using the primer to make certain of the explosion.

Sgd. E. H. R. TENISON,
P.M.
12. 4. 34.

*In the Police
Court of
Colombo.*

No. 3.
Evidence for
Prosecution.

(y) James
Gray.
Re-exa-
mination.

D. C. LORNIE. Sworn. Engineer, Gas Company.

I have 22 years experience. I am an Associated Member of the
10 Institute of Gas Engineers. I installed the Gas in the Times Building.
The Gas comes into the building by the Switch Room. At that place there
was a meter. From there through switch room was a 3" pipe. As far as
wall dividing switch room and Mr. Kennedy's basement. Pipe then went
through wall into Mr. Kennedy's basement and was reduced to 2" Follows
this wall to Times Basement. Then ran along wall dividing Times and
and Mr. Kennedy's basement towards chute. Then went through the wall
into Times basement. I produce 6 copies of sketch showing the positions,
P 40. I inspect the installation once in 10 days. The meter man Asan Ali
also inspects the meter. He makes sure the water line is alright. This
20 is done every Sunday. Meter reading is taken by S. M. A. Cader, at regular
intervals. After the fire I went to the Times basement with Mr. Ferguson
on the day after the fire. I turned on a ring. No gas came. This indicated
that the meter had stuck. I examined pipe line with Government Analyst.
Found no defects. The line was approximately on the ceiling, suspended
on the H iron. The wall dividing the switch room from Mr. Kennedy's
basement was blown away. Our pipe sagged down at this spot. The force
of the explosion did not damage the pipe line. The pipes are made of
wrought iron. Tested to 300 lbs. per square inch. This is a very high
pressure. Joints are screwed in sockets. Any leak would have to get past
30 $1\frac{3}{4}$ " of screwed thread. I looked at the meteres. It was not working. I
cut off the gas at the road outside the building. I then cut the pipe line
in the Times basement for a test. Normal Ton pressure was applied from
the cut to the outlet cock. Cocks were not moved before the test was made.
An instrument called a Manometer is attached to the pipe and by means
of weights air is forced through the pipe. The water in the gauge is thereby
raised. Water on this occasion was raised to $4\frac{1}{2}$ inches. If there had been
a leak, the water would go up but would drop immediately. On this
occasion the gauge stayed up, thereby indicating there was no leak in the
pipe. I was absolutely surprised that the pipes stood up to this explosion.
40 In order to test the meter portion I shut the service cock and opened the
out-let cock. Cocks had not been touched. The test included the meter.
No leaks. When we instal gas we put in pipes in accordance with the
amount to be consumed. We work it out accordingly to Ton pressure
and taking into consideration the amount of gas that can travel along the

(z) D. C.
Lornie.
Examina-
tion.

In the Police
Court of
Colombo.

No. 3.

Evidence for
Prosecution.

(z) D. C.
Lornie.
Examina-
tion—con-
tinued.

pipe at this pressure on a given line. Not possibly to alter the Ton pressure. I produce a statement showing the different sizes of pipe lines. (P 48). 70 feet of 2" piping would allow to pass 560 cubic feet of gas per hour. If someone cut the pipe and allowed the gas to come out 560 cubic feet of gas to come out in one hour. 1630 cubic feet for a 3-inch pipe. If the whole of the meter has been removed only 1630 cubic feet of gas could have come in in one hour. Our gas is kept up to a certain standard and tested in British Thermal units. Ours is 400 B.T. units. It is tested. Gas at this standard $5\frac{1}{2}$ to $6\frac{1}{2}$ parts of air to one of gas makes an explosive mixture. If you had an area of 16,000 cubic feet you would require 2,666 feet of gas to make explosive mixture. With a 2" opening it would take 5 hours to get sufficient gas in space of 16000 cubic feet to get explosive mixture, or from 3" pipe $1\frac{1}{2}$ hours. We keep an account of amount of gas used by Times of Ceylon. I produce statement P 47. The statement is from January 1933 till the time of the last reading 28th September. This shows average daily consumption was 4750 cubic feet per day. From 28th September up to the time of the fire—when meter stopped work 8800 cubic feet which is for 2 days. This is less than daily average. Gas is lighter than air. Has a very pungent smell. Safety of gas is in its smell. If Gas leaked, it would usually go out above the line. I know the basement. The only opening are spiral staircase and chute. Either gas would go out into street through chute door into Mr. Kennedy's ground floor shop. Opening near meter is lift shaft. Anyone standing near lift shaft would smell the gas if it was escaping. This explosion was not due to gas. Gas cannot set fire to itself.

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Cross-exa-
mination.

CROSS-EXAMINED.

I have been with the Gas Company 9 years. Not all installations are inspected every 10 days. All big installations are inspected. I have not been in the basement of Kennedy in the 2 years they have been there. I removed the pipe. Part is at the Gas Company. Possibly not all the parts are not there. The Architects asked us to remove the pipes. I removed the pipes. A temporary line was put in. The pipe had sagged as a result of the tear. It was in a U shape, about 2 feet from the ground. All the hooks are given way. The pipe would stretch slightly. We do not supply water gas. We supply pure coal gas. Coal gas only goes into the pipes. People do get Asphyxiated from coal gas. The original piping was about 3" below the ceiling. The bend now seen in the Times building was there, before. The reading on 28th September was taken between 9 and 9.30 a.m. I believe. The explosion of fire caused cessation of gas.

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Sgd. E. H. R. TENNISON, 40
P.M.

12.4.34.

(This Witness was recalled, see page 48.)

S. M. A. CADER. Affirmed : 22, Meter Reader, Gas Company.

I read Times of Ceylon meter in the basement at end of each month. I read it at end of September—on 28th September—9 a.m. I made note at the Company's office in Pencil on a sheet of paper. The pencil note is inked over 28982. (Shewn P31.) I identify this.

In the Police Court of Colombo.

No. 3.
Evidence for Prosecution.

(aa) S. M. A. Cader.
Examination.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
P.M.

10

12.4.34.

ASAN ALIYAR. Affirmed : 45, Gas Company, Fitter.

My duty is to go round and test the meters. I water the meter on Sunday. I also take the reading as well. I made note in my note book. I produce my note book, showing Reading P49. The last occasion on which I read the meter was on 17.9.33. I identify my writing. On 24.9.33 I was on leave.

(bb) Asan Aliyar.
Examination.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
P.M.

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12.4.34.

R. STEUART. Sworn. Inspector of Police, Crimes.

I went to Mr. S. A. Perera's bungalow at Kelaniya on 7th October 1933 and I examined his premises and car for new pattern petrol tins. I found a new pattern shell tin in the garage and one in his motor car. I produce these. P21, and P22. I found two old tins as well. I went with a man from Walkers Petrol Depot to Mr. Kennedy's new shop on 6.10.33. Asked him to point out the person who brought 2 petrol tins from his Depot. He went in and pointed out Hossan.

(cc) R. Steuart.
Examination.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
P.M.

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12.4.34.

SIMON FERNANDO. Affirmed : 25. Cashier, Walkers.

I was in charge of Walkers Petrol Depot at certain times of the day. On 23.8.33 I was in charge in the morning. A man asked me for two petrol tins. We keep 3 tins in stock. At that time we had no tins in stock. We had to arrange for tins to be brought from the Shell Company. The tins were brought in the petrol lorry. The tins were filled, and I

(dd) Simon Fernando.
Examination.

*In the Police
Court of
Colombo.*

No. 3.

Evidence for
Prosecution.

(dd) Simon
Fernando.
Examina-
tion—con-
tinued.

handed them over to the man who applied for them. It was about noon. I signed a receipt for the tins. I gave this to the lorry driver. I identify my signature. I was later asked to identify the person. This was by Inspector Steuart. The man had told me he was employed at Kennedy's. I asked him if he could give us any reduction in buying things at Kennedy's. The tins I supplied were new tins. I went with Inspector Steuart and pointed out the man. I have not since learnt his name.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON, 10
P.M.
12.4.34.

(ee) W. S.
Peiris.
Examina-
tion.

W. S. PEIRIS. Sworn. 26—Clerk, Shell Co., Main Office.

On 4th October 1933 a man came and asked for 2 petrol tins. We do not keep tins here. He paid Rs. 4/50 for 2 tins. I sent him with an order to get them. He took the order. I made counterfoil in my book. He gave his name as Pelis Appu, I produce the counterfoil P17. Occasionally we get such requests.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON, 20
P.M.
12.4.34.

(This Witness was recalled, see page 49.)

(ff) E. C.
Young.
Examina-
tion.

E. C. YOUNG. Sworn. 26. Storekeeper Shell Co.

On 4th Octr. 1933 one man called Pelis Appu came with a receipt from the office with order to purchase 2 petrol tins. I gave him the two tins. He signed for them. The signature was written in my presence. P52. They were new tins. It is so marked in the slip P52.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON, 30
P.M.
12.4.34.

(gg) J. V.
Collins.
Examina-
tion.

J. V. COLLINS. Sworn. Assistant Government Analyst, Colombo.

The proportion of petrol to air is given as 1.6% and 6% to make an explosive mixture. The amount of pressure which two gallons of petrol exploding in 16000 cubic feet of air exerts is an increase of pressure of about 30 lbs to the square inch, provided it is based on a perfect explosion. If

there was half that quantity of air and only 1 gallon the pressure would be the same. These petrol tins in the suit case were handed over by Mr. Ferguson on 30.9.33. The contents of P10, P9, P11, P13 are roughly in same position as I took charge. In addition there was a role of water-proof paper which I produce P13. I examined the contents of what was left in the tins. In the tin marked A by me (P11) there was a very small quantity of petrol only. It was petrol only. The stopper was intact. When the stopper was unscrewed, air rushed in, showing there was a partial vacuum in the tin. In the other tin (b) P10 there was a small quantity of acid smelling liquid, which I could not identify. It would not burn. It was not petrol. Topper was intact. There was no Vacuum. Both tins show that they were subjected to heat. If P10 had been full of petrol and had been inside the suit case and been subjected to this heat, it might have burst, but it is difficult to say. Probably some of the petrol would have got out. If petrol had got out, I should have expected to have been burst, but not the exact circumstances it is difficult to say. On 30.9.34 I also took charge of the clothes worn by accused and handed them over in a sealed packet to Mr. Ferguson yesterday. P3, P2, P4, P5, P6, P7, P8. The clothes were wet when I received them. Socks are the only items which appear to have been burnt. Burns in socks are in patches. One of which is just above the level of the shoes. When a sock is worn, one does not wear it however flat. I smelt the box that the shoes were in. Faint smell of kerosine or petrol in the shoes. Very faint. Smell came from the shoes. I asked Mr. Chanmugam to smell the shoes. Petrol and kerosine have a distinct smell. I made no mistake, I think about the smell. Nothing sufficient to analyse. If skins were decomposing I doubt if certain monoxide would be given off. The proportion of air to carbon monoxide required to form an explosive mixture is 1 Vol. C.M. and $2\frac{1}{2}$ air. The proportion of carbon monoxide to air which makes it obnoxious to breath—.25%. Quantity varies from .02 to $\frac{1}{2}$ %. If there was an explosive mixture of carbon monoxide, it would be extremely toxic. The only possibility of any other gas coming into the building is Marsh Gas. Proportion of marsh gas to air to make explosive mixture is $\frac{1}{2}$ to 1 part of air. In 16000 cubic feet you would require 2000 cubic feet of marsh gas to make an explosive mixture. Marsh Gas forms in sewerage and decomposing matter. If you found it from sewerage of decomposing matter you would expect to find other gases coming with it. Ones which you would smell. If Marsh gas comes you would expect a more or less continuous stream of gas. If things are soaked in inflammable liquid they would catch a light more quickly than purely from an explosion from Marsh Gas or similar gas. Dynamite and coal gas are the only things which come into my mind which are available to the public and could cause an explosion.

CROSS-EXAMINED.

You might find sulpherated hydrogen. Carbon Monoxide is one of the constituents of coal gas. Lotus pond was before my time. If the building was on boggy land Marsh Gas could collect. Contents of can B

*In the Police
Court of
Colombo.*

*No. 3.
Evidence for
Prosecution.*

*(gg) J. V.
Collins.
Examina-
tion—con-
tinued.*

*Cross-exa-
mination.*

In the Police Court of Colombo.
 No. 3.
 Evidence for Prosecution.
 (gg) J. V. Collins.
 Cross-examination—
continued.
 Re-examination.

are not petrol. A non-oily substance—watery. I have rinsed the tins out. I emptied out the tins first and then rinsed them. Can B is somewhat dented on one side. The Mobiloil tin was completely empty. No smell in it, at all. About 33 C. feet of gas comes from one gallon of petrol. It is not necessary that there should be an explosive mixture in all the rooms to cause an explosion. The shoes came in the box (shown). I do not know where the box came from. The shoes appear to have been scratched. A new shoe box gives off a smell of new leather.

RE-EXAMINED.

Petrol vapour is I believe heavier than air. I am not certain. Petrol 10 diffuses rapidly.

Sgd. E. H. R. TENISON,
 P.M.

12.4.34.

(hh) P. Hurst.
 Examination.

P. HURST. Sworn. 34. Meter Engineer, Gas Company.

On 24.10.33 the meter in Times Building was brought to our workshop. I read the meter before it was taken to pieces. I produce the job card P53. Reading 29070. I removed the meter myself and I saw it when taken to pieces. All the solder in the seams in the drum had melted. The heat expanded the drum shaft and the bearings and this stopped the drum 26 revolving. This automatically cuts off the gas.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
 Police Magistrate

12.4.34.

(ii) W. R. Chanmugam.
 Examination.

W. R. CHANMUGAM. Sworn : Sub-Assistant to Government Analyst.

I remember Mr. Collins asking me to come and examine some shoes. I identify these shoes P8 (shown). They were in the box. I examined them in the box. There was a distinct smell of a paraffin body. Petrol is also 30 a paraffin body. I can't say whether the smell came from the shoes or the box.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
 Police Magistrate.

12.4.34.

A. PAUL. Sworn : 35, Electrician, Times Building, Lockgate, Colombo. *In the Police Court of Colombo.*

On the night before the fire I was working in Times Building. I was in the Switch Room. I left at 4 p.m. Locked my gates that night. All electrical meters appeared in order. I know the smell of coal gas. I did not notice that smell when I left. Then I examined the doorway after the fire, I found the padlock still intact on the gate. If anything goes wrong with the electrical equipment it is my duty to attend to it. About 10 I month before the fire I had to repair a basement light in Kennedy's. A fuse had blown. The fuses are on the ground floor. This is the only occasion, with the exception of a blown fuse on the ground floor. The fuse did not blow again. This shows that there was no short circuit. A fuse could blow if the circuit was over loaded. *(jj) A. Paul. Examination.*

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
Police Magistrate.
12.4.34.

A. WAKISTAR. P.C.1046. Affirmed : Criminal Investigation Department Photographer. *(kk) A. Wakistar. Examination.*

20 On the day after the fire I took photo of ground floor of Kennedy's shop. I produce it P42 and of the doorway from outside leading down to the chute. I produce it P43, and of the spiral staircase P44 which I produce. I also produce photo of basement P45 showing portion of gas pipe. I also produce a photo of corner of ground floor showing breaking up of verandah P46. I also produce photo of Ground Floor leading towards spiral staircase P51. On 1st October I took photo of a switch board which Mr. Merry pointed out P50.

CROSS-EXAMINED.

Nil.

30 Sgd. E. H. R. TENISON,
Police Magistrate.
12.4.34.

Further inquiry on 14.4.34.

Sgd. E. H. R. TENISON,
Police Magistrate.
12.4.

14.4.34.

Accused : A. Kennedy.

Present : Mr. R. L. Pereira, K.C., Van Geyzel, P. Cooke for accused.

14th April
1934.

In the Police
Court of
Colombo.

No. 3.
Evidence for
Prosecution.

(U) W.
Small.
Examina-
tion.

W. SMALL. Sworn : 48, Architect, Galle Face Hotel.

I am partner in firm of Adams & Small. I am an Associate R.I.B.A. and Member Institute Constructional Engineers. Our firm were contractors to the Times building. I produce 6 copies of sketch plan of the basement P23 and 6 copies of sketch plan of the ground floor P24. Mr. Kennedy's basement was divided off from the portion marked intake chamber on the plan by a wall which went to the ceiling. Wall was $4\frac{1}{2}$ thick. Also divided off from rest of Times basement by wall marked D.E. & F. in plan, also $4\frac{1}{2}$ " wall. Entrance to the basement was by means of the spiral staircase B. There was also a chute A. Apart from A & B there was no other ventilation. After the fire the wall G had disappeared entirely and was under the debris. When debris was taken away this wall was found near position marked (1). A long H iron was buckled. A portion of the wall F had fallen down and the door at C was twisted. It was still locked. The wall at K had been knocked into the store. Top of wall D had been destroyed and debris was lying in passage H. Near dotted line about 60 feet from wall D. Part of wall D and E had below it a large stock of paper reels. The top two feet of the wall had been destroyed and was lying on the paper. In the passage H there was no obstruction. Concrete slab which formed top of chute was fractured and the two side walls bulge outwards. In P24 Mr. Kennedy's ground floor covers a larger area than his basement. I have marked in red the position of the basement. The back bay of the floor which is not over the basement was practically undamaged. The reinforced concrete slab forming the remainder of the floor of the shop was a complete wreck. Broken in all directions, large holes in it. Some sections were hanging down into the basement suspended by the wire reinforcing. In two cases the concrete had undergone a horizontal movement of 2 feet. Floor slab in verandah outside shop was also fractured. Fractures ran down the middle of the slab along both sides and generally at right angles across the centre line. That portion of the verandah covers the basement. Wall TT had fallen into the vestibule. Door F had gone with it. Wall U was 7' 6" high acting as a screen to the chute, $4\frac{1}{2}$ " thick. It had fallen over as a whole in the direction of spiral stair-case. Door C had fallen with it. D was originally an expanding metal gate with wooden folding door on each side. I saw the steel gate on the morning after the fire. It was still padlocked together. It had been torn out of its socket. I saw fragments of one side of the wooden door outside in the street. Also one complete side. Small portion of that wooden door was still adhering to the hinges. Window G had plate glass and this had disappeared. Charred remains of door E remained. All this damage could have been caused by an explosion. As I found the wreck the conditions are consistent with a simultaneous explosion on ground floor and basement. Fire and water would have some action on the concrete slabs, where not supported. The thin wires would expand. The slabs may not necessarily have fallen at the time of the explosion. There was a beam between the pillars marked S.S. This supported the slab. The slab had fractured somewhere along

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that line. There was a hollow brick column in square K1. When the slab fell it brought the brick with it. Seeing the floor after the event it is in many cases quite impossible to say whether the damage had been caused by heat or violence. Concrete exposed to heat and unable to expand will develop internal stresses which cause it to destroy itself. The stresses are so great that they rupture the concrete with considerable violence, and the result will look like destruction due to violence. If two slabs of concrete were exposed to heat and were on a curve, the rupture would come in an outward direction from the middle. If the concrete on the verandah was prevented from expanding at the two ends it would probably rupture at J. The concrete at J was pushed out (as shown in photo P46). From the verandah slab one can calculate the pressure required to fracture it. There were no weights on the verandah. Inside the shop there are tables, chairs, etc., etc. The pressure required to break the verandah concrete slab—2 lbs. per square inch. This is the lowest pressure I am prepared to give, as pressure which will break the floor. A pressure of 30 lbs. per 1" would cause considerable damage. I supervised the digging of the foundation of this building. There are 8 stones in a basement necessary to get solid foundation. No piles are put in this building. The excavation was 17 feet deep. Upper lay 8 feet was a filling of sand, cabook earth and usual pieces of iron which are finds. Below that are various sorts of sand. We came across no interruption of any sort. I would not say there was no decomposing matter in first 8 feet. The foundation go 6' 1" below level of the basement. *Re* the foundation the building stands on a reinforced concrete raft which has a slab 14" thick over the whole area. Upon that is a net work of reinforced concrete beams 4 feet in height. Space in between the beams are filled with earth and sand and over the top of the whole is an 11½" concrete floor. Any gases coming up from below the level of the ground would have to go through 14" concrete, then through the filling, then through 11½" concrete. The sides of the basement is reinforced concrete 3' 8" wide at bottom, sloping to 2' 6" at ground level. Inside of that wall is the wall of Mr. Kennedy's basement. There are no cracks of any kind on the floor or the walls of the basement.

In the Police Court of Colombo.

No. 3.
Evidence for Prosecution.

(II) W. Small.
Examination—continued.

CROSS-EXAMINED.

Cross-examination.

I was one of the 1st persons to enter the building on the morning after the fire and went on till 5th October inspecting. The amount of expansion of a 10' verandah subjected to 300° Fahrenheit would be about 1". Expansion sets up such stresses that the concrete flies to pieces. The sloping of the verandah might be due to heat or explosion. Upper portion of the wall of the basement was in steps. I am not responsible for the red lines on the plan. There are cracks other than indicated by the red lines. A pressure of 2 lbs. per square inch is sufficient to blow up the floor. I calculated the strength of the floor. I had to assume the tensile stress in concrete. I took the tensile stress as 240 lbs. which is the breaking stress in reinforced concrete. The tensile strength of reinforced concrete is not

*In the Police
Court of
Colombo.*

No. 3.

Evidence for
Prosecution.

(ll) W.
Small.
Cross-exa-
mination—
continued.

greater than ordinary concrete. Tensile strength depends on the strength of the steel. Tensile strength of concrete or reinforced is the same. Having done this I found the pressure required was a little over 1 lb. per square inch to break the slab. I asked myself what pressure with absolute certainty would break the floor. I therefore put tensile strength as 480 which is unheard of. This is upward pressure, not downward. I would not definitely say there was a simultaneous explosion on ground floor and basement. There was an explosion. The ground floor shows that the windows were blown out and walls blown down, and in the basement the walls were blown down. Wall XU had fallen over the spiral staircase.

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Re-exa-
mination.

RE-EXAMINED.

If the wall U fell over it may have been before the fire got at it. There were no marks of fire on it. My opinion was that it fell early.

Sgd. E. H. R. TENISON,
Police Magistrate.
14.4.1934.

(mm) I. D.
Merry.
Examina-
tion.

I. D. MERRY. Sworn. Assistant Superintendent of Police, Harbour.

On 1.10.33 I removed a switch board from column marked S.H in plan 24 on instructions from Mr. Ferguson. It was then photographed by P.C. Wakista. I produce it P27. I also made a search and found the broken portion of a soda water bottle which I produce P29. I found this at point B on the plan, P24. I also marked the position where the suit case and petrol tins were found S1. I also marked the spot where a tin (Mobiloil A) was found T1 on plan P24. The foreman of the Fire Brigade pointed out the place. I can't say for certain whether the fireman was present. I have also drawn into scale from measurements. I took places where the floor had fallen in shading. The wavy lines indicate cracks, but are not to scale. There are numerous cracks and it is not possible to include all in the plan. Plan does show a large crack H on the verandah. I delivered the switch board to Deputy Inspector General (Mr. Ferguson).

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Cross-exa-
mination.

CROSS-EXAMINED.

The petrol cans were found just on the edge of the area over the basement. The red wavy lines are not exhaustive. I made my observations on 5th October. I put the red marks on P24 early this morning. I made my original notes on 5th October P30. I also produce P54 sketch I made on 5.10.33.

Sgd. E. H. R. TENNISON,
Police Magistrate.
14.4.34.

WILLIAM WILSON. Sworn. 48. Electrical Engineer, Grand Oriental Hotel. *In the Police Court of Colombo.*

I am in charge of the contracting side of Messrs. Boustead Bros. I installed the electric lighting and lift at Mr. Kennedy's. The lights in the basement have the switch on the pillar by spiral stair-case. Main switch board was above that. On the ground floor on same pillar. P27 shown. This is the switch board. The whole of the lighting circuit of basement, ground floor and first floor had fuses on this switch board. The whole of the lighting was controlled by main switch (marked 1 in photo P50).
 10 Once that switch is off no current can blow into Mr. Kennedy's Establishment. 2 and 3 are the main fuses for the whole of the lighting circuit. If there was a short circuit in one of the wires in the basement, one of the sub-circuit fuses would fuse. If the fault was a serious one one of the two main fuses 2 and 3 would fuse. If the tumbler switches were off in the basement, the current could not flow to any of the lights or wires beyond the switches, but the current could flow from main switch on switch board to tumbler switch on the pillar in the basement, a distance of about 9 or 10 feet. The wire connected the main switch to the tumbler switch in the basement, was a lead covered wire. It went through an
 20 iron pipe in the concrete floor to protect the wire so it can't be damaged. The fact of the wire being lead cased means that the outer cover was earthed. If there was a short circuit in that wire one of the sub-circuit fuses on the main switch board would blow. To enable the wire to become naked it would be necessary for the lead casing to melt first. I examined the switch board in Mr. Ferguson's office with Mr. Misso of the Government Electrical Department. The main switch (1) is an iron clad switch. The iron cover to protect anyone coming in contact with live wire. It is not absolutely flash-proof. The operating handle is loose. This is intentional. Until the lever is put in off position it is not possible to open the cover.
 30 In addition there is a small screw on the side which has to be unscrewed before the cover can be removed. When I examined the switch board in Mr. Ferguson's office the lever was in the "On" position. I then unscrewed the small screw, and put the lever to the off position and opened the cover. I would have expected to find the switch blade had come out of the contact clips, which would put the switch into the "Off position." In actual fact I found the switch blades remained in the contact clips. They had not got into the off position because the insulation. Connecting the spindle of the operating handle to the blades had become soft and damaged. I should consider this conclusive proof that the
 40 switch was never put off. I then closed it up again. I then opened the cover to the two main switches 2 and 3. Examined fuses. Fuses were intact. This indicated no serious fault with the lighting service.

(No. 3 fuse shown to Court intact.)

(Also fuse No. 2 shown to court intact.)

If a short circuit had occurred on the switch board in one of the tumbler switches, I would have expected their tongues to have been

In the Police Court of Colombo.

No. 3.

Evidence for Prosecution.

(*nn*) William Wilson.

Examination.

*In the Police
Court of
Colombo.*

No. 3.

Evidence for
Prosecution.

fused. None have been fused. If an explosion had occurred on the switch board I should have expected damage on the switch on which the explosion took place. Some of the switches are cracked. It is not possible to say whether the cracks in the porcelain have been caused by an explosion. When a switch is switched off a small spark sometimes take place at the slips. This spark would only be at the switch.

(nn) William
Wilson.
Cross-exa-
mination.

CROSS-EXAMINED.

I saw the switch board at Mr. Ferguson's office but I cannot remember the date. I first saw the board on the Monday after the fire at the Times building.

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Sgd. E. H. R. TENISON,
Police Magistrate
14.4.34.

(oo) G. E.
Misso.
Examina-
tion.

G. E. MISSO. Sworn. Electrical Engineer, Supply and Maintenance, Government Electrical Department.

Our Government mains go into basement of the Times Building near the lift, i.e. to right of place marked 3A intake chamber. After the fire I accompanied Mr. Ferguson and the Government Analyst and inspected the switch gear and fuses at the building. Found that they were burnt. Covers of iron-clad fuses were intact, meter boards had burnt off, but meters were intact. The connection were intact. No portion of our wires go into Mr. Kennedy's basement. If there had been a serious short circuit at the main cable intake I should have expected to have seen molten metal in the cables. Heat of short circuit would melt the metal. If there was a serious short circuit it would bring out the circuit breaker at the Fort Sub-section. All the lights would go out in that area. A portion of Main Street down to Lotus Road is included in this area. The breaker would have to be put back before the lights would go on and the short circuit would have had to have been rectified. 4 people are usually in charge of the sub-station. I examined the switch board P27 with Mr. Wilson at Mr. Ferguson's office. The main switch was "On." It was opened eventually by Mr. Wilson. Jaws were still in contact with the blades. I cannot remember if the two main fuses 2 and 3 were examined.

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Cross-exa-
mination.

CROSS-EXAMINED.

I examined this at the Criminal Investigation Department Office—probably about 10 days after. We were not interested in the removal. I do not know who took the board to the office.

Sgd. E. H. R. TENISON,
Police Magistrate
14.4.34.

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L. W. G. A. STARBUCK. Sworn. 30—Engineer—Race Course Avenue, Colombo. *In the Police Court of Colombo.*

I am Walkers Electrical Engineer. I installed the main power switch board in the Times building in the Intake room. (Base of Lift). The lighting circuit switch board were on the partition-wall—G in P23, i.e. on intake chamber side. Nothing on Mr. Kennedy's side of the wall. I examined the power circuit switches with Mr. Ferguson, Mr. Misso and the Government Analyst. All the switches had been blown right across towards wall G. Some of them. The power switches were on, some off. The main circuit breaker was off. This could be caused in two ways, i.e., by an overload, or by the No Volt release which would be overrated if the current outside the building failed. A short circuit across the parts has the effect of an overload. I can't definitely say whether the power circuit switches were all in contact or not. If wall C was blown away and carried with it the 220 Volt lighting system, it would have caused the main circuit breaker to trip, because the lighting. Circuit was connected through the same breaker. Any damage to any of the electrical apparatus in the Intake chamber would have been confined to that chamber.

No. 3.
Evidence for Prosecution.

(pp) L. W. G. A. Starbuck.
Examination.

CROSS-EXAMINED.

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Nil.

Sgd. E. H. R. TENISON,
Police Magistrate
14.4.34.

Further enquiry 16.4.34.

16th April
1934.

Accused :—A. Kennedy.

Present.

Mr. R. L. Pereira, K.C. }
Van Geysel } Present.
Wijesinghe }

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B. E. WEERASINGHE. Sworn. Chief Officer, Fire Brigade.

(qq) B. E. Weerasinghe.
Examination.

I was in charge of the operations in putting out the fire. At about 6 a.m. 30th September 1933 Foreman Ahamadeen came up to me and informed me that he had found some tins of petrol in a suit case. I went up to the spot on the ground floor a few feet away from the wall as you enter from Main Street, towards wall T, towards corner of the lift. I saw two petrol tins and a suit case. One outside. There was something like Jute Hessian or gunny bag in the suit case. I also saw a mobiloil tin about two feet from the suit case. I pointed out these things to Inspector Prins. I cannot remember who put the spare tin back into the suit case. If I see the suit case I can identify it. Shown the suit case. This is the suit case so

*In the Police
Court of
Colombo.*

No. 3.

Evidence for
Prosecution.

(qq) B. E.
Weera-
singhe.
Examina-
tion—con-
tinued.

far as I can remember. The tins were burnt. P9, P10, P.11. The jute hessian P12 looked like this.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
Police Magistrate
16.4.34.

(rr) W. J.
Prins.
Examina-
tion.

W. J. PRINS. Sworn. Inspector Police, Depot.

On 30. 9.33 I was on duty in charge of the guard placed round the Times building. Mr. Weerasinghe pointed out to me about 6.30 a.m. a suit case, partly burnt with two empty petrol tins wrapped up in this gunny. When I saw the tins they were in the corner close to the lift. There was another tin, an oil tin. I cannot remember what tin. I identify the suit case. The petrol tins shown. They were burnt like this. I identify the hessian as like this. Sub-Inspector Musafar relieved me at 7.5 a.m. and I handed over the productions to him. Mr. Muller was present. I made a note in my note book (Read). P33. I produce it. 10

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON, 20
Police Magistrate
16.4.34.

(ss) D.
Lloyd.
Examina-
tion.

D. LLOYD. Sworn. Assistant Superintendent of Police, Crimes.

On 30th September 1933 I searched Mr. Kennedy's bungalow, Monsoon Lodge, Colpetty. I found no skins at the bungalow. I found a number of empty packing cases on the verandah. I found about 12 large packages full. I went with Mr. Ogle, who informed me that they contained shoes which were to be transferred to the new shop. On 2nd October 1933 I went there again to examine Mr. Kennedy's garage. I found several tins of oil. I found a $\frac{3}{4}$ full tin of mobiloil A. There was also a tin of mobiloil B.B.— full and another similar tin half full. There were also two small tins containing C.C. oil half full. 30

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
Police Magistrate
16.4.34.

D. R. PERERA. Sworn, 33 Lorry driver. Dematagoda.

I was employed by Shell Company. On 28th August, 1933 I drove lorry C 7840 from Kolonnawa to Colpetty. I cannot remember exactly if I took two petrol tins. I took a tin sheet. (Shewn P16). The gate keeper wrote this. It may be that two empty cans were delivered at Walkers. I cannot remember.

In the Police Court of Colombo.

No. 3.
Evidence for Prosecution.

(tt) D. R. Perera.
Examination.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
Police Magistrate
16.4.34.

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S. A. PERERA. Sworn. 32—Tanner—Kelaniya.

(uu) S. A. Perera.
Examination.

I am the proprietor of Welvelden Tannery, which is 6 miles from Colombo. I am sole proprietor and is registered in my name under the Ordinance. There are a large number of tanneries near Colombo. I have supplied Mr. Kennedy with skins for past 8 years. I tan the skins and supply him. Once Mr. Kennedy gave me skins to tan. I delivered these skins to Mr. Kennedy's bungalow. Mostly I get the skins from Ceylon. A portion I import. Except from buying skins from me Mr. Kennedy has no interest in the tannery. Mr. Kennedy has never kept any stock of his skins in my tannery. I have never kept my skins at his basement store or at his bungalow. After Mr. Kennedy came back from leave last year I saw him several times, at the shop and at the bungalow. On 13. 7. 33 Mr. Kennedy gave me some skins to be brushed. (Shewn P32) page 11. I wrote this. I brushed and delivered the skins at his house. From 1. 1. 33 to the time of the fire I delivered skins to the value Rs.17049/54. I produce my account book showing that. P55. The total amount up to 24000/- odd. 7127/22 was outstanding from previous year. At the time of Times fire Mr. Kennedy owed me Rs.684/76. In previous years he had not owed me large sums. I supplied the skins and the next day he usually paid. Mr. Kennedy did not hold a stock of my skins value Rs.98454/03 against sale. (Page 1 and 2 of file P32 shown). This is not signed. Page 11 is not signed. One day when I went to Mr. K's office to draw payment—It was about 13th July 1933—Mr. Kennedy then gave me a rough copy and asked me to copy it. I copied it. The file was there. I pasted on the cover "Wevelduwa Tanneries" and I wrote consignment stock with Kennedy & Co. I asked Mr. Kennedy why he wanted this statement. He told me and said "I have a portion of skins bought from you and skins bought from others, and they cannot be sold in the present market—for my reference I want this, so that these skins may be out of my books." He said he wanted them dyed afterwards. He asked me to write "Wevelduwa Tanneries" on the cover, so I did. I gave the file to Mr. Kennedy when I had done this. I did not speak to Mr. Kennedy after the fire. Inspector Steuart came to

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In the Police
Court of
Colombo.

No. 3.

Evidence for
Prosecution.

(uu) S. A.
Perera.
Examina-
tion—con-
tinued.

my garage, questioned me and took two petrol tins. At that time I had two new tins. At end of July I went to Mr. Kennedy taking some samples and showed him them. After that he asked me if stains could be removed from skins by the application of petrol. I said "Never use petrol on skins, they get rotten and wasted." He said I have two tins bought for that purpose—they are of no use to me. I said if they are of no use to you, give them to me as I have to make long trips. He gave them to me and I took them away. (Shown P39). Items marked "T.C.—T.C." correspond with this in P32 totalling Rs. 98454/03. I can't explain what T.C. means.

CROSS-EXAMINED.

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Nil.

Sgd. E. H. R. TENISON

Police Magistrate
16.4.34.

(vv) Charles
Graham.
Examina-
tion.

CHARLES GRAHAM. Sworn. 54. Manager, National Bank of India.

In January 1933 I saw Mr. Kennedy before he went home. I asked him what about the liquidation of his No. 2 account—the skin account. He said he was going to England and he said he would liquidate that account when he got there from sale of skins which were already in England. The balance outstanding on that account on 1.1.33 was Rs.60118/95. This amount was due to us. In addition to that he had No. 1 account—a general business account. He was Rs.83972/83 on 1.1.33 overdrawn on that account. On 5th April 1933 (Shown P20 page 42) I wrote to Mr. Kennedy and informed him that his No. 1 account was overdrawn by Rs.94055/34 and No. 2 account was overdrawn by Rs. 57639/61 and I asked him to reduce these amounts and not draw on us further until such reduction had been made. In reply to a letter from Messrs. Kennedy we replied on 11.4.33 page 38, P20—that we would pay Insurance premium and that a steady reduction of the overdraft was expected. On 18.4.33 on instructions from the Head Office we wrote *re* No. 1 account allowing him to go up to a limit of 1 lac of rupees. On 25.4.33 on instructions from the Head Office we informed Mr. Kennedy that Campbell Bros. Carter & Co. Ltd., had opened a credit on behalf of Mr. Kennedy for £10000 sterling to honour his bills. This was on account of reptile skins, and conditions were that held good till 31.12.33. In that connection we authorised Mr. Kennedy to open a No. 3 account to the extent of giving him credit in Rs.10000/-. (Page 32 of P20 shown.) This Rs.10000/- credit automatically terminated on 31.12.33. On 5.7.33 I wrote to Mr. Kennedy (Page 9, P20) and said we beg to advise your No. 1 account was overdrawn by Rs. 100961/47 and we requested him to bring the overdraft to within the limit of 1 lac. On 11.7.33 we wrote to Mr. Kennedy (Page 6, P20). This overdraft had to be reduced to $\frac{1}{2}$ lac by end of December 1933. With regard to overdraft on No. 2 account we wrote asking when we could receive proceeds from the sale of the skins sent to England on consignment; as

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it was said that Mr. Kennedy had promised to repay this amount immediately on his arrival in England. A statement showing the skins still to be realised was asked. In regard to the over-draft of Rs. 6542/95 in the No. 3 account we asked him to draw a bill for Messrs. Campbell Bros. Carter & Co. We said that this account must not be allowed to become dormant and we asked for liquidation. On 15.7.34 (Page 5, P20) we wrote to Mr. Kennedy we invited attention *re* the statement; and asked for proceeds to be remitted. I received no reply to that letter. On 22.7.33 and 9th August we again invited attention in regard to the fact that the No. 3 account was overdrawn. On 15.8.33 a letter was sent to Mr. K. inviting attention to our letter of 15.7.33 asking for statement of skins in England and for a balance sheet. On 18.8.33 I wrote to Mr. K. saying, "With reference to your call today we note that the overdraft in your No. 2 account will be liquidated at beginning of next month, and meanwhile we shall be glad if you will send the statement asked for and the approximate value." (Shewn P 41—page 68.) In reply to that we received from Mr. K. 19.8.33 P56. (My attention is drawn to the fact that there are some skins given to S. A. Perera on 13.7.33 for purpose of brushing and identical to P39—skins stock in basement, (Page 2) against which No. 2 account marked is marked. In reply to P56 we replied. Page 63, P41, we said we could not follow the explanation. On page 64 in P41. We wrote to Mr. K. on same day as the letter sent on page 63 in P41. (Letter read at this stage.) The letter was written by me to Mr. Kennedy. We mentioned that there was likely to be a short fall in the old account, the present debit balance being about 23000/- (No. 2 account). "This was not in accordance with what we were led to understand would be the case." On 28.8.33 I again invited attention to the fact that No. 3 account was overdrawn. Page 16 in P28. On 30th August 1933 I again wrote to Mr. K. and said we had paid a cheque for him and that his overdraft on No. 1 account was Rs. 100051/77 and that we asked him to bring it to within the limit of 1 lac, and that his maturing bills could not be debited to this account if by so doing the amount of 1 lac was exceeded. On 4.9.33 I again invited his attention that his No. 1 account was over 1 lac. On 22.9.33 Page 20 of P28 I asked Mr. K. for his balance sheet at an early date. Another letter was also sent on 22.9.33 and we invited attention to his promise to liquidate No. 2 account by the end of the month. On 23.9.33 Mr. K. replied. I produce the letter P58. He promised to ship the goods, the next week, and redeem his promise, and said that a number of goods on No. 3 account would be shipped before morning into the new premises. On October 1st. From January 1933 to 23.9.33 Mr. Kennedy had been putting us off with regard to the shipping of No. 2 account skins. I produce a statement showing bills which were maturing after September, *i.e.*, From 1st October 1933 P59.

*In the Police
Court of
Colombo.*

—
No. 3.
Evidence for
Prosecution.

—
(*vv*) Charles
Graham.
Examina-
tion—*con-
tinued.*

Mr. K's debit balances on 30th September 1933 :—

No. 1. account was overdrawn by	Rs. 99893/72
No. 2.....	19441/73
No. 3.....	9733/08

*In the Police
Court of
Colombo.*

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Evidence for
Prosecution.

(*vv*) Charles
Graham.
Examina-
tion—*con-
tinued.*

so that if Mr. K. was to keep to his promise to reduce his No. 1 account to $\frac{1}{2}$ lac, he had to find from October to December Rs. 49893/72. He had also to pay off his No. 2 account and he had to settle his No. 3 account. In addition to which he had to find money for his maturing bills amounting to Rs. 21492/77 that is if he could not get further extension. On 31.12.33 debit balance on No. 2 account was Rs. 19495/82. After the fire I applied for the Insurance policies. We had to recover the money due to us. I produce the policies, Commercial Union Policy No. 15412505. Sum insured —Rs. 125,000/-. In respect of reptile skins loose or unpacked in Times Basement P60. Date of the Policy is 17.7.33. I also produce Commercial Union Policy No. 15117330 dated 15.4.32. Sum insured Rs.175000/- for stock in trade with general goods but does not include skins. P61. I also produce Manchester Insurance Co. No. 92468449 dated 15.4.32 which includes stock in trade and skins. Amount Rs.250000/-. P62. I also produce Caledonian Insurance Company Policy P63 F. 588529 for Rs. 75000/- dated 15.8.29. The position was that we would repay ourselves from the amounts due from the Insurance companies. The Insurance Companies have not yet paid, and in the event of their not paying we shall lose heavily.

CROSS-EXAMINED.

Nil.

Policies handed back to Mr. Graham to be produced when required.

Sgd. E. H. R. TENISON,
P.M.

16.4.34.

(*This Witness was recalled see page 47*).

(*vv*) G. A.
Wemys.
Examina-
tion.

G. A. WEMYS. Sworn : 45 Sub-manager, Chartered Bank, Colombo.

Mr. Kennedy came to see me re opening an account sometime in August 1933. He wanted to open the account in order to finance his skin business. He said his bank was National Bank of India and as they had no branch in Java, he wanted to put the whole transaction through us. He said that his reptile account separate from his General Account which was at the National Bank. He did not tell me he had 2 separate skin accounts with National Bank. He wrote on 5th September 1933 after his final interview. I produce his letter P64. (Letter read at this stage). We opened an account that day. It was understood that he could draw up to Rs. 10000/- until we saw how the business was going. We asked for a balance but we did not receive one. On 30.9.33 the account was overdrawn. Rs. 9852/59. On 31st December 1933 the account was overdrawn. Rs. 14812/81. Page 26 in P41. Letter dated 6.9.33 read at this stage. P65. Page 42 P41, P66 read at this stage.

(This is said to correspond with P39 stock in basement. No. of skins 2388 form polished length pythons. 1603 unpolished, 1856 form polish rings; value according to rates entered in P39 Rs. 41337/71.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
P.M.

16.4.34.

*In the Police
Court of
Colombo.*

No. 3.
Evidence for
Prosecution.

(*ww*) G. A.
Wemys.
Examina-
tion—*con-
tinued.*

I. R. G. SMITH. Sworn : 26 Insurance Agent, Harrison & Crossfield. (xx) I. R. G. Smith. Examination.

10 We are agents for Manchester Insurance Company. On 15.4.32 Mr. K. took out Policy 9246849 with our Company for 250000/-. The Policy included general stock in trade and skins. On 14th November 1933 I received a claim signed by Kennedy & Company in connection with the fire at the building. Mrs. Kennedy signed the claim. She showed me her power of Attorney. The amount claimed on account skins was Rs. 14057/17. The claim was sent to Lee Hedges. In connection with the Commercial Union Policy we should take our share of the total with the C. Union who also had the other policy for skins. General assessment for other stock was Rs. 447306/40. That also we would share the other companies with

20 which there were policies for the General stock. The original claim has been sent to Calcutta. I cannot produce it today. Mr. K. spoke to me on the phone about this and asked when he could expect settlement.

CROSS-EXAMINED.

One Policy does not say one word about loss of profits.

Sgd. E. H. R. TENISON,
P.M.

16.4.34

Cross-exa-
mination.

J. M. S. CROSSMAN. Sworn : 28, Representative, Commercial Union Insurance Company. (yy) J. M. S. Crossman. Examination.

30 We had a general Insurance Policy with Mr. K. The Policy was taken in the name of C. U. Ins : Co. Ltd. Policy No. 15117330 for Rs. 175000/-. It was for general goods but did not include skins. Mr. K. came to me and asked to take out a separate policy in regard to skins on 17.7.33. He did not say he already had a policy with Manchester Insurance Co. covering skins. He said the skins were in the basement of the Times Building. I entered into a Policy with him. No. 15412505 on 17.7.33 for Rs. 125000/- This was for stock of reptile skins, loose or in packages whilst stored in basement of Times Building. I did not inspect the stock. On 14.11.33 I received claim signed by Kennedy & Co. under each policy. The Policy

40 on account skins was for Rs. 14057/17 and was signed by Mrs. Kennedy—Attorney of Mr. K. We should take our share of that with the Manchester

In the Police
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Colombo.

No. 3.

Evidence for
Prosecution.

Company. I produce the original claim P67. I received the other claim on same day for Rs. 175000/- on account general stock. This was the total of the Policy which we had, the actual total in full being Rs. 447306/40. Mr. Kennedy rang me up on the phone and asked when he could expect settlement. If Mr. K. himself set fire to the goods we should not be liable. I produce this claim under Policy 15117330. P68.

(yy) J. M. S.
Crossman.
Cross-exa-
mination.

CROSS-EXAMINED.

Neither of the Policies cover loss of profits. Some of the stock was sold back to Mr. K. for Rs. 11000/- on the understanding that this would be deducted from the amount eventually paid. The assessor has the 10 proceeds of the sale of certain other articles sold.

Sgd. E. H. R. TENISON,
P.M.

16.4.34.

(zz) P. S.
Chawdary.
Examina-
tion.

P. S. CHAWDARY. Affirmed : 33 Contractor, Kosgama.

I am employed in the Eastern River Tanneries. I have had dealings with Mr. K. for past 2 years, and have supplied him with reptile skins. I supplied 15598/84 worth of skins in 1933. I produce the statement P69. I keep files which will show the figures. 1st date is 27.7.33. I have sold skins prior to that date to Mr. K. but can't remember the amount. Before 20 that Mr. K. paid me cash for anything purchased. After 27.7.33 he took credit. That is why I started keeping these accounts. The total sales up to end of September amounted to Rs. 5846/29, and receipts Rs. 4750/-. About the time of the fire he owed about 1000/-. These skins were sold by me personally.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
P.M.

16.4.34.

30

(This Witness was recalled, see page 49).

(aaa) P.
Foemaker.
Examina-
tion.

P. FOEMAKER. Sworn : 46. Accountant. E. River Tanneries, Kosgama.

Mr. K. has had no interest financially in E. River Tanneries for past 2½ years, nor to my knowledge before this. During past 2½ years he has made no purchases from the Tanneries.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,

P.M.

16.4.34.

40

JOSEPH PERUMAL. Sworn : 36. Chief Correspondence Clerk, Times of Ceylon. *In the Police Court of Colombo.*

I produce letter dated 23rd August 1933 copy of letter sent by Accountant to Mr. Kennedy P70. (Read). I also produce his reply P71 dated 24th August 1933. (Read in open Court).

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CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,

P.M.

16.4.34.

10

Further enquiry 8.5.34.

Sgd. E. H. R. TENISON,

P.M.

16.4.34.

8.5.34.

Accused : A. Kennedy.

Present.

Mr. R. L. Pereira, K.C.

Van Geysel,

20 P. Cooke,

Wijesinghe,

} for accused.

8th May,
1934.

R. H. S. FERNANDO. Sworn 45. Clerk. Harrison and Crossfields, Moratuwa. *(ccc) R. H. S. Fernando. Examination.*

I produce P72 claim on the Manchester Assurance Co. and P73 copy of the Company's Policy 9246849.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,

P.M.

8.5.

30

LT. COL. NAPIER CLAVERING. Sworn : Flag Staff Street.

I am Officer Commanding Troops, Ceylon and R.E.'s Ceylon. I have experience in explosives. It is part of my work. On 5th October 1933 I examined Mr. K's shop and basement, before any of the debris had been removed. Since then I have examined the shop. I saw it yesterday. The damage which I saw could not be caused by an explosive. My reasons are :—When I saw it on 5th all the remnants of the boot racks in the basement were still standing. (Shewn P45.) If an explosive had been

(ddd) Lt.-Col. Napier Clavering. Examination.

*In the Police
Court of
Colombo.*

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Evidence for
Prosecution.

*(ddd) Lt.-
Col. Napier
Clavering
Examina-
tion—con-
tinued.*

used I should have expected to find a spreading shattering effect—i.e. an area where everything would have been flat; and further to that if the explosive had been placed on the floor I should have expected to find damage to the floor. In actual fact I found no damage. The effect of an explosive is local, shattering in all directions. If the explosive had not been placed on the floor I should have expected a spreading effect which would have razed the racks to the ground. In actual fact this did not occur. If this damage had been caused by an explosive I should not have expected to find the shoes etc. etc. blazing up *in two* of three seconds. The effect of a high explosive very rarely leads to fire. It is so local.

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CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENNISON,
P.M.

8.5.34.

*(eee) John
Ross.
Examina-
tion.*

JOHN ROSS. Sworn : 32 Engineer, Calcutta.

I am employed by Messrs. Longdale Clark & Co. I have 9 years' experience and 9 years' experience of assessing. I have assessed about 100 fires a year for past 9 years. I came and saw Mr. K's shop on 6th October 1933 and saw Mr. K. in Hospital on 9th October. He said I could obtain particulars of the accounts from Messrs. Duncan, Watkins, Ford & Company. On 6th October till 20 or 21 October I was engaged in checking the stock. I checked up the debris as far as possible. I found on checking the general stock and fittings that they corresponded fairly closely with the stock sheets as made up on December 31st 1932. In the stock sheets of December 31st 1932 about 200000/- was shown to be in the basement. I found portions of burnt reptile skins in the basement. I was not satisfied with the traces of debris (stock). I examined file P39 (shown stock in basement), and as far as I could see the stocks in basement fell short of what there should have been. I arranged to see Mr. K re this. I wished to point out that it was essential that we had full documentary proof of the existence of the stocks. I refer to the discrepancy in skins in the basement. I arranged to see him on 28th October 1933. I saw him in his new shop. I told him I was prepared to accept the stock figure of skins as shewn in the balance sheet as being in Colombo on 31.12.32 and that I would add to all the purchases of skins which could be verified up to date of the fire, and that I would deduct value of all skins despatched during the period, and stated that the result would total about 15000/- and that I could not assess loss on skins at any higher figure. I ascertained that the skins were obtained from S. A. Perera and Mr. Chandry. I examined their accounts and pass the details to Mr. Watkins. I told Mr. K. that he had an apparent stock of reptile skins to value of Rs. 127000/- approximately Mr. K. said the skins were in the basement. He told me that when trade was good he did

20

40

not wish to show profits too high as stocks of skins were bought with surplus profits and the transaction was not shown or accounted for in the balance sheets. He said the skins were formerly kept in his old bungalow and that later they were transferred to Monsoon Lodge, Colpetty. On returning from England he found that the skins were being affected by being so close to the sea and he had them transferred to basement of Times building. From my enquiries I have no knowledge of the skins being insured prior to their going to Times Building. Mr. K did not offer to produce any cart hire receipts to show he had been in possession of these skins. I told him that if he made a claim for skins of Rs. 127000/- the Insurance Companies would undoubtedly repudiate liability and as some of the policies were non-concurrent. (Shewn P73, repudiation of liability for the skins would also entail repudiation of General stock. This Policy covered $\frac{1}{2}$ the claim. He asked what he should do in the matter to which I replied that to avoid trouble he should accept my assessment figure and make his claim on that basis. His actual claim was 14000/- odd. He is foregoing 110,000/- on his claim. I have examined his accounts and balance sheets.

20 In 1929 his general stock turn over was Rs. 170931/56, skins Rs. 233558/26. Total Rs. 404489/82. Net profit was Rs. 46809/40.

In 1930 General Stock turn over was Rs. 130756/42. Skins Rs. 183703/79. Total Rs. 314460/21. Net profit Rs. 10411/91.

In 1931 General stock turn over was Rs. 120034/31. Skins Rs. 113076/31. Total Rs. 233110/62. On adjusted figures net loss Rs. 5006/01.

In 1932 General Stock turn over was Rs. 115054/69. Skins Rs. 51904/50. Total Rs. 166959/19. On adjusted figure net loss Rs. 28952/67.

30 1933. Up to date:—30.9.34. General stock turn over was:— Rs. 65492/23. Skins Rs. 50953/57. Total:—Rs. 116,445/80. Net loss:— Rs. 35639/08.

40 The figures show gradual reduction of turn over in General stock. Skins have decreased. Turn over was much more rapid. From examination of his accounts I estimate that to complete turn over the general stock a period of 3 to 4 years would have been required. Mr. K. in letter P66 says he could reduce stock by £.8000.0.0. From the figures I have just given, considering that the turn over in General Stock for the 3 years before the fire had not exceeded 130000/- in any one period of 12 months and in view of the fact that gross sales of General stock for the period of 9 months immediately before the fire was Rs. 65492/-. I consider it would have been impossible for Mr. K & Co. to have turned over stock to value of Rs. 108000/- in $2\frac{1}{2}$ months. In the year immediately before the fire overhead charges amounted to Rs. 96000/-. The ratio of gross profits on General stock has varied in recent years between 40 and 43%. On that basis a turnover of Rs. 240000/- a year would be required to clear the overhead charges before any net profit could be made. Our firm do between 200—250 assessments a year and I cannot recollect a single instance of a case of a fire in a business similar

In the Police Court of Colombo.

No. 3.
Evidence for Prosecution.

(see) John Ross.
Examination—continued.

*In the Police
Court of
Colombo.*

No. 3.

Evidence for
Prosecution.

(eee) John
Ross.

Cross-exa-
mination.

*sic.

to this in which Insurance against loss of profits had been affected. In recent years Insurance against loss of profits has become fairly.* General in Mills and factories where an outfit has to be Guaranteed against for wards sales, or where a crop would have to be removed to a distance and manufactured at increased cost. I went with Inspector Koelmeyer to Mr. K's bungalow on 25th October. He took charge of about 15 files. P32. I remember.

CROSS-EXAMINED.

The actual claim for skins was for Rs. 14000/-, when I discussed the matter with Mr. K. one or two shipments still had to be verified. The figure quoted to Mr. K (17000/-) was an approximate one. When all ship- 10
ments had been finally checked the stock figure was 14000/- odd. This was supported by certificate from the Chartered accountants. I gave them figure. I went through all the books myself. The accountants had not to my knowledge arrived at this figure. They may have done. Overhead charges in 1929 were Rs. 86639/68. Rent in 1929 was Rs. 14235. Rent in 1932 Rs. 15190/-.

Sgd. E. H. R. TENISON,
P.M.

8.5.34. 20

(fff) G. P.
Edge.
Examina-
tion.

G. P. EDGE. Sworn. 55 of E. B. Creasy & Co.

I issued policy No. 588529 on 18.9.29 (Caledonian Insurance) to Mr. K. I produce a certified copy P74. On 13.11.33 I received claim from Mr. K. for Rs. 459295/90, P75. I produce it. That was on account damage caused in this fire. The position of our company was that we could take a portion of the claim with the other company's involved. If Mr. K. himself caused the fire we should not be liable to pay. Mr. K. communicated with me re the claim.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
P.M.

8.5.34.

30

(ggg) Arthur
Marcellin
de Silva.
Examina-
tion.

ARTHUR MARCELLIN DE SILVA. Sworn. 54 Senior Surgeon,
General Hospital.

On 30.9.34 I examined Mr. Kennedy at General Hospital. I have been treating him since, up to the institution of this case. He had burns on his face, lower part of the face were of 1.2.3 degree, upper part 1 and 2 degree. Back of head was slightly red. His hands were burnt as high up as the wrist, distribution of burns being glove shaped. In front of and on 40
back of the hands and side of the fingers. Burns of 1.2.3 degree. On back of right forearm there was a linear burn from the back of the hand up to the forearm. 2 or 3 inches up. $\frac{1}{2}$ " wide at commencement tapering upwards. Burns of 1 and 2 degree. Burns of 1.2.3 degree. Right ankle joints had 2 burns, one burn over inner ankle bone, the other over external

- ankle bone. Left ankle had one burn over inner bone. Triangular in shape, 1.2.3 degree Lower portion of face burnt more than upper portion. Probably flame came upwards. No blister on back of head. Burns on hands were unusual. Unusual stopping at wrist and between fingers. If Mr. K had been wearing coat one would expect the end of sleeve to be burnt. Shewn P6. Sleeves are short. Not likely to be burnt. Burns of feet are unusual. The flame must have been rapid and intense. For the burns to be on face, hands and feet, he would have to have come in contact with flames at 3 levels if he was in erect posture. This depends on his posture.
- 10 If he was lying down flames would have to be more than 3 different places. If lying on his back his face would not have been burnt. He was probably crouching. Burns on face indicate that flame came suddenly and he had no time to withdraw. There are various possibilities in which the burns could have been caused. Either heated or inflammable materials—solid or liquid or gaseous. The burns on the hand could possibly be caused by solids, but more probably liquids. The hand is completely burnt including burn between the finger, and the stoppage of burn at the wrist, and the drip character on the back of the right forearm. Burns on ankles might be due to splashes of inflammable liquid. I consider he was crouching low.
- 20 From indications it would appear that flames came from below upwards. Sudden and rapid flame which he could not avoid. If his hands were down the flame I think might have burnt the sleeve. I have seen the spiral stairs. If Mr. K. had been in the basement at the time of the explosion I think he could have come up the stairs.

*In the Police
Court of
Colombo.*

No. 3.
Evidence for
Prosecution.

(ggg) Arthur
Marcellin
de Silva.
Examina-
tion—con-
tinued.

CROSS-EXAMINED.

Cross-exa-
mination.

- I do not know the nature of the fire. He could not have fallen down into the basement. I should have expected other injuries, if so. I think he had a coat on. Sleeves of his shirt were short. The burn was tapering on his right wrist. The injury is more likely to be caused by some inflammable liquid running down the arm. I suggest his hand was covered with some inflammable liquid. I do not know what liquid was used. Petrol smarts if on the hand. I do not think a tongue of flame went up his arm and burnt him. It is possible if he was lying down and his arm over a crack in the floor that his arm got burnt. But I would expect more extensive burns. It depends how long he was in contact with the fire. His socks were burnt. If he was crouching and his sleeves had been drawn up slightly, it is not necessary for the sleeves to be burnt. If the sleeves were down I think they would have been burnt. I do not suggest the trousers were tucked up. There might have been a drip on the sock. When
- 40 crouching the face, hands and ankles are in closer proximity than if he was standing up.

To Court : I do not suggest his face had any petrol on it.

Sgd. E. H. R. TENISON,
P.M.

8.5.34.

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Court of
Colombo.

No. 3.
Evidence for
Prosecution.

(hh) R. N.
Watkins.
Examina-
tion.

*See p. 50,
l. 16.

R. N. WATKINS. Sworn. Colombo.

I am a partner in Duncan Watkins Ford & Co. We have been making up Mr. K's accounts for some years. We have not audited the books. We make up the annual balance sheet. I produce copies of the balance sheet for 1929, P76, 1930, P77, 1931, P78, 1932, P79 and 1.1.33 to 30.9.33 P80. Copies were given to Mr. K. This file P39 was handed to me by Mrs. Kennedy. I can't recollect the date. It was in connection with the accounts. It purported to be a statement of stock of skins from July 1933 onwards. It also contained a list of skins despatched. I produce the file P39. Total value of skins shown—Rs. 146059/47. Value of skins despatched—Rs.* 21507/57. This is amount shown in his file. Certain items marked T.C. Total Rs. 98455/03. I could not obtain documentary proof of these items. In addition to that there was an amount of 12000/- odd. I could obtain no documentary proof of that. In 1932 only No. 2 account skins appeared in his balance sheet. In 1933 No. 2 and No. 3 the amounts outstanding appeared in the balance sheet. The Items 98455/03 out of the 110000/- odd definitely depositing did not appear in the 1932 balance sheet. I can't say whether the remainder of the 110000/- odd appeared or not we accepted Mr. K's figure of stock. I prepared the claims on the insurance companies. I prepared P67. Skin account. Total amount claimed Rs. 14057/17. We took Mr. K's statement of his balance of stock on 31.12.32 as correct. Mr. K. gave us the figure of his stock of skins. He submits stock sheets. We do not go to the shop and check the stocks. We merely satisfy ourselves as to the arithmetical accuracy of figures. We did not check the stock of skins. We checked arithmetical accuracy of the figures. In preparing the claim we took the stock of skins held on 31.12.32 (Balance sheet) and added them to purchases obtained from S. A. Perera and Chandry. Deducted from that skins despatched at cost price in the 1932 balance sheet P 79 the overdraft on No. 2 account N.B. India—Rs. 60118/95. On asset side balance sheet skins in Colombo :— Rs. 12142/21 and skins in U.K. and afloat—Rs. 40839/78. Total :—52979/99. Skin asset fell short of overdraft on bank by 7000/00 odd. In the same balance sheet on page 2 I made note of the further very considerable reduction in turn over in skins. (Shown P80) In addition to Mr. K's overdraft in the bank he owed an account. Loans and deposits Rs. 97846/55, in addition to which he owed interest Rs. 9600/33 on these loans. In addition to that he had local trade creditors and Sundry accounts outstanding to the value of Rs. 21742/62.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
P.M.

8.5.34.

I. MANUEL. Sworn. 59. Gatekeeper Shell Company.

On 23.8.33 I gave (P15) shown to the Lorry Driver D. R. Perera I keep a weigh bill of movements of lorries and I produce weigh bill P81 showing that D. R. Perera's lorry C. 7840 left the installation at 9.50 a.m. on 23.8.33 and returned at 11.10 a.m. having taken with him 2 empty new cans. On the next day I prepared P16. It is in my handwriting and handed it to the office. It gives the same details.

*In the Police
Court of
Colombo.*

No. 3.
Evidence for
Prosecution.

(iii) I.
Manuel.
Examina-
tion.

CROSS-EXAMINED.

Nil.

10

Sgd. E. H. R. TENISON,
P.M.

8.5.34.

C. D. ARNOLD. Sworn : 32 Electrician, Wattala.

I was in charge of the sub station, Fort on 29.9.33. This is close to Times building. At 11.7 p.m. No. 3 Machine circuit braker tripped off for a short in Times Building, which was on fire. That meant that the No. 3 circuit braker disconnected. We at once started another machine for that Fort area. I made an entry at the time. I produce it. P34. I identify my writing.

(jjj) C. D.
Arnold.
Examina-
tion.

CROSS-EXAMINED.

Nil.

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E. H. R. TENISON,
P.M.

8.5.34.

E. L. RODRIGO. Sworn : Clerk Lee Hedges, Kotehena.

I produce certified copy of Commercial Union Insurance Policy No. 15117330. P82 and a certified copy of C.U. Insurance Policy No. 15412505. P83.

(kkk) E. L.
Rodrigo.
Examina-
tion.

CROSS-EXAMINED.

Nil.

30

Sgd. E. H. R. TENISON,
P.M.

8.5.34.

689P. SGT. HAJUDEEN. Affirmed. Slave Island Police.

On 30/9/33 I was attached to Colpetty Police Station. On that date I sealed the safe in Mr. K's bungalow, Mansion Lodge.

(lll) Sgt.
Hajudeen.
Examina-
tion.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
P.M.

40

8.5.34.

*In the Police
Court of
Colombo.*

No. 3.
Evidence for
Prosecution.

(*mmm*) E. A.
Koelmeyer.
Examina-
tion.

E. A. KOELMEYER. Sworn. Inspector of Police, C.I.D.

On 6.10.33 I went to Mr. K's bungalow and in Mr. Ferguson's presence I looked at certain files which were replaced in the safe. The seals of the safe were intact on arrival and I re-sealed the safe. Mrs. K. was present. On 25.10.33 I again went to Mr. K's bungalow with Mr. Ross. Found seal intact. Examined the files in presence of Mrs. K. Took charge of certain files and gave her a receipt for them. I produce files, P20, P28, P32 and P41.

CROSS-EXAMINED.

Nil.

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E. H. R. TENISON,
P.M.

8.5.34.

(*nnn*) G. H.
Ferguson.
Examina-
tion.

G. H. FERGUSON. Sworn. Deputy Inspector General of Police.

On 30.9.33 about 7.30 a.m. I visited the scene of the fire, and took charge of the suit case. P.9. 2 petrol tins, P10, P11, and some jute hessian P12 which was visible inside the suit case. I did not open the suit case. I also took charge of Mobiloil A Tin, P14. These productions were handed to me by Mr. Muller, Superintendent Police, who is now on leave. I handed them over to Mr. J. V. Collins, D.G. Analyst. On 3.10.33 I took charge of the switch board P27 from Mr. Merry, A.S.P. I remained in my custody until the institution of this case. On 17.10.33 the switchboard was examined in my presence by Mr. Wilson and Mr. Misso.

CROSS-EXAMINED.

Nil.

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E. H. R. TENISON,
P.M.

8.5.34.

Prosecution closed.
To A.G. returnable 30.5.34.

Sd. E. H. R. TENISON,
P.M.

30

8.5.34.

20th June,
1934.

20.6.34.
Accused : A. Kennedy. Present.
Further enquiry 29.6.

Sd. E. H. R. TENISON,
P.M.

20.6.34.

3rd July,
1934.

3.7.34.
Accused : A. Kennedy. Present.
Mr. R. L. Pereira, K.C. }
Van Gaysel, } for accused.
Wijeyesinghe }
P. Cooke }

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Miss L. B. BAMPTON. Sworn.

On 30th September 1933 I took charge of Day Duty Merchants Ward 7 a.m. *i.e.* the day after Mr. K. was brought to hospital. I handed Mr. K's cloth to Mr. Bantock. I haven't memorized them. There was one pair of shoes.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON.

P.M.

*In the Police
Court of
Colombo.*

—
No. 3.
Evidence for
Prosecution.

(ooo) Miss
L. B.
Bampton.
Examina-
tion.

10

3.7.34.

C. E. GRAHAM. Sworn. Recalled.

I produce copy of all correspondence between myself and Mr. Kennedy P84. I also produce Mr. K's original replies P85. I wrote to Mr. K. on 1.2.33 P20 (1). I also wrote to him on 1.3.33 P20 (2). I also wrote on 31.3.33 P20 (3) and on 5.4.33 P20 (4) Mr. K. wrote to me on 10.4.33. P85 (1). I wrote to him on 10.4.33 P20 (5). He wrote to me on 11.4.33 P85 (2). I wrote to him on 11.4.33 P20 (60). I wrote to him on 18.4.33 P20 (7). He wrote to me on 18.4.33 P85 (3). I produce copy of letter I wrote to Mr. K. on 25.4.33 P84 (1) Mr. K wrote to me on 26.4.33 P85 (4). I wrote Mr. K. on 28.4.33 P20 (8) and on 1.5.33 P20 (9). I produce copy of a letter sent to Mr. K. dated 15.5.33 P84 (2). Mr. K. wrote to me on 16.5.33 P85 (5). I produce copy of a letter dated 18.5.33 which I wrote Mr. K. P84 (3). Mr. K. wrote to me on 19.5.33 (P85) (6). I produce copy of letter dated 20.5.33 which I sent Mr. K. P84 (4). I wrote Mr. K. 22.5.33 P20 (10). On 1.6.33 P20 (11) and on 8th June P20 (12) and on 30.6.33 P20 (13) and on 5th July P20 (14) Mr. K. wrote to me 7.7.33 P85 (7). I wrote him on 11.7.33 P20 (15) and on 15.7.33 P20 (16). I produce copy of letter I wrote Mr. K. 22.7.33 P84 (5). Mr. K. wrote me 29.7.33 P85 (8). I produce copy of letter dated 1.8.33. I sent Mr. K. P84 (6). Mr. K. wrote me 2.8.33 P85 (9). I produce copy of letter dated 9.8.33 which I wrote Mr. K. P84 (7). I also produce copy of letter dated 15.8.33 which I sent Mr. K. P84 (8). Mr. K. wrote me 16.8.33 P85 (10). I wrote Mr. K. on 18/8/33 P41 (1). Mr. K. wrote me 19.8.33 P56. I wrote him on 21.8.33 P41 (2) and on 21.8.33 P41 (3) Mr. K. wrote me 23.8.33 P85 (11). I wrote him on 24.8.33 P28 (1) and on 30.8.33 P28 (2) and on 1.9.33 P 41 (4). Mr. K. wrote to me on 1.8.33 P 85 (12). I wrote him on 1.9.33 P28 (3). I produce copy of letter date 1.9.33 I sent Mr. K. P84 (9) and another letter dated 4.9.33 P84 (10). Mr. K. wrote to me on 13.9.33 (P85) (13). I wrote him on 22.9.33 P28 (4) and on 22.9.33 P28 (5).
40 Mr. K. wrote to me on 23.9.33 P58. I wrote him on 23.9.33 P28 (6) and again on 23.9.33 P28 (7). Mr. K. wrote on 23.9.33 P85 (14).

(ppp) C. E.
Graham
(re-called).
Examina-
tion.

CROSS-EXAMINED.

Mr. K. wrote through his Proctors for the Policies. I said I would hand them over if the court so ordered. (Mr. R. L. Pereira asks at this stage

Cross-exa-
mination.

No. 3.
Evidence for
Prosecution.

(ppp) C. E.
Graham
(re-called).
Cross-exa-
mination—
continued.

for the originals.) The Police have no objections. Mr. Graham can hand them over to Mr. R. L. Pereira, K.C., obtaining receipt for his own purposes. and on Mr. R. L. Pereira undertaking that they should be produced when required by the prosecution. Mr. R. L. Pereira to hand them back to Mr. Graham.

Sgd. E. H. R. TENISON,
P.M.
3.7.34.

(qqq) D. C.
Lornie
(re-called).
Examina-
tion.

D. C. LORNIE. Sworn. Recalled.

I produced a piece of 3" gas pipe which was removed from basement of 10 Mr. K's shop P87 and a piece of 2" inch pipe P88.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
P.M.
3.7.34.

(rrr) Zain
Mahath
(re-called).
Examina-
tion.

ZAIN MAHATH. Affirmed : Recalled.

I produce the hurricane lamp which I used on the night of the fire, when I went round the Times building.

CROSS-EXAMINED.

20

Nil.

Sgd. E. H. R. TENISON,
P.M.
3.7.34.

(sss) H. R.
Ogle (re-
called).
Examina-
tion.

H. R. OGLE. Sworn. Recalled.

I showed Mr. Lloyd round Mr. K's outhouses and bungalow on the day after the fire. There were a number unopened (4 or 5) packing cases there. I later saw the contents. Mostly they contained travelling trunks, showcases, suit cases, ward robe cases. There were no skins to my knowledge.

CROSS-EXAMINED.

30

Nil.

Sgd. E. H. R. TENISON,
P.M.
3.7.34.

W. S. PEIRIS. Sworn. Recalled. Previous Evidence read.

*In the Police
Court of
Colombo.*

I produce the original order which I delivered to Pelis Appu on 4.10.33 P52 (a). It is in my handwriting I also produce my book of counterfoils for orders for petrol tins P89. I also produce an abstract taken from this booklet P89A showing cash sales of serviceable petrol tins made through the Shell Head Office from 6.1.27 to 27.2.34. This shows that during the period of 6 years up to the 4th October 1933 the only direct cash sales of petrol tins to private individuals apart from 4 clerks in the office were 3 petrol tins. This application of Mr. Pelis Appu's was an unusual one.

No. 3.
Evidence for
Prosecution.

(ttt) W. S.
Peiris
(re-called).
Examina-
tion.

10

CROSS-EXAMINED.

I do not know who Pelis Appu is.

Sgd. E. H. R. TENISON,
P.M.

3.7.34.

P. S. CHAWDARY. Affirmed. Recalled.

I produce my original file on which I prepared statement (P69). The file is P69A. There are only accounts which I kept with Mr. Kennedy.

(uuu) P. S.
Chawdary
(recalled).
Examina-
tion.

CROSS-EXAMINED.

Nil.

20

Sgd. E. H. R. TENISON,
P.M.

3.7.34.

K. JAMES PERERA. Affirmed. 39. Attendant, General Hospital.

(vvv) K.
James
Perera.
Examina-
tion.

I was on duty in Merchants Ward General Hospital the night Mr. K was brought. I removed his clothes from him. (Shown P2) It was a coat like this. (Shown P3) They were white trousers like this. (Shown P4) It was a collar. (Shown P5) I saw only one handkerchief. (2 shown) (Shown P6) It was a shirt like this. (Shown P7) The socks were this colour. (Shown P8) These are the shoes.

30 I folded them and kept them near the bathroom. They had blood-stains. I kept the shoes in the room itself. I handed over the clothes to A. James Perera.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON,
P.M.

3.7.34.

*In the Police
Court of
Colombo.*

No. 3.
Evidence for
Prosecution.

(www) A.
Musafer.
Examina-
tion.

A. MUSAFER. Affirmed. S. I. Police, Maradana.

On the day after the fire I took charge of the duty at Times of Ceylon Building, from Inspector Prins, at 7 a.m. He handed over 2 petrol tins which were in a suit case. I can identify them. (Shown P9 and P10 and P11). P9 is the suit case. P12 is the jute hessian. There was also a Mobil Oil tin like P14 (shown). I remained in charge of the production till Mr. Ferguson took delivery of them.

CROSS-EXAMINED.

Nil.

Sgd. E. H. R. TENISON, 10
P.M.
3.7.34.

No. 4.

No. 4.
Notes by
Police
Magistrate
at con-
clusion of
evidence for
Prosecution,
3rd July,
1934.

*See p. 44,
l. 11.

Notes by Police Magistrate at Conclusion of Evidence for Prosecution.

At this stage Prosecution brings to my notice that a clerical error has occurred *on page 175, Line 6 of the record, that the figure Rs. 121507/57 read 21507/57.

Defence have no objection to allowing this alteration without recalling Mr. R. N. Watkins.

Sgd. E. H. R. TENISON, 20
P.M.
3.7.34.

To A. G. returnable 12.7.34.

Sgd. E. H. R. TENISON.
3.7.34.

IN THE POLICE COURT OF COLOMBO.

On the 12th day of July, 1934.

Accused present :—

On bail.

Alexander Kennedy.

30

On instructions received from the Attorney General the accused is committed for trial to the Supreme Court at its next sessions.

The indictment, as settled and approved by the Attorney General, is read and explained to the accused, and a copy thereof is served on the accused.

The accused elects a English-speaking Jury.

The accused wishes the following witnesses to be summoned :—

Proctor will file list.

Sgd. E. H. R. TENNISON.
P. M.

40

12th July,
1934.

12.7.34.

Accused : Alexander Kennedy.

He is informed that the Crown will move the Supreme Court to add this case to the current sessions and that the trial is provisionally fixed for 3.9.34.

The hurricane lamp referred to by Zain Mahath at page 192 of the evidence is marked P86.

He is committed for trial to the Supreme Court at its next sessions after recharging him from the indictment, recording his further statement and tendering the prosecution witnesses for re-cross-examination.

Sgd. E. H. R. TENISON,
12.7.34.

*In the Police
Court of
Colombo.*

No. 4.
Notes by
Police
Magistrate
at con-
clusion of
evidence for
Prosecution,
12th July,
1934—con-
tinued.

Call 14.7.34.

Sgd. E. H. R. TENISON,
12.7.

14.7.34.

Accused :—Alexander Kennedy.
Forward case to S.C.

Sgd. E. H. R. TENISON,
P.M.

14th July,
1934.

20

No. 5.

Statement of Accused.

10713.

Non-Summary Form No. 1.

No. 5.
Statement
of accused,
12th July,
1934.

Name of Accused : Alexander Kennedy.

The particulars of the offence charge are explained to the accused as follows :—

From the indictment.

The accused is addressed as follows :—

30 “ I am prepared to hear any statement which you wish to make. Anything you say will be written down and will be read at your trial. You may give the names of any persons whom you wish to be summoned to give evidence and state what each can prove.”

The accused states :—

“ I have no further statement to make. My proctors will file a list of witnesses.”

Sgd. A. KENNEDY.

I hereby certify that the above record was taken in my presence and
40 contains accurately the whole of the statement of the accused.

Sgd. E. H. R. TENISON,
Police Magistrate.

Date : 12th July, 1934.

*In the
Supreme
Court of
Ceylon.*

No. 6.
Indictment,
11th July,
1934.

POLICE COURT, COLOMBO.
No. 10713.

No. 6.

Indictment.

INDICTMENT.

(CRIMINAL JURISDICTION).

In the Supreme Court
of the Island of Ceylon.

Western ... Circuit.
District of Colombo.

Session,
1934.

} At a Session of the said Supreme Court in its
Criminal Jurisdiction for the Western Circuit 10
to be holden at Colombo in the year of
our Lord One thousand Nine hundred and
thirty-four.

THE KING

versus

ALEXANDER KENNEDY.

You are indicted at the instance of the Honourable Sir Edward St. John Jackson, K.C., His Majesty's Attorney-General, and the charges against you are :—

(1) That on or about the 29th September, 1933, you did, at Colombo, 20
commit mischief by fire knowing it to be likely that you will 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 you have thereby committed an offence punishable under
section 419 of the Ceylon Penal Code.

(2) That at the time and place aforesaid you 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
you have thereby committed an offence punishable under section 418 of
the Ceylon Penal Code. 30

The 11th day of July, 1934.

Sgd. R.St. P. DERANIYAGALA,
Crown Counsel.

List of Witnesses and Annexures not printed.

COLOMBO, 3rd September, 1934.

To this Indictment the prisoner Alexander Kennedy pleads not guilty.

Sgd. E. W. GUNARATNA,
Dy. Registrar, S.C.

COLOMBO the twentieth day of October One thousand Nine hundred and thirty-four.

The unanimous Verdict of the Jurors sworn to try the matter of accusation in this case is that Alexander Kennedy is guilty on both counts of the Indictment.

Sgd. W. W. TAYLOR,
Foreman.

Sgd. W. J. PERERA,
Deputy Registrar, S.C.

*In the
Supreme
Court of
Ceylon.*

No. 6.
Indictment,
11th July,
1934—con-
tinued.

10 COLOMBO the twentieth day of October One thousand Nine hundred and thirty-four.

On this Indictment the sentence of the Court, pronounced and published this day, is that the prisoner be imprisoned and kept to rigorous imprisonment for a term of Six years on each count, the sentences to run concurrently, that is to say Six years in all.

Sgd. W. J. PERERA,
Deputy Registrar, Supreme Court.

No. 7.
Judge's Notes.

No. 7.
Judge's
Notes, 3rd
September,
1934.

20 S.C. No. 83.

D.C. Colombo No. 10713.

REX
vs.

ALEXANDER KENNEDY.

Date of trial : 3rd September, 1934.

Charges : (1) Committing mischief by fire—419 C.P.C. (2) Committing mischief by fire intending thereby to cause damage to property—418 C.P.C.

Plea : Not guilty.

J. E. M. Obeysekera with Deraniyagala, C.C. for the prosecution.

30 Mr. R. L. Pereira, K.C., with Van Geyzel for the defence.

Special Jury empanelled—all sworn.

At this stage Mr. Pereira requests Crown Counsel not to refer in his opening address, to Dr. A. M. de Silva's opinions with regard to fires, as he is not competent to give that evidence.

Crown Counsel replies that he will not open that part of the evidence.
Crown Counsel opens case.

After Lunch.

Opening continued.

Adjourned.

*In the
Supreme
Court of
Ceylon.*

No. 8.

Evidence for Prosecution.

4th September, 1934.—Accused present. Same Counsel as before.
Crown Counsel calls :—

No. 8.
Evidence for
Prosecution.

MISS E. CATTO. Sworn. Night-sister, General Hospital.

EXAMINED.

(a) Miss E.
Catto.
Examina-
tion.

I am nursing sister attached to the General Hospital. On the night of the 29th September last year I was on night duty for the whole paying section of the General Hospital. That would include the Merchant's Ward. Mr. Kennedy was admitted to the Merchant's Ward as far as I can remember about 11 p.m. I cannot say as to what the exact time was. (To COURT : It was round about 11.) He was accompanied by his wife and Mr. Owen. At the time of his admission he was in a shock condition. (To COURT : He was not unconscious. He was just suffering from shock and was in a very low condition. I spoke to him and he answered.) I do not remember whether he was bleeding. I would not say he was bleeding. He was not bleeding. Yes, he was suffering from burns; burns of both hands, face, and he had a small patch on his ankle. I can't remember which ankle or whether it was both ankles. I did not pay much attention to his clothes. I spoke to him, and asked him what had happened. He said he went back to put off the electric light. It fused and there was a flash and he knew no more. He merely said he went back to switch off the lights. I dressed his wounds. I caught the skin and dressed his wounds, and the Doctor gave an anaesthetic. The Doctor is a House officer, Dr. Ramanathan. I did not question Kennedy in detail. 10

Cross-exa-
mination.

CROSS-EXAMINED.

I could not say whether he was in Hospital for something like 37 days. I do not know that he was discharged on the 6th of November because that was my last night on duty, and I never saw Kennedy after that hour. That was the one and only night I ever saw Mr. Kennedy. 30

To COURT : I did not give my mind to find out how it occurred. I had other night patients to look after. It was not a thing to worry about.

(b) Lt.-Col.
Napier
Clavering.
Examina-
tion.

LT.-COL. NAPIER CLAVERING. Sworn.

EXAMINED.

I am not now the Officer Commanding the Troops in Ceylon. I am the Commander of the Royal Engineers. I got 26 years service with the regular army. That has not been confined to service with the Royal Engineers mainly. With the Royal Engineers I have served over 20 years. I have served in the war right throughout, and have held a commission. I have a great deal of experience of the action of high explosives. In fact that is part of my work as a Royal Engineer's Officer. I remember the fire at the "Times" building. Some few days after the fire, on the 5th October I examined the shop and basement. When I examined the 40

shop the debris had not been removed. It looked like the condition after the fire. (Shown P45.) That is a photograph of the basement as it was after the explosion. I do not think having regard to what I found at my inspection that the explosion could have been the result of a high explosive, not even dynamite. Actually explosive substances would not have caused the explosion; dynamite and blasting powder and so forth could not have caused that explosion. If a high explosive had been used I should have expected to find some space in the room where everything is flat. The action of a high explosive is very local. I would expect everything or
 10 some things to be flattened. (To COURT: In the middle of the room were the remains of the uprights or wooden racks and those were still there; a great number of them in an upright position. It looked to me as if they were racks.) (Shown photograph.) (Witness points to the uprights.) That is why I used the word remains of the rack. What I mean is the remaining uprights. I cannot say whether those were the things that were fixed to the ground. They would have been thrown down. When I say that they would have been flattened down I mean that they would have been thrown down. The remains were wood. I could not say those (racks) were fixed to the ground, there was a lot of debris round the base.
 20 But when I visited the place later on after it had been cleared there were no marks to show that the uprights had been fixed to the ground. The effect of a high explosive is equal in all directions. It is an outward sudden charge. I did not see that result there—no signs of it at all. (To COURT: When I speak of a high explosive it really makes very little difference whether it is closed or not. If you fill the chamber like that with an explosive gas and explode it you will get a certain effect; you will get the same effect by exploding a high explosive but it would be a different process rather. But if you have the whole of the chamber filled with an explosive gas then you will not get the local shattering effect. With a high ex-
 30 plosive you get the local effect and then the great pressure round which would damage the wall but given an explosive gas you get no local effect at all. The whole thing is one of even distribution as it were. Such a thing would have no effect on uprights. The pressure is all round. If a high explosive had been used and it had been placed on the ground I should have found a crater—a definite fracture on the floor. No, the surface of the floor broken away crumbled over an area roughly corresponding to the size of the charge. With high explosive the thing is so sudden that it damages the hard substance immediately. I did not find any such crater in the floor of the basement. I examined the basement after it had been
 40 cleared very carefully and I found no signs of any such crater. If a high explosive had been used and it had been placed not on the floor but on a rack or table or anything like that there would undoubtedly have been an area in the room where everything was completely shattered away. There would have been a void in the middle. If a high explosive had been used and placed not on the ground but on a table or rack in the room I would have expected to find a void as it were—everything cleared about the area of the place where it had been deposited. I did not find any such

*In the
Supreme
Court of
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No. 8.
Evidence for
Prosecution.

(b) Lt.-Col.
Napier
Clavering.
Examina-
tion—con-
tinued.

*In the
Supreme
Court of
Ceylon.*

No. 8.
Evidence for
Prosecution.

(b) Lt.-Col.
Napier
Clavering.
Examina-
tion—con-
tinued.

evidence, none at all. As to whether if a high explosive is used a fire results soon depends upon where the explosion takes place. The normal result of a high explosive is not to catch fire. If there was only a high explosion and there was no inflammable substance the fire would not be produced in a short time; certainly not in a couple of minutes. Otherwise it would be slow. Whether there would not have been any fire at all depends on what way and time the fire was ignited, and what was next to the high explosive. If there were goods that is stocks of shoes and also certain parcels of cured skins and a high explosive had ignited and come in contact with stuff of that sort I think it very unlikely for a fire to start at all. It would start very slowly. 10

Q. The evidence is, in this case, that within a few minutes the fire was simply blazing up and going up that lift well. Would you expect that to happen if a high explosive had been used?—A. No.

To COURT: There are some explosions which would not cause a flame. Explosives such as gunpowder would produce flame, but not high explosives. Gunpowder is a low explosive, especially black powder. It is a slow burning explosive which would produce a flame. The explosion of petrol vapour would produce a flame. No, the effect of a high explosive is so extremely sudden there is no time for a flame. It is instantaneous. 20

Cross-exa-
mination.

CROSS-EXAMINED.

I was speaking with reference to the basement not of the ground floor, when I said I found some racks standing. There were the uprights, the charred remains of the uprights in the basement. (Shown Photograph P44.) These black lines here those were charred remains of the racks, just standing up to a height of 7 or 8 feet, some of them right in the middle of the floor. That is not the debris from above that came down. (Photograph P.42 is shown to witness.) That is the ground floor. I think these pieces of timber shown here 2, 3, 4, about 6 of them represent what remains of the racks. In the Police Court I said if any explosive had been used I would have expected a shattering effect,—a spreading and shattering effect. That would include explosives such as Nitroglycerine, gun cotton and blasting powder. They are all high explosives (To COURT: Blasting powder is not always a high explosive. It is something of a preparation of black powder. Even that has a shattering effect. I visited the scene three times. Twice immediately after the fire and once later on. The greatest effect of the fire was up the lift well. I am not aware that the lift well acted as a sort of flue and carried the fire up to the 2nd, 3rd and 4th floors of the building. I did not see that damage caused by the fire spreading from the lift well, to the 4th, 3rd and 2nd floors. I do not know whether there was no access from the basement to the lift well. I remember seeing a certain amount of debris. I was not concerned with it. 30 40

Re-exa-
mination.

RE-EXAMINED.

Given that an explosion had occurred in the basement as a result of the explosion of petrol the natural tendency would be for the flame to find an

exit. This basement was before the fire, as I know, a closed chamber and the only exit being the spiral staircase and the chute normally the fire would seek to escape through them and once that wall S. had given way the fire would naturally spread along the lift well the area acting as a flue. (TO COURT: The fire acts as a chimney.)

TO JURY. No, I looked carefully but could find no place where I thought the explosion was likely to have occurred, or originated. It was evenly spread all over the basement as far as I could see. (TO COURT: There was no centre, so to say, from which it radiated.

*In the
Supreme
Court of
Ceylon.*

No. 8.
Evidence for
Prosecution.

(b) Lt.-Col.
Napier
Clavering.
Re-exa-
mination—
continued

10 C. E. GRAHAM. Sworn. Manager, National Bank of India Limited, Colombo.

(c) C. E.
Graham
Examina-
tion.

EXAMINED.

I have held the position of Manager of the National Bank of India 2½ years. Before that I was attached to the Colombo Branch of the Bank from 1912 to 1919 in a junior capacity and 2½ years ago I returned to Ceylon as Manager. I know Mr. Kennedy; have known him since I came here in April 1932. My relations with him were purely business relations. Mr. Kennedy banked with the National Bank and to start with he had what has been described as No. 1 account. That account he had, I think, for
20 the purpose of his general business in shoes and men's outfitting, and my bank financed that part of his business. Generally speaking when I say I financed his business I mean that I gave him overdrafts against security of his stocks. I took documents of lien. (TO COURT: That was a lien over his stock.) I should think there was a promissory note but I cannot speak definitely about it. That was in the ordinary course a document which would be more readily used. That would be in the position of collateral security. Somewhere in June 1931 he opened what has been described as No. 2 account. The purpose of that account was to finance his business in skins. On that account again I gave him overdrafts against the security
30 of skins that had been sent to London for realisation on consignment. In exporting those skins Kennedy did not draw on the Bank. He exported it on his own account there and they were awaiting disposal there. I allowed him an overdraft the understanding being that when the stock in London was realised the overdraft would be met. The money came back by telegram. His friends in London paid the money as it was realised by telegram to us. The buyers in England paid the money by telegram to our Bank. (TO COURT: I got many payments by telegram. We did not have a tally on what he sent. He gave us a rough invoice of what he sent. We credited them to his No. 2 account). On 1st January 1933 his No. 1 account was
40 overdrawn by Rs. 83,972.83. His No. 2 account on the 1st of January 1933 was overdrawn by Rs. 60,118.95. I know that Kennedy went to England in January 1933. He saw me before he left for England, and I spoke to him as regards the overdrafts on these two accounts. With regard to

*In the
Supreme
Court of
Ceylon.*

No. 8.
Evidence for
Prosecution.

(c) C. E.
Graham.
Examina-
tion—con-
tinued.

No. 1 account I wanted him to reduce that overdraft to Rs. 50,000 because I thought that for a business of his class that sum would be quite enough of an overdraft. (To COURT :—No, generally it was a good banking risk I thought. Anything above that I consider as excessive). No, we were amply covered with stock. No, I considered that an overdraft of Rs. 50,000/- was quite enough for a business of that class. With that overdraft he would have been able to do that business if things were going all right. I spoke to him about his No. 2 account and told him that the amount had been outstanding a considerable time. He said he had not been getting the proceeds of skins from London well enough and he said he would undertake 10 to see that these things were cleared when he went to London. My impression was that he had sufficient stock of skins in consignment in England to meet that entire overdraft. It was quite understood that he had skins in London. (To COURT : I understood that there were skins sufficient in London which when realised would repay that overdraft. There was nothing expressly said. He merely promised to dispose of the skins when he went to London. The basis of payment was that he had the skins there. The skins were with his friends and agents in London and the understanding was when he went away that he would be busy in London to see that the skins were disposed and that he would thereby pay the overdraft. (Shown 20 P20(4). That is my letter written on the 5th of April. (Letter read). To that I received letter P85 (1) of the 10th April. I identify that letter which I received from Kennedy & Co: (Letter read). Then I wrote letter P20(5), of the 10th April (That letter is read). That was in reply to the request in the last letter that he should meet it in two insurance policies despite the fact that there was a debit to that effect. In reply they wrote to me P85 (2) of the 11th April. (Letter read). I replied with P.20(6) of the 11th April. (To COURT :—That means that both accounts were being overdrawn. We said that we would meet these cheques, but I would not increase his overdraft further. I received no specific reply to that letter. On the 18th 30 April I wrote letter P20(7) conveying instructions I received from the head office. (Letter read). I could not tell you off-hand what the state of No. 1 account was about the 18th April. On the 5th April it was Rs. 94,000. The London office allowed a further Rs. 10,000. This facility represented about Rs. 10,000 more. The overdraft was Rs. 90,000. So that he was allowed Rs. 10,000 more. I was not prepared to allow that but my London office authorised it. (To COURT : My head office gave this increased overdraft though I thought Rs. 50,000 was enough). On the 25th April I wrote that letter P84 (1) which is in the usual form advising that Campbell Brothers Carter and Company had opened a credit of £10,000 with Kennedy 40 against a security on skins. That is in the way of payment. That is not a credit. He could not draw cash against that. It is an authority to us to take his bills on Campbell Bros : Carter to the extent of £10,000. It is not an authority to advance cash. That is to say beyond the delivery of shipping documents we would pay 80%. The bill would be drawn by Kennedy and Co: on Campbell Bros : Carter & Co: London. The bill would be merely payable to National Bank, but it is drawn on Campbell

Carter and the shipping documents for the goods would be attached to my name would get payment in London. The shipping documents would be delivered to Campbell Bros : on payment. They would be making payment against skins actually received. That is the position. And that credit facility would be of no use to Kennedy unless he had skins to that value to export. You must have the skins to export ; it could not be a cash advance. I followed that up on the 28th April by letter P28 (1) allowing him an overdraft on a separate No. 3 account of Rs. 10,000 to purchase only skins for purposes of export. It is addressed to Kennedy & Co : (Letter read).

10 The purpose of No. 3 account was an advance made by our London Office to enable Kennedy to purchase skins so that he could take advantage on that credit of £10,000. It was auxiliary to that. It was a revolving credit. He could get money out of that account at any time and buy skins up to £10,000. When he takes skins automatically it was reduced and he could draw it again. When he shipped goods he gave us a bill and we credit the proceeds to his account. When we ship Carter's is our debtor. This arrangement with Campbell Bros : Carter and the opening of No. 3 account was quite independent of No. 2 account and did not go in reduction of that account at all. (To COURT : This was arranged from our London office.

20 They authorised the Rs. 10,000—that was nothing unusual). As regards that No. 3 account in which I advanced him up to Rs. 10,000 to purchase skins I had taken a lien over the skins. If he purchased skins out of the proceeds of the overdraft of No. 3 account he would have the skins in his possession and I would claim a lien over it pending shipment. (To COURT : No. 2 account was covering skins also. No. 3 account was a separate account altogether. He should have skins to cover his No. 2 account in London. The letter of lien with regard to shop goods did not cover anything). No. 2 and No. 3 accounts had nothing whatever to do with each other. As regards No. 3 account I took a formal letter of lien. I did not inquire

30 and make sure whether the payment was actually for skins purchased. We just paid his cheques. We presumed they were in payment of skins, but we did not inquire. That was on the 28th of April. (Letter P20 (12) is read). That is headed No. 3 account. I could not say offhand whether between April 28th and 8th June no skins had been exported on Campbell Bros : Carter & Co.'s account. I inquire when I expect to see shipments going forward, so that the overdraft may be adjusted. I cannot say for certain from that that no shipments had gone. I should fancy that no shipments of skins had gone. The overdraft arrangement was not made till the 18th of May. Then I wrote on the 5th of July letter P20 (14) drawing attention to the

40 fact that the authorised limit of No. 1 account had been exceeded. (Letter read). To that Kennedy replied by his letter P85 (7) of the 7th July, undertaking to reduce it within a few days. (Letter read). Then on the 11th July I wrote P20 (15) drawing attention to really 3 matters. (Letter read). In that letter first I refer to a promise of his to me to reduce his No. 1 account to half a lac on the 11th of December. (To COURT : They did not take my advice. They gave him more. When Kennedy saw me before he left for England I told him that he must reduce his No. 1

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tion—con-
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account. Yes, in various letters I said he should bring it down to Rs. 50,000. Secondly in that letter which I read I specifically inquire when I may expect to receive proceeds of the skins sent to England on consignment and I remind him of a statement made by him. I also asked for a statement of skins out in England waiting realisation. So that that letter bears out my statement that when he left for England in January there was an undertaking to meet the overdraft on No. 2 account by the sale of skins in England. I also inquired on No. 3 account when he would arrange to draw a bill on Carter & Co. I cannot say when Kennedy returned to Ceylon. Then I wrote on the 15th July 4 days later my letter P.20 (16) inviting attention to that earlier date and asking for a statement of skins in England. (Letter read). I think we did get a statement of skins in England. I did not get a statement of skins in England waiting realisation. My impression is that we did not get. I did not receive a reply to that letter of 15th July. (Letter dated 22nd July and marked P84 (5) addressed to Kennedy & Co. is read). I did not get a reply to that letter of the 22nd July. (To COURT: We do not usually get a reply to letters informing people of their overdrafts. (Letter written by witness to Kennedy on 9th August read). At this time accused was in Ceylon. On the 15th August I wrote to him P84 (8) asking for the skins in Britain for realisation. (Letter read). (To COURT: Balance sheet was the balance sheet in 1932 the previous year. We had never got the general balance sheet of his business. I wanted to see the balance sheets of each year. I did not get a reply to that letter. Then on the 18th August I wrote P41 (1) in which I refer to a call on Kennedy. (Letter read). When I wrote that letter I was not becoming uncomfortable about the situation nor was I beginning to doubt the veracity of his statement. I was at a loss to understand why the skins should be in Colombo when the arrangement expressly was that he stated when he was going to England he would dispose of the skins there. When I write this "It is difficult to understand when you expressly stated when you proceeded to England" I might qualify that by saying that he did not expressly state the skins were there. As far as I can recollect he did not expressly say that these skins were in England but they were expressly understood to be there. There was no doubt about the understanding. There was sufficient skin to cover the overdraft of No. 2 account in England. (To COURT: No overdraft was opened to pay for skins which he was sending to London.

Q. I go on to say it was difficult to understand how there should have been skins relating to the overdraft lying here?—*A.* Not sufficient to cover the overdraft but partly. The result of that would be that there was not there in England a sufficient stock of skins to cover No. 2 account. That would be contrary to the arrangement made when he left for England. (To COURT: I was disappointed to find that he had skins in Colombo against this overdraft because I understood that skins that he had purchased against this overdraft had been sent to London: therefore there should have been those skins in London, to cover the overdraft. Kennedy replied to that letter by letter P56 dated 19th August. On the 16th of August

when this question came up the No. 2 account was really overdrawn to Rs. 18,998. It had been reduced to that. If that was so I had quite sufficient cover because he had stuff here and stuff in England. Yes, I suggested to him that when he was in London he should make his arrangements with his friends there, that he could draw against any skins he was sending to them on consignment. It was on Carter's really. He is alluding to the Carter's arrangement when he says to draw 80%. I replied to that letter by P41 (3) of the 21st August. (Letter read.) I could not follow any explanation of part of these skins being here at all. It was
10 contrary to the arrangement I considered it quite unbusinesslike. (P42 the letter he wrote on the 21st August conveying certain instructions received from the Head office is read.) Apparently Kennedy had telegraphed to his agents in London, Campbell Bros. and they had approached the London office and asked them to give him more accommodation on No. 3 account under their £10,000 credit. Carter's had taken no responsibility on the Rs. 10,000. They made us to take it. They said they could not give the overdraft until the old overdraft on No. 2 account had been liquidated. They said we understand there is only £2,000 due in England and skins in Ceylon are like to realise £900. If you add the two together
20 that would be very nearly the amount of the overdraft here. That is about Rs. 14,000. The overdraft was at that date Rs. 18,000. He said there was a shortfall of Rs. 2,500. He said the skins in Ceylon had been sold and they did not realise the prices which he expected and so there was a shortfall which would account for the difference. Kennedy had explained that from his letter. That was exactly what he described that they were held in the Ceylon Tannery. Our London office had been told that there were stock in the Ceylon Tannery. Those stocks were presumably belonging to Kennedy. (To COURT: I did not exactly understand his reference to the "Ceylon Tannery" but I take it it was stocks which were held here under
30 his arrangement in No. 2 account, which I have said all along should have been in London. The word "Ceylon Tannery" did not convey any meaning to me. I have not seen the tannery. I did not know that such a thing existed. I only regarded it in the point of fact of so much stock. In the same letter I went on to press him for an early settlement of the No. 2 account. On the 24th August I wrote a further letter drawing attention to the state of the No. 2 account. (That letter P28 (1) is read.) I will give the shipments after lunch. On the 30th August I wrote P28 (2) drawing attention to the state of No. 1 account and saying that I would not meet further maturing bills. (Letter read.) That would not have
40 been a serious matter for Kennedy as he could have got an extension from Carter's. If he did not get an extension it would be a serious matter. I have not produced that list of maturing bills. (To COURT: These bills were drawn by his agents in London Carter Campbell and Co. on Kennedy & Co. Then he got the documents and accepted the bill and the bill was payable 30 or 60 days later. Sometimes he got extensions of the bill not from us, but Carter Campbell's. If he did not pay the bill we would note the bill for non-payment and call upon the shipping firm in London to refund the

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tion—con-
tinued.

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money which we had already paid to them. The bills were payable to the endorser of the National Bank. We were the collecting agents. When we get the bill we hand over the documents to Kennedy and 60 days later he had to pay the bill. If he did not pay the money we would ask Carter Co. to refund the money to us. We gave the money to Carter Co. He could sell the goods and retire the bill. That is the idea. I produce (P59) which are the statements of the bills which were maturing between the period of October and December. They all are drawn by Carter Co. Ltd.—10 bills, totalling £1,611 9s. 2d. and that totals to Rs. 21,491.11. (Letter of 4th September written by witness and marked P84 (10) is read.) In that letter I pointed out that No. 1 account had again exceeded the limit. On the 22nd September I wrote letter P28 (5) reminding Kennedy of his promise to liquidate No. 2 account at the end of that month. (Letter read.) Kennedy replied by (P58). (Letter read.) At the end of September approximately at the date of the fire 1933 his account was as follows: No. 1 account overdrawn Rs. 97,895.17. No. 2 account overdrawn by Rs. 18,998.6. No. 3 was overdrawn Rs. 9,546.66. Those were the figures on the 29th September. Figures on the 30th September were No. 1 account Rs. 99,893.72 and No. 2 account Rs. 19,441.73. No. 3 account was overdrawn Rs. 9,733.8. So far as I was concerned he had undertaken to reduce No. 1 account by the end of December to half lac. He had undertaken to liquidate No. 2 account immediately by shipment of skins and No. 3 account would have been wiped out by the same shipment of skins. Yes, the credit which was opened against No. 3 account exported at the end of December. If Carter Campbell had asked our London office to extend the time I would have done it. No, I got it from him that he would reduce it at the end of the year to Rs. 50,000 which I wanted done. Had he not done it I would refer it to my London office. I would have to consider what I would do. After the fire I applied for the Insurance Policies and I got the originals. I produced them in the Police Court. My position would be that I would if the Insurance Co. pays I would recover what was due to me and then pay any balance to the accused. After the fire the Policies were handed to us. We had authority to collect the money. They were given to me by the accused after the fire by his wife. We wanted to have the policies because we had no goods against the overdraft. I know that the Insurance Co. have not paid. I have no knowledge that they are refusing liability. If the Insurance Co. refuses liability and do not pay I stand to lose if Kennedy has no other assets. Mr. Kennedy has given me no other securities.

Cross-exa-
mination.

CROSS-EXAMINED.

I came here I stated as Manager in April, 1932. The No. 2 bank account had been opened in June 1931, before I came there. That account has fluctuated has gone up and gone down considerably. I know that the Government of Ceylon forbade the exportation of Talagoya skins. (To COURT: I have no knowledge of the approximate date when it was prohibited). That prohibition hampered his business considerably. He told

me that. He led me to understand that even though Campbell Bros. & Carter opened up a credit of £10,000 to help him in the skin business he found difficulty in getting supplies, either from Ceylon or India. I understand that he started getting skins out from Java and Borneo Mr. Kennedy had opened up an account in the Chartered Bank which had branches in Java and Borneo. I do not know that this credit of Rs. 10,000 was cancelled by Carter Bros. The credit was not cancelled with me. If he opened accounts with other banks it must have been fresh ones. I knew nothing of this Java business. The No. 1 and No. 2 accounts had been opened at the time of Mr. Lawrence, and is now in the London Office and generally supervises the Eastern branches. (To COURT: He is what is called London Manager. He is the 2nd Manager of the Bank.) The No. (2) account was also opened out on instructions from London. When he resumed duties here the depression was well under way and as a matter of general policy I thought it necessary to reduce these overdrafts to some extent. The banks generally set with a certain amount of caution to some extent and try to reduce the overdrafts in the bank and I may have mentioned to Kennedy incidentally that he should reduce his No. 1 account to Rs. 50,000 by the end of December. I do not think I ever wrote to that effect. Mr. Kennedy when he went to London got credit facilities extended to one lac with an undertaking that he would reduce it to Rs. 50,000 on the 31st December. That is clear from the letter P20 (15) dated 11th of July 1933. (That letter is read by Mr. Pereira). "We shall be glad if you therefore take steps to gradually reduce this in terms of the head office wishes" ?—A. Probably my own wishes. I cannot say off-hand what amount the skin account on the 1st of January showed. It had been reduced by 13th September to Rs. 19,000. He had effected a 66% reduction more in the No. (2) account. I will tell you after lunch whether there were any shipments on No. (3) account. It was only after Mr. Kennedy's return in July and August that the shipments went forward. There are shipments in August. You find one on the 2nd August. On the 29th of July you find too a shipment of two cases of reptile skins (Shown P85 (8)). That shows that on the 2nd of August there were 7 parcels of reptile skins sent to London. And Mr. Kennedy asked me to credit the 80% to the No. (2) account. On the 16th of August as shown by P85 (10) 7 parcels of reptile skins were sent. On the 23rd of August 4 parcels reptile skins went with No. (3) account. Then P85 (12) informs me that the skins under lien are black and white Lizard, Indian Thalagoya. And P85 (13) 8 parcels which went to the credit of No. 3 account. I heard that Mr. Ross the agent of the Insurance Co. : valued the stock at Rs. 455,000.

Q. The stock exclusive of the skin?—A. I am not aware of it.

The offer to the London office to reduce the lac overdraft to Rs. 50,000 was that due to any pressure or was Mr. Kennedy volunteering to reduce it? —A. I cannot say. (To COURT: I had repeatedly told them that I was trying to reduce the overdraft to less than half a lac). If he can reduce the overdraft he can save the bank's charges of interest.

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(c) C. E.
Graham.
Cross-exa-
mination—
continued.

AFTER LUNCH.

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No. 8.

Evidence for
Prosecution.

(c) C. E.
Graham.
Cross-exa-
mination—
continued.

On the day of the fire No. 1 account had been overdrawn to the extent of Rs. 97926/-. The difference between the 29th and the 30th was Rs. 2000/- but I do not know to what it was due. On the 31st December it was Rs. 766775/-.

On the No. 2 account so far as we were aware there was no limit placed at any time.

Q. You yourself suggested to Mr. Kennedy that the skin business might well be financed by the London agency?—A. I did. That would shift the responsibility from ourselves to Campbell Bros. Carter & Co. This is on the No. 2 account. The No. 3 account was on Messrs. Campbell Bros. Carter & Co. The skins were shipped to Messrs. Campbell Bros. Carter in London. Had he drawn the bills we should have given him the proceeds of these bills and had the goods gone to London and we got the money from Campbell Carters we should have given him the money but we should have drawn the bills so that the overdrafts would not have been outstanding so long. 10

The No. 2 account was reduced during the period 30th September to 31st December by Rs. 2224/-. We have got the figure on the 29th September. The balance was Rs. 18998/- and on the 30th April it was Rs. 17903/-. It was reduced between the date of the fire and the 31st December. It has been since reduced—in April by Rs. 2284/-. On the 31st December it was Rs. 19495/-. 20

The reduction occurred on the 30th September. It was Rs. 17903/-.

Q. Will you look at the letter (P41) (1)?—A. What is the date of it?

Q. It is dated the 18th August. You were given an explanation as to why some skins were in Ceylon?—A. Mr. Kennedy had drawn them at what he considered market value from No. 2 account on the shipments. When it reached the other end the peculiar tannage of that skin had lost all their popularity. That was his explanation. He did not realise that price. 30

Q. He stated that he had other skins in Colombo which he had bought with the monies advanced from the No. 2 account which he proposed sending to London for sale?—A. Yes.

Q. He gave you a reason for not sending them earlier that he did not want them dumped and reduce their price and so create a glut in the market?—A. That was his explanation.

Q. You understood Mr. Kennedy to say that immediately he got to London he would see to the sale of the skins and the reduction of the No. 2 account?—A. Yes. Mr. Kennedy explained that it was not possible to do it right away on account of the depression. He promised to expedite the sale as soon as he reached England. There was no question of his having skins in Ceylon. I gathered that from the correspondence. 40

Q. This letter where you asked him to reduce his overdraft from Rs. 179,000/- to half a lac dated July 5th 1933 which was characterised as an uncomfortable letter, was it sent at a time at which he would have

found it difficult to meet? It was one of the routine letters to customers drawing attention to the fact that the account was overdrawn?—A. In other words we did not want the account to go any higher. That was merely routine.

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I wrote to him with regard to his No. 3 account on the 11th July. After that he wrote letter P20 (15).

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(Counsel reads the letter. The account had been standing at that figure and presumably he had skins to ship and we wanted to ship them and wipe out the balance. Our request there was merely a formal one. The account did fluctuate. On the 22nd July the account was Rs. 10900/-. On the 11th July it was Rs. 6502/-. By being dormant I meant to say that he had skins on hands he had not shipped them yet and the account had become dormant.

(c) C. E.
Graham.
Cross-exa-
mination—
continued.

Q. You expected the skins to go forward resulting in business coming to the bank?—A. I wanted them to reduce the overdraft. Mr. Kennedy's presence was necessary before the skins could be shipped. The Rs. 10,000/- went towards the purchase of raw materials and the skins had to be cured before they could go forward. The overdraft was reduced before the 30th September considerably by the despatch of skins.

20 Q. I have already referred to those letters P85, 9, P85, 8, and P85 (10). —A. That is right.

Q. Did you at any time Mr. Graham doubt the honesty of Mr. Kennedy?—A. No.

Q. He had ample security for his overdrafts?—A. Ample security.

Q. Your letters were written to him asking him to reduce his overdrafts were written as a matter of common prudence?—A. Yes.

(To Court : It was not as a matter of any particular weakness in his account.)

30 Q. Those letters were in the nature of routine letters except in the case of the longer ones?—A. Yes. Mr. Kennedy was in September negotiating moving into the premises called the Colombo Stores. The Colombo Stores had a larger ground space than the Times building and he was expecting to do a larger business. He told me so.

Q. Your letters calling for stocks in hand. Are those letters banks usually write to firms which they usually finance?—A. They are purely routine.

(To COURT : Do you expect a response to those letters?—A. In some cases we have to send several reminders.)

40 He sent me a formal statement of his stock every month. It had nothing to do with his boots and shoes. It was a general statement. He did it regularly during the whole of the 14 years he had been doing business and he had been dealing with our bank.

Q. There was not a single bill noted for non-payment?—A. I am aware of no bill.

Q. You are aware that this fire did cripple his business considerably?—A. It left his business out.

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mination—
continued.

Q. Did this fire in any way alter your opinion of Mr. Kennedy?—*A.* As a matter of fact I would say no.

(To COURT: Counsel asked me if this fire had altered my opinion of Mr. Kennedy. His question was whether I had altered my opinion of him. I said “No.”)

Q. With regard to these requests for reductions of overdrafts and writing to customers to reduce them by particular dates they are steps the banks are compelled to take?—*A.* Yes.

Q. If a customer has made an honest effort to reduce the amount due to the bank is it your invariable practice to allow further time to reduce the overdraft?—*A.* In many cases that is allowed. 10

Q. You were shown a list of goods that arrived and bills Mr. Kennedy had to meet by the end of December?—*A.* Yes. That is signed by one of my assistants.

Q. As a matter of fact all those bills were taken over by Campbell Bros. Carter & Co?—*A.* I can't say off-hand. They were repaid by Campbell Bros.

(To COURT: Under what circumstances?—They were accepted and Kennedy bought the goods and he could not pay the bills on the due dates and the drawers of the bills merely let them lapse. They did nothing. We got instructions from them to hold them over. They were all accepted by Kennedy but they were not paid. Every one of the bills fell due after the fire and the last one on the 26th December.) 20

Q. Campbell Bros. never wrote to you later in the year asking you to refuse the goods or see that the goods never entered his hands?—*A.* He had got the goods. He accepted them. He got the goods. As a matter of fact once the fire occurred I learnt that Mr. Kennedy was in Hospital.

Q. You took steps to see that the Insurance Companies were notified of the claims?—*A.* I saw that they were duly sent up to the Insurance Companies. I knew that Mr. Kennedy was unable to attend to them at that time. Notice had to be given to the Insurance Companies forthwith. 30

Q. Are you aware that he had a policy affecting the skins he had in his bungalow before he shifted into the new bungalow, Monsoon Lodge?—*A.* I am aware that he had a policy affecting the skins he had in his bungalow before he shifted into the new bungalow Monsoon Lodge.

Re-exa-
mination.

RE-EXAMINED.

Q. It has been stated incorrectly that Kennedy negotiated with the Chartered Bank in August to open an account with them to finance his skin business?—*A.* I had no knowledge of it until I heard the Police Court evidence. I do not know about it. Up to the date of the fire I had no knowledge of it even after the fire that he had any transactions of any kind with the Chartered Bank. 10

Q. As a matter of fact if he told the Chartered Bank that his stocks of skins was free of all lien from all source that is untrue?—*A.* That would be untrue.

(Counsel refers to the letters written by Kennedy to the Manager, Chartered Bank.)

Q. In this letter he says that he has in his store skins to the value of Rs. 98,000/-. Would you have any lien over any portion of them?—*A.* We would have a lien over the portion of skins that covered his No. 2 account and No. 3 account.

Q. Is it correct or incorrect to state that the entire stock of skins was entirely free of any lien?—*A.* It is incorrect because we had skins which were under lien to us. If he was talking of the stocks to the Chartered Bank it included our stocks. At the date of the fire the amount of the debit was Rs. 97,126/- against No. 1 account. That was increased to Rs. 99,900/-. By the 31st December that was reduced to Rs. 76,776/-.

I am aware that there was an auction sale of the damaged stock but I do not remember the figure realised at the sale. I cannot say that the proceeds of that sale went to the credit of No. 2 account but Mr. Kennedy said it would. I am aware that Kennedy with the consent of the Insurance Companies took over the damaged stock and sold them. I do not know that the proceeds of that particular sale came to Rs. 11,706/- but he made a lot of small payments to me almost daily. The proceeds of the two sales amount to Rs. 17,876/-. I know that the monies realised out of the auction sale and the other sale went to the credit of No. 1 account. I do not know what those payments represented. I do not know if it had anything to do with the auction sale. The reduction is actually about Rs. 20,000/-.

The No. 2 account was Rs. 18,998/- on the date of the fire and on the 31st December it was Rs. 19,495/-. At the end of April it was reduced to Rs. 17,903/-. The present amount outstanding on that account on the 4th September was Rs. 18,222/- with the addition of interest. It would be correct to say that he made no reduction of the No. 2 account by the sale of any skins since the fire. There was a reduction in one month but I cannot say what it was. I think there was a remittance from London in April. It would appear that in April one remittance came out from London as final proceeds of the skins lying in London. There was a reduction of about Rs. 1,600/-. I would need to verify that from my books.

(To COURT: There were no shipments from here after the fire).

The No. 3 account stood at Rs. 9,746/- as on the date of the fire. After the date of the fire it has not been reduced. On the 4th September, i.e., to-day it is Rs. 18,222/- by the addition of interest. At the end of September after the fire it was Rs. 9,753/08. In liquidation of the No. 3 account no reduction has been made. It is Rs. 10,260/60 to-day. The only security I had for the overdraft was on No. 1 account was the stocks of skins not cured exclusive of the skins and that the only security on the No. 2 and No. 3 accounts were his skins which were on consignment in England. We looked to him to pay from the proceeds. I realised when the fire occurred that it would be the policies of the Insurance Companies unless he had any assets of which I do not know and of which I am not aware now. I do not know if he has any obligations now. I have no idea he has any obligations

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continued.

except his obligation to the Chartered Bank from what I have been told. I have not seen the balance sheet of Kennedy's for 1932. That was what I was asking for all along. I did not get it. In the nature of business—shoes and men's outfitting his turnover was slow. I did know that from a study of his previous balance sheets. As a banker it would be my business to acquaint myself with matters of this sort. I know that depreciation in this class is very high. Fashions change, particularly ladies shoes. From the date of the fire I have given him further credit facilities. It is difficult to say how much I gave him. I think I gave him a couple of Rs. 1000/- to pay the rent of his new premises. There is no reason why we should have paid it as it went to somebody else. I did not give it to him on that account. Apart from that I have given him no further credit facilities. The Rs. 2000/- was an advance payment. 10

As regards the bills in P59 which were due between October and December this is a statement of bills which Kennedy had accepted prior to the date of the fire. Therefore the goods which the bills represented at the date of the fire were in his possession. So far as the bank is concerned I am in the position of a collector as regards these bills. On the date of maturity I accept payment but if Kennedy does not pay I come down on Carter Bros. In fact Kennedy did not pay these amounts. The bills were not formally noted for dishonour but we looked to Carters for payment. We did not lose by it. They are the drawers of the bills. 20

As regards the Java business Kennedy did not at any time come and ask for special credit to do business with Java. He went to our London Head Office and got further credit. Carters Bros: went to our London Office and asked for further credit to help Kennedy to do further business with Java (Counsel proceeds to read copy of letter P65 said to have been written by accused to Campbell Bros: and Carter.

Mr. R. L. Pereira objects on the ground that there is no proof that the letter was sent, and even if it was sent it was not relevant to the charge. 30

(Shown P65). This is a letter written by Kennedy to his agent giving a reason as to why he opened an account with the Chartered Bank.

I never had it proposed to me by Kennedy that he wanted me to finance his Java business. He never proposed the Java business to me. He certainly wanted me to finance him but I did not do it. I told Kennedy that he must reduce his overdraft on No. 1 account to half a lakh. That was before he went to England. It was not a casual request. I intended him to do it otherwise he would not do it. I never advised the head-office that one lakh was a safe limit. I was trying to reduce the limit to half a lakh because I considered it a safe limit for that class of business. I did not say that I would not allow more than that. He had no need for any money in my opinion. Had he realised his stocks he would not have required more money. I would consider Rs. 50,000/- a safe limit for that class of business. He had large stocks and we had security. He was importing when he should have been selling his stocks. My request was 40

that he should reduce his overdraft. That had nothing to do with the economic depression prevailing at that time.

(Counsel refers to P85 (8), (9) and (10).

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continued.

This refers to No. 3 account. The shipment of the 30th July appears to be against the credit of No. 2 account. Three shipments were made on account of No. 3 account. I cannot say what they were or against what credits these went against. On the other hand the letter P85 (9) and (10) ask me to credit the proceeds to the account. The letter refers to the three consignments of skins. I cannot say off-hand to what accounts these proceeds went. I will have to refer to my books. I do not know that they were purchases out of the monies advanced by me. The reference in P85 (11) is against the No. 3 account. P85 (12) is a statement of skins in hand. P85 (13) is an advice. That is against No. 3 account. I have five advices of actual despatch of parcels of which three at least went to the credit of No. 2 account. There were only two consignments that went to the credit of No. 3 account. I cannot say off-hand the total value of the amounts which went to No. 2 account. Whatever went to the credit of No. 3 account were skins purchased on the credit allowed by me against No. 2 account I referred to most of those letters asking for various statements as having been sent out in the ordinary course of routine. Those seven letters in which I ask for statements of skins were not routine letters.

P20 (15) of the 11th July deals with three matters. On the 20th July I wrote P20 (16). That is a routine letter. The letter of the 15th August P84 (8) is not a routine letter. The letter P41 (1) of the 18th August is not a routine letter. I cannot carry back my recollection to the interview referred in P41 (1). There are four requests made by me in four different letters asking for statements of skins in England. I did not receive any replies to those. I have got Kennedy's letter of the 19th August P56 in which he did not send me a statement of the skins in England but in which he sent me a statement of skins which he meant to export.

(To COURT). I have to write many letters about accounts these days. I do not think these were out of the common. Kennedy never gave me a statement of skins he had in England.

Trial adjourned for tomorrow.

5th September, 1934.

5th September, 1934.

CHARLES ELDER GRAHAM. Sworn.

Further
cross-exa-
mination.

FURTHER CROSS-EXAMINED.

Q. By the 5th of September would it be correct to say that on No. 2 and 3 accounts there was due to you about Rs. 28,000/- or Rs. 29,000/- ?—

A. Did I state that in a letter. I cannot say that off-hand. I cannot give the actual 5th September balance off-hand.

Q. On the 29th September it was Rs. 17,000/- odd?—A. The debit on the 29th September on the No. 2 account was Rs. 18,998 and on the No. 3 account the debit was Rs. 9,546/-.

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mination—
continued.

Q. That makes Rs. 28,500/- odd?—A. Yes.

Q. Your lien, if you had a valid lien, would not extend over and above that sum?—A. Certainly not.

Q. I suppose you are aware that Mr. Kennedy's claim in respect of skins as put forward originally to the Insurance Companies and their Assessor Mr. Ross was in the neighbourhood of Rs. 127,000/-?—A. I have heard so.

Q. Subtracting Rs. 28,500/- from Rs. 127,000/- we have a difference of Rs. 98,500/-?—A. Precisely so. To COURT. I understand that the claim was for that sum but I have no proof of it. 10

Q. If he did have stocks to the value of Rs. 127,000/- looking at the 2nd but the last paragraph of P64 with the paragraph beginning " We have reptile skins in our store.....?—A. This letter is not addressed to me. It is addressed to the Chartered Bank. It is the first time I have seen it.

Q. If he had stock to the value of Rs. 127,000/- your lien would not extend to the value of Rs. 98,000/-?—A. No. To COURT. Our lien was on skins to cover the overdrafts which was practically Rs. 28,000/-.

Q. Have you got the written lien?—A. I have not got the written lien. The lien may be over a special part of the whole of the goods. To COURT. My lien was not over all the skins but over skins to cover the overdraft. 20
My lien extended to part of the goods. He may have had goods under lien to another bank in the same warehouse. He might have goods under lien to two banks in the same warehouse and he would keep each bank covered to the amount they expected. In this case he gave a lien evidently to another bank of which I was not aware. My idea was that he had in his premises skins to cover our overdrafts. I had no knowledge of any surplus he might have. He ought to have had skins in his warehouse to cover the amount of our overdraft. We would keep his skins to cover our overdraft and let him remove the other skins. We would endeavour to seize all goods in their warehouse until our claim was satisfied. Till our claim was satisfied 30
we would not allow him to remove any goods out of the warehouse.

Q. It possibly could not be as Your Lordship put it. Your lien extended only to those goods bought by your monies?—A. Yes.

Q. Your lien could not extend to goods bought with other monies?—A. Yes.

Q. You advance monies for a certain purpose?—A. Yes.

Q. If he bought goods out of other monies your lien could not extend to those goods?—A. We would endeavour to seize the goods in the warehouse irrespective of those rights.

Q. That is if you go on an order of Court?—A. Yes. 40

Q. If he had bought goods from independent resources or from other sources he got from other banks your lien would not extend to goods bought by monies advanced by other banks?—A. Yes. We would enforce our lien. We would not allow anything to go out until our claim was satisfied not even goods bought with other monies. I notice against these bills they are extended by 90 days, the last four bills falling due in December. They were evidently originally falling due in September but they were extended

for 90 days which took him up to December. The letters H.O. refer to Head Office. The last four items are evidently the only ones extended. They are bracketed. I have seen the original. As far as the original goes those four bills were extended.

Q. You were asked yesterday about the balances due on the accounts Nos. 1, 2 and 3 in April 1934. I take it you were adding interest all the time?—A. Yes.

Q. Is that done quarterly or monthly?—A. That is done quarterly. The account is debited quarterly. The difference between the 29th and 10 30th September would be largely accounted for by the addition of interest for the quarter. The rate at that time must have varied. I cannot say off-hand what the rate was. It varies between 6 and 7%.

Q. Can you tell me what the deposits by the accused in October and December 1932 were?—A. No, not off-hand. I could not give them to you.

Q. You could produce the deposit figures for 1930, 1931 and 1932?—A. I have not copies of Mr. Kennedy's account. We have the account. The account was in our books in the bank. You want to know during 1930, 1931 and 1932 the total amounts paid to the account during the whole 20 year and the total amount paid to the account during the last quarter.

Q. You were shown a letter written to Campbell Bros. Carter P65?—A. I have it here.

Q. Is it correct to state so far as you are concerned you were not prepared to give him an advance of more than Rs. 10,000/- on the No. 3 account?—A. That is so. If he wanted to do a larger volume of business than Rs. 10,000/- he would have had to go outside.

Q. You say in one of your letters that Carters approached your London office for bigger credit but that they refused to give it until the overdraft was paid off?—A. Yes.

30 Q. Was that why he went to the Chartered Bank, largely to do the skin business?—A. It is so. It was not put to me as the Java proposition. I definitely turned it down. I would not give him anything more. It was not put to me as the Java business. It was put to me as additional business he expected to do. I definitely refused to give him more than Rs. 10,000/- on the No. 3 account. I was not prepared to give him further funds. It was not put to me as the Java business. He asked for further accommodation but I refused to give it to him.

Q. If the word 'Java' is substituted for any additional business is that right?—A. That is right.

40 To COURT: The No. 2 account was opened on account of the skins that had gone forward to England. I was under the impression that all the skins that covered the overdraft were in England. I had not an actual statement. We got a rough invoice of the skins as they went forward. There were many shipments. We never handled the shipping in any way. I have a note of the shipments. I have P56 which details several parcels of skins he intended to ship. We never knew what the proceeds were. We got

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telegraphic remittances and we could not tally them off with the parcels shipped. He did not say what shipments were still in London. The accused could have told us but we never had a statement. We had his word that he shipped the skins and there was an understanding by Campbell Carters that they would send the proceeds to our London office. We got several remittances by telegraph. It was to go to the credit of No. 2 account here, not in London. We felt quite safe about it. We had confidence in Carters that they would send the proceeds of the sale.

Q. (To the Foreman of the Jury.) Would you have been prepared to consider and finance any proposition for further local business if it was satisfactory?—A. Yes. My confidence in Mr. Kennedy was not shaken. I could not consider Java business as I had no branch there. No such proposition was put to me. Carter Bros. had opened up further credit for Java business. We could not have financed it as we had no branch in Java even if he put the Java proposition to me. I could not finance this business in Java as we had no branch there.

Q. If the proposition had been put to you by Mr. Kennedy to do business with any other part of the world excluding Java and if you had a branch would you have been prepared to consider it?—A. I would have been prepared to consider it. My confidence in him was not shaken. I would never have taken legal steps to recover the monies due. Java is not a satisfactory proposition because we have not a branch there.

To COURT: I had no want of confidence in the accused at the time.

The Rs. 10,000/- was given by the bank and not by Carter Bros. In drawing on the Rs. 10,000/- he gradually paid off the bills by sending shipments of skins.

(This witness was recalled. See page 140.)

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Examina-
tion.

G. A. WEMYS. Sworn.

I am the sub-manager in Ceylon of the Chartered Bank. I have held that position for 2½ years. I had been in Ceylon about 23 years ago for a short time and since then I have been here for 2½ years.

I first met Kennedy in August 1923. That was when he came to me in connection with a business proposition. He had no account before that. Before that date I had not seen him. On that occasion he saw the Manager first, and then he saw me. His conversation with me was to ask us to facilitate his business with Java. He had been shipping skins from Ceylon as a side-line of his business and on the restriction of the exportation of Thalagoya skins he intended to ship skins from Java to London, and as the National Bank had no branch in Java he came to ask us to arrange the matter. He told me that since the restrictions on the exportation of Thalagoya skins he had hoped to commence business with Java, to buy skins in Java to be exported from Java to England. The only difficulty was that the National Bank had no branch in Java.

He had to buy the skins in Java instead of buying them in Ceylon and send them to England. They were actually shipped direct.

He told me he had an account with the National Bank but he did not tell me he had two separate accounts and I did not ask him. He did not say that his general account and skin account in the National Bank were separate. He mentioned nothing. In this case we were covered by the credits being opened in London and so for any advances made I trust to a man's honesty to pay those monies. He draws on the account for goods to be shipped to London.

I discussed the overdraft facilities. We arranged to give him Rs. 10,000/-. His request depended on the amount of business he was doing. I did not ask for any particular account. The credit facilities were opened in England. Rs. 10,000/- was not a large sum.

We had a report of him by the beginning of the year in the ordinary report of firms—his name appeared—there was nothing against him. I was prepared to give him an advance up to Rs. 10,000/- without further enquiries.

To COURT: My firm gets confidential reports of all firms in Colombo and of branches established.

He opened an account with me and drew on the account and met our cheques. He was going to do so up to Rs. 10,000/-. I was going to take a trust receipt. The trust receipt was not actually signed till the 10th October. On the 10th October we sent them the stock list and the other papers. The stock receipt is a printed form which we get people to sign and by which they undertake to hold the stocks which they bought with the bank's money under lien for the bank and undertaking to hand us the shipping documents or the equivalent in cash until the goods are shipped.

(The witness hands up to Court a form called the Trust receipt.)

It was understood that he would sign a trust receipt and whatever skins he bought through the proceeds of the overdraft he would hold under that lien until they were exported. It was sent out and all the rest of them on the last day of the money.

The credits that were opened called for bills to be drawn up to 80% of the invoice value against shipment. That credit was opened by Stanley Bank in South Africa. The Stanley Bank was responsible. Carters arranged with Stanley Bank. Our immediate dealings were with Stanley Bank. At the date of the interview I do not think I enquired whether Kennedy had held any stocks of skins. I did not enquire. He told me he was doing the skin business, but there were no figures mentioned. This was only before the credits were opened. We were not concerned with skins at that time. The skins would not have to be paid for here. We would instruct our Java branch to pay for them in Java. The advance in Ceylon was for shipments from Ceylon. All the shipments were not from Java. Some were from Java and some from Ceylon. In the case of Java shipments there were 80% to be drawn for. We were shipping from here. Kennedy said he was doing the skin business and we presumed that he had stocks. He did not give us the precise amount and we did not enquire.

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He said he was interested in a tannery here. He did not give the name of the tannery nor the name of the person to whom it belonged. He did not say it belonged to a Singhalese man—not until I visited it in February. After the interview I wrote letter of the 5th September P64. (Witness reads the letter.) At the date we had not given the overdraft. It was opened on that day the 6th. The third paragraph of that letter commences with the statement “ We have had for several years a tannery To the best of my recollection with reference to that statement he said he was interested in the tannery. He may have had an interest in the business. He said he had a special place outside Colombo for tanning and he said he had an interest in it. To COURT. I understood that he had a managing interest or control of some sort in it. It was not necessary a proprietary interest. 10

I understood that he was sending his skins to the tannery and getting them tanned there and also taking his profits and getting some benefit out of the tannery.

(Counsel refers to the 5th paragraph.) I do not understand the figure. It was never mentioned to me. No specific figure was mentioned to me. I have an impression that it was Rs. 25,000/- or Rs. 30,000/-.

He was talking about the skin business he was doing and also he said 20 he might require a Rs. 25,000/- overdraft. That was at one interview. There were two or three interviews and I thought his stock might be up to that figure. I did not at the interview enquire whether the stock was insured. He did not show me any stock statement nor did I ask for one. On the 5th September I opened an account; the understanding being that he would draw up to Rs. 10,000/-.

To COURT: He said that the stocks were in his shop and bungalow and partly at his tannery. That must have been in the course of conversation that he said the skins were at various places.

The account stood overdrawn on the 30th September by Rs. 9,852-59. 30 I have got a copy of the account. The drawings on the account in September were largely to Cash, S. A. Perera and Chawdary. The cash drawings total about Rs. 6250/- roughly. I have got a copy of the bank account. The figure drawn out in payment of cash is about Rs. 6,000/-. That Rs. 6,000/- was out of the Rs. 9,852/-.

(Mr. Obeyesekere marks the statement XI).

On the 31st December the account was overdrawn by Rs. 14,812-81. At the end of August it was Rs. 16,000/-. We have had several proceeds remitted from London part of the surplus 20% on the bills drawn from the beginning of this year. We have had £6,750/- this year. I cannot say 40 if those were on Ceylon shipments. They might have been Ceylon or Java. They are principally Java. The limit was Rs. 10,000/- against the skins. There is a difference of 20% on the shipments the proceeds of which went to London. We are secured to the extent of Rs. 13,000/-. Carters have undertaken to hand us the proceeds. Before the fire, at the time the negotiations were entered into, I did not enquire whether the stocks were

insured. The manager might have enquired. After the fire I made no enquiries. The first stock list was sent to us on the 10th October. That is included in the stock lists supplied to us. There were no enquiries made about the insurance at the time of the fire. I have got a stock statement. I have got the first stock list on the trust receipts dated the 10th October and monthly since. There were still some stocks after the fire going up to Rs. 14,000/-. That is Mr. Kennedy's valuation. I have received this statement showing Rs. 14,000/- worth of skins. I went round and saw the stocks on the 1st February this year. I went out with Kennedy and saw them. There were five cases already packed on the second floor of his new shop. There was also some at his bungalow "Monsoon Lodge," two wardrobes of skins, and also some out at the tannery.

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The tannery was about half an hour's drive from Colombo. I understood the tannery belonged to one Perera. I cannot identify Perera if I see him. The tannery may be on the Kandy road.

Kennedy said the skins which he showed me at the tannery were partly his. The manager of the tannery was not with us at the time. I did not verify the statement made by Kennedy by reference to the manager of the tannery.

There are details given on the stock lists dated the 31st January 1934. He gave the total value of skins as Rs. 24,000/- in the tannery and on the stock receipt. I got this list on the 5th February.

(Mr. Obeyesekere marks the receipt X2).

This is a statement of skins which he would hold in lien for me. The total value of the skins is given as Rs. 24,000/-, stored in the tannery and stock room. By the tannery I meant him to refer to the tannery he showed me and by the stock room also the stores and his bungalow. He had two stock rooms: he had one at his bungalow.

Credits Nos. 5 and 6 were the shipments which he had drawn on for purchasing the goods against the credits we held. It is a detail of the skins which he held pending shipment and purchased with our money. This statement was filled in by Kennedy independently of me. I had not got the statement in hand when I went to the tannery. I went to the tannery and house and saw a quantity of skins but I saw the statement X2 afterwards.

My godown inspector's book states that Rs. 10,000/- was accused's interest in the tannery. At the tannery I made a note on the 1st February that he had Rs. 10,000/- worth of skins in the tannery belonging to him. The stock receipt does not give details. Kennedy told me that Rs. 10,000/- worth of stocks I found in the tannery had been paid for by him.

The godown book is marked X3.

CROSS-EXAMINED.

Q.—When Mr. Kennedy came to you, Mr. Wemyss, he definitely told you that he wanted you to finance the skin business? A.—Yes.

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Q.—He told you his bankers were the National Bank and as they had no branch in Java he wanted to open an account with you? A.—Yes.

Q.—He told you he had a reptile account and a general account in the National Bank? A.—I do not know. He said he had a general account. (Page 142 of the Police Court evidence is read to the witness).

The word “reptile” is a term generally used for snakes, crocodiles and things of that sort.

Kennedy did not tell me he had two reptile accounts. He may have said he had a skin and reptile account but I cannot remember distinctly. It made no difference from my point of view. I made a statement to the Police before I came to the Police Court. 10

There is no obligation for each customer to tell us his previous transactions with any bank unless he wishes.

P64 clearly sets out what he intends doing. The letter says that the skins had to be tanned in Ceylon. It appears from that letter that Mr. Kennedy at the time he opened this account intended tanning skins in Ceylon. The letter was with Mr. Rice. I did not see this letter until a considerable time afterwards. According to my recollection this letter bears out what took place at the interview. I was taken to the tannery by Mr. Kennedy and I found a man called Perera in charge. I do not think I would be able to identify him. I did not pay particular attention to him. I opened an account of the 5th September for Kennedy. His promise to do considerable business as stated in the letter was fulfilled. Business to the tune of Rs. 83,000/- went through before the end of the year. 20

(S. A. Perera is called in): I cannot identify this person.

Credits represent the proceeds of the sales negotiated. Goods were being shipped from the 15th September. Goods were shipped between the 15th September and the 29th December to the value of Rs. 70,000/-. There is a debit balance of Rs. 14,000/-. The business continued down to this year as well and the total volume of business put through was about Rs. 140,000/- up to the end of June from the 1st January. Rs. 15,000 was the business done in 9 months. 30

The printed matter in the trust receipt says that the goods shall be in our godown and the particulars of the stocks are given below. The remark “where stocked” is filled in by the particular “Tannery.” The document was signed by Mr. Kennedy when Kennedy was in hospital. The stamp is dated the 11th October. Credits were opened out by Carter Bros. with a bank in South Africa. The largest credit was for £2985. They were repeated as necessity arose. 40

I asked Kennedy to take me round to see the stocks. He did not ask me to see the stocks, I have no recollection of his asking me to go round and see the stocks at the time. My actual visit was on the 1st February.

X3 is headed Godown Inspector’s book.

There were five cases of skins in the stores. I visited the Colombo Store premises. They were all in the new building. At Monsoon Lodge I found two wardrobes of skins. Kennedy told me that Perera was the

owner of the tannery. Till the 1st February I did not worry about going round to see the skins as far as I was concerned. We generally inspect the places once or twice a year, about the beginning of the year.

These proceedings were instituted by the Police shortly before I gave evidence in the Police Court.

(To COURT.) There was no particular reason to take possession of the skins.

By stock room I mean the Colombo Store premises and what was in the bungalow.

10

RE-EXAMINED.

I do not remember the date on which I made a statement to Mr. Ferguson. It was before I went to the Tannery. It was possibly some days before I went to the Tannery. I visited the Tannery on the 1st February. My visit to the Tannery had nothing to do with the statement I made or of what was asked of me. In the course of the statement Mr. Ferguson informed me that the figures given in the letter P64 were out of proportion, and I was going to see the stocks in any case.

20

X2 refers to 5000 thalagoya skins which were ready. That reference is to Ceylon Thalagoya skins. We had not imported any skins from Java. Nothing was imported from Java. The credits were to finance shipments from Java, but they were not landed here. They went direct through. There were no shipments from Borneo. They were only from Java. Under this arrangement with me no skins were imported to Ceylon from Java. The only skins paid for here were bought locally. The credits that were opened for Java were on shipments from Java direct to London. From the circumstance that no payments were made through me to any foreigner in Ceylon I would infer that I had not imported any skins from any place out of Ceylon against the credits.

30

The credits were opened against Kennedy & Co. The shipments were from Java straight to England. The process was that credits were opened in favour of Kennedy and Kennedy had to open credits in favour of us with some bank in Java. Kennedy gave us the documents on the Java skins. I had no business at all with India. We were not financing business from India.

G. PERCY EDGE. Sworn.

40

I work in the firm of E. B. Creasy & Co. They are agents for the Caledonian Insurance Company. The accused took out a policy with that company for Rs. 75,000/- on the 18th September 1929 to cover his general stock; general stock Rs. 60,000/- and office furniture and fittings Rs. 15,000/-. I produce that copy P74. One of the conditions of that policy is condition No. 12 which says that my company will not be liable if damage is occasioned by a wilful act or an act occasioned by connivance.

I received a claim for Rs. 459,295/- on the 13th November. I produce the claim P75.

The position would be that the other insurance companies would take a pro rata share in the event of liability being admitted. I have not

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admitted that claim. I have denied liability on the instructions received from our principals in Calcutta—The Caledonian Insurance Company. The Head Office for the East is at Calcutta.

To COURT: I received the instructions after I had referred the claim to them.

We have not actually denied liability to Kennedy & Co. and we have not admitted liability. Our position is we are awaiting the decision of this case to a very large extent.

To COURT: We told Kennedy & Co. that we could not admit liability at the moment. I cannot say when I said that but it was fairly soon after I received the claim. The position is that I refused to admit liability long before these proceedings were commenced. At the time I refused to accept liability I did not know that legal proceedings would be taken against Kennedy. Nobody knew of it until proceedings were taken in April. Between the date of the claim and April when these proceedings were taken Kennedy once or twice had been pressing me for payment. I refused to pay. I have got down a Fire Assessor, Mr. Ross, from Calcutta—all the companies acted together. Mr. Ross arrived in Ceylon in early October. 10

Q. Do you know that there was an auction sale of the damaged stock on account and risk of the party concerned?—A. Yes. 20

Q. That is on account of Kennedy. Do you know what was realised at that sale?—A. I have not the figures. I do not know what happened to the proceeds.

Q. Do you know that part of the damaged stock was taken over by Kennedy and sold at greatly reduced prices?—A. Yes. He got the proceeds of the sale as far as I know.

Should I be eventually condemned to pay I will get credit for that amount.

To COURT: That was an arrangement which was come to between the three insurance companies. 30

5th September 1934.

AFTER LUNCH.

All the claims in respect of the policies with my Caledonian Insurance Co. of which we were agents was sent I believe on the 13th of November. I have not got the claim in front of me. (Witness is handed the claim.) Yes, it is on the 13th of November. About October or November I came to learn that the Police were investigating into the origin of this fire. I cannot remember now whether on the 15th of December I wrote to Kennedy asking them not to take out a policy with a clause insuring them loss of profits as well as capital. (To COURT: I have not brought my file of letters. If there was such a letter that would have been written by me. I cannot remember the occasion. I do not remember asking him to take out policies. (To COURT: I cannot recollect letters of any sort. I can get the file in half an hour. I am in charge of that file.) I remember writing to the 40

defendant that I was unable to admit or reject the claim till the Police investigations were concluded. All the companies wrote to the same effect too. They consulted each other before writing. The actual claim by the accused or his wife on his behalf was Rs. 459,295-90.

Q. Of which Rs. 14,000 comprises the value of skin losses and Rs. 445,000 the value of stock other than skins—stock fittings and so on?—

A. That claim does not include skins. The whole of it was for general stock, the shop furniture and shop effects. In point of fact the total insurance covering the premises came to Rs. 600,000 I think, and the various companies would pay their proportionate share of the Rs. 459,000 if they admit liability. (To COURT: There will be a proportionate distribution.) The Companies have agreed with the accused on the amount they would pay if they are going to do so. Both parties have accepted Mr. Ross' figures. This figure of Rs. 459,295 was the figure arrived at by Mr. Ross himself. All the Companies concerned have waived the reference to arbitration contained in the policies. We have not been advised yet in the matter as to whether if the case results in the acquittal of the accused whether there will not be any litigation on the civil side for the recovery of the money. (Witness is asked to bring his file by His Lordship.)

20

(*This Witness was recalled, see page 84.*)

J. R. G. SMITH. Sworn.

EXAMINED.

I am the Assistant at Messrs. Harrison & Crosfield. I took up their Insurance business. My firm has agents here for the Manchester Insurance Co. On the 15th of April 1931 Kennedy took out an insurance policy with my firm for Rs. 250,000 to cover general stock and skins. (Shown P73.) I received a claim on that policy on the 14th November and I produce that claim (marked P72). I know as regards this claim that Kennedy is covered with two other Insurance Companies—the Caledonian Insurance Co. and Commercial Insurance Company, and in the event of our accepting liability I will take my *pro-rata* share of the claim. We have not admitted liability. We are awaiting the results of this case, of the Police investigations as to the cause of the fire. The claim was made to me about the 14th of November. I think we acknowledge his claim. I do not remember what we said. We had an assessor down from Calcutta who was dealing with the claim and I think we merely acknowledged his written intimation of it. This claim came later. I cannot remember what reply we gave him. I am afraid I do not know what we replied to Kennedy. I think we said we would refer it to our Calcutta office. On receipt of his written claim we would refer it to Calcutta, to our principals there.

40

Q. Have you received instructions from your principals in Calcutta?—

A. They were dealing with the assessor in Calcutta. I presume they are still dealing with the assessor in Calcutta since the claims have not been settled yet. We are awaiting the investigations of the Police authorities.

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(e) G. Percy
Edge.
Examina-
tion—con-
tinued.

(f) J. R. G.
Smith.
Examina-
tion.

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(f) J. R. G.
Smith.
Examina-
tion—con-
tinued.

Cross-exa-
mination. (e)

I think we did write that to the accused, viz., that we were awaiting the investigations of the Police.

Q. The claims were made to you in November and these proceedings were instituted only at the beginning of April and you did not know at the time the claim was received or soon after that that any proceedings were taken against him at all—A. No.

We understood that the Police were investigating. We were awaiting that. We asked the Police whether they had completed their investigations and they said “No.” (To COURT: Kennedy asked us when we were going to settle his claim and we told him that we were unable to settle it just now. 10 We wanted to find out the cause of the fire. There is a clause in this policy which exempts you from liability if the damage is cause by the act of the insured.

CROSS-EXAMINED.

In the absence of such a clause the Insurance Company will be inundated with applications for insurance. Such a clause has to be in every Fire Insurance Policy. I do not know whether Caledonian Insurance Co. deals with Calcutta. My Company represents the Manchester Insurance and holds the biggest insurance policies. All the Companies jointly got down Mr. Ross from Calcutta. He is a well-known assessor at Calcutta; 20 an expert in his line. (To COURT: He belongs to the firm of Long Dale Clark and Co.) I do not think that he came by aeroplane part of the way. I do not think he came up to Madras by air. (To COURT: There was some talk about his doing that, but I do not think he actually did it.) Mr. Ross was dissatisfied with the proof that Mr. Kennedy could adduce as to the value of skins in the basement of this building. Mr. Kennedy’s actual claim under that head was Rs. 127,000 originally. I do not know what Mr. Ross said to Kennedy.

Q. And Mr. Ross put it to Mr. Kennedy that if that claim of Rs. 127,000 was put forward, in as much as some of the claims were in respect of general 30 stock and skins jointly, that the whole of his claim in respect of the stock other than the skins would be thrown to the melting pot and would be the subject matter of litigation?—A. I do not know what he said to Mr. Kennedy. He did not convey that to me. I am in sole charge of the policies in Harrison and Crossfields. I have no recollection of Mr. Ross telling me that he told the accused unless he agreed to reduce his claim voluntarily to the skin account the whole claim would be repudiated. He did not tell that to me. (To COURT: With regard to the stock both Mr. Kennedy and Ross agreed that the claim should be Rs. 459,000; and with regard to the boots, shoes, furniture, men’s outfitting and so on Mr. Ross admitted the 40 claim and he found stock to that value of Rs. 200,000. Mr. Ross was not satisfied that there were skins that Mr. Kennedy claimed, to the value of Rs. 127,000.

Q. Mr. Ross has said this, “If you repudiate liability on the skins that would entail the repudiation of the general stock as well.”—A. I am not aware of that.

I do not know what Mr. Ross said to Kennedy when he was assessing the amount of the stock. We would accept Mr. Ross' assessment. The apportionment would be *pro rata* on the different sums earned. Through our lawyers, Messrs. Julius & Creasy, we agreed to waive our liability and refer the matter to arbitration. This particular policy was taken out in 1932 but there were policies earlier than that taken out by Kennedy in 1931 from our firm. At no time has the Manchester Union repudiated liability. Probably the acquittal of the accused will be followed by a payment of the *pro rata*, but we have not admitted anything yet. Our policy contains no clause guaranteeing against loss of profits. Such policies are usually in respect of shop goods.

(To COURT: We can get a lot of profit for any business at all where there are profits being earned. The insured value is not the selling value. Whether he is entitled to profits or not depends upon the price upon which it is insured. The whole principle in insurance is that he must not make a profit. The general principle in insurance says that he must not make a profit. We have the right of indemnifying him by replacing the stock as it was before the fire. So that the price that the accused will get assuming that his policy is paid will be the value of these things damaged at practically the cost price. We take depreciation into consideration when valuing stock.

RE-EXAMINED.

I admitted in cross-examination that I had waived the benefits arising through that clause. The waiver still leaves me open to litigate that same question in a Court of Law, *i.e.*, the question of liability.

TO COURT.

Q.—If you did not waive the benefit of that clause and you did not appoint an arbitrator within the point of time fixed you would not be able to canvass that issue in a Court of Law? A.—No, the arbitration must come before. We waived that and left ourselves open to canvass the issue in a Court of Law. When I told you in examination-in-chief that I was awaiting the result of the Police investigations it did not necessarily follow that if no prosecution is followed we would pay up.

G. D. S. CROSSMAN. Sworn.

EXAMINED.

I am the agent in the Firm of Messrs. Lee Hedges & Co., I am actually employed by the Commercial Union Insurance Co., but I work at Lee Hedges who are the local agents of that Insurance Company. Kennedy took out a policy with me in April 1932 for Rs. 175,000 for his general stock exclusive of skins but he renewed the policy. (Shown P82). That is the policy. I identify it. (To COURT: It was renewed on the same conditions). We take these policies for a year and it is renewed from year to year. A new policy was not issued. This Rs. 175,000 is made out in this way: Rs. 160,000 covers Kennedy's shop in the nature of boots, shoes,

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No. 8.
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Prosecution.

(f) J. R. G.
Smith.
Cross-exa-
mination—
continued.

Re-exa-
mination.

(g) G. D. S.
Crossman.
Examina-
tion.

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No. 8.
Evidence for
Prosecution.

(g) G. D. S.
Crossman.
Examina-
tion—con-
tinued.

men's outfittings, etc., contained at the Times Building in Main Street. Shop furniture and effects Rs. 12,000. On the 17th of July 1933 Kennedy took out a new policy from me for Rs. 125,000 to cover stock of reptile skins loose or in packages while stored in the basement of the Times Building. I identify that policy (shown P83). Yes, he came and saw me. And told you that he was already covered in respect of skins? A.—No. I knew he was covered with skins because I knew that he had insurance with other Companies. I knew he had insurance with the Manchester. I did not actually know that they covered skins, but I presumed they did cover skins. Kennedy did not make out a proposal form before he took that policy. If it is a fresh business the proposal form is insisted upon, but in business that is increased it is not necessary to ask it. No proposal form was necessary. I knew that he was insured elsewhere, not necessarily in skins, but I knew that his stock was insured. I had no knowledge that he was in fact insured in respect of skins elsewhere. I knew that he had skins and I knew that he had insurance and I presumed that his skins were insured. I did not inspect the stock before taking out that policy. It is not usual.

Q.—Your position is in the event of a claim being made the burden would be on him to prove his losses? A.—Not necessarily. But when we have been doing business with a man for some time one does not necessarily go to inspect his stock. I received 2 claims on the 14th of November. (P67) is a claim of Rs. 14,657-17 in respect of skins. That is on the 13th of November. I produce (P68). A claim dated the 13th November urging a claim for Rs. 447,306-40. That is the total claim on the policy. He claimed on our policy Rs. 175,000/-. I would pay in the event of our admitting liability a proportionate share of that claim. We have not admitted liability on either of these claims. We have not repudiated liability. We have done nothing at all. We await the result of this case till we come to a decision. We are awaiting the decision of this case. I do not know when this case was filed.

Q.—You took no steps to admit or repudiate liability between the date of that claim and the 3rd April? A.—Because we understood that a case was pending. We heard that the Police had the matter in hand. I cannot say whether we would necessarily pay if the prosecution fails. It does not necessarily depend upon that.

Cross-exa-
mination.

CROSS-EXAMINED.

The Commercial Union Insurance Company have been insuring Mr. Kennedy's stock for several years past and time was when I had some bigger policies on the general stock than I have presently. Assuming that the Company has to pay the quatum which we have to pay has been agreed by Mr. Ross. It all depends whether the damage was caused by fire. If it is found that this is not a case of incendiarism but accidental fire the measure of damage has been agreed upon subject to the various Insurance Companies sharing parts. I do as a matter of fact insure against

loss of profits as well in concerns of this type. The insurance is effected on the value of the stock to be insured. (To COURT: I mean the cost price of the goods. There is depreciation which has to be taken into account. This sum of Rs. 447,000 odd rupees is the value of the stock at the time of the fire because Mr. Ross had taken away depreciation. That is in some cases less than the cost price owing to some deterioration of the price. A man will only get the cost price if the goods were absolutely new. If they were some time in stock there will be depreciations had on the stock. There are policies like that agreeing to pay the value of the goods insured. The policy in respect of skins—Rs. 125,000/- taken out in July 1933 was taken out by Mr. Kennedy himself and Kennedy himself saw me personally with regard to it. I do not remember Kennedy telling me that he was removing the skins from his bungalow to the basement of the Times Buildings. I do not remember that the skins were being transferred from the basement to his new building and that was why he wanted the policy.

Q.—Was it pointed out to you that there his skin business would be developed considerably and there would be a larger number of skins bought than in the past? A.—I cannot remember. He might have told me that.

20 Q. The stock on the 1st floor of any service was handed back to Mr. Kennedy on an agreed price? You agreed to Rs. 11,000/-. It was valued at that and you handed it to Mr. Kennedy?—A. Yes.

Q. And the stock was handed over on the understanding that Rs. 11,000/- would be deducted from the amount payable to Kennedy if it was ascertained that the Company was liable?—A. No money passed.

Certain of the stock on the 1st floor as well as a few things found on the ground floor were put up for auction by Mr. Hills, Auctioneer, and the proceeds of those goods are in the hands of the assessor. Those did not go to the accused or to the bank. We do not know what the amount is. I cannot remember being invited by Mr. Kennedy to come and inspect the stock when that policy for Rs. 250,000/- was taken. I have been there previously but I did not go there after the 17th. I did not go to inspect the stocks after the policy was made. I cannot remember some years ago that Kennedy had a policy in respect of his previous bungalow. I have been here since January, 1932. My Company as I stated has neither repudiated nor admitted liability up to date. All the Companies are awaiting the decision of this case. Kennedy informed me about the 15th of September, —I cannot remember the date—that he was shifting off to the Colombo Stores premises. He informed me by letter. He wanted the policy amended. Pending the amendment of the alteration of the policy itself I issued temporary cover effecting the period moving from one place to the other. In respect of the Colombo Stores I charged a higher rate because the building was not supposed to be as fire proof as the Times Building. The Times Building charged higher rates of insurance because it was more fire proof than the Colombo Stores.

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Prosecution.

(g) G. D. S.
Crossman.
Cross-exa-
mination—
continued.

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(g) G. D. S.
Crossman.
Re-exa-
mination.

RE-EXAMINED.

He had not insured against profits to my knowledge. He could insure against standing charges. Even if his business registered losses he could insure yet. In those circumstances insurance against losses of profits would be of no avail to him. It all depends upon the terms of the policy. It all depends upon what the policy is based. There are about 6 or 7 policies. There are several ways of estimating the losses. He has to decide upon what basis he wants to assess his profits. You can insure your profits on the output basis or the turnover basis, which means gross sales in a business of this sort. He can insure on the basis of gross sales. It may be on the basis of profits on previous years. That again depends upon the terms of the policy. If the insurance was based on the profits of previous years in a business that showed a lot of losses, insurance would be purposeless. 10

To COURT: He would stop losing money.

Q. Suppose in the early part of January the accused had come to you and wanted to insure for loss of profits. He showed you his balance sheet and 3 years prior to that he had been losing on the balance sheet. So that if he proposed to insure with you for profits on what basis would you suggest?—A. We should suggest that he should insure his standing charges only,—rent, sales, actual office expenses which he continues to incur even though the losses have occurred and until he gets a resumption of business. There are two items in those policies—one is standing charges and one is profits. That is why I say one will have to adapt it to the business. In other words anything that will enable him to continue until his business comes back only. 20

(h) G. P.
Edge (re-
called).
Cross-exa-
mination.

G. P. EDGE—recalled.

CROSS-EXAMINED.

I have got the letter I wrote to Kennedy on the 15th of December 1933. I refer in that to three previous communications on the subject of insurance. (To COURT: I have a recollection of what I wrote in that letter now.) 30

(At this stage Crown Counsel objects to Defending Counsel getting the witness to speak to the contents of a letter without producing it.)

(To COURT: I suggested to the accused in December to take out a policy against the loss of profits.) It was the first time after the fire that I made the suggestion to him.

Q. Had you not done so on 2 or 3 occasions before December previous to the fire?—A. If you can refresh my memory as to dates I will say Yes or No, but I cannot remember off-hand. (To COURT: I have no record of it. I have no recollection. I asked him once before and again after the fire in December to take out a policy.) 40

Q. As a matter of fact did you not in December when you made that request to him refer to these earlier requests of yours?—A. Not in respect of taking out a loss of profits policy. I think my Firm were written to

on the 15th of September by the accused proposing that he was shifting to the Colombo Stores premises. He advised us that he would be shifting from the Times Building to the Colombo Stores Building. He did not tell us to make the necessary alterations in the policy. The Colombo Stores Building is not so fire proof as the Times Building therefore I asked for higher rates. The accused has had a policy running with the Caledonian Insurance Company since 1929. This policy did not replace an earlier one to my knowledge. I came here in 1931. But the Firm I was in before was Tarrant & Company, who were agents for the Caledonian Company. As far as I know there were no previous policies by the accused with Caledonian Insurance Company previous to 1929. This particular policy was taken out in September 1929. Whether there were other policies which replaced this policy of an earlier date than that I do not know.

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(h) G. P.
Edge (re-
called).
Cross-exa-
mination—
continued.

RE-EXAMINED.

The waiver would leave it open for me to litigate this question in a Court of Law. My assessor, Mr. Ross, arrived in Ceylon very shortly after the fire, within a few days. In fact before the claim on the policies were sent in. It was a special precaution we took on account of the large sum involved. Immediately we communicated with the Head Office the Fire Assessor was on the scene and assessing the damages before they sent in their claim. I do not know that Messrs. Watkins Ford & Company, Auditors, were given a document upon which the claims on account of skins were given. I do not know that on account of Mr. Ross' estimate it was reduced to Rs. 14,000/-. By a number of letters my Firm has been pressing Kennedy for a payment of the outstanding account. In May 1923* I wrote to Kennedy. (Letter read.) On the 11th of July I was pressing Kennedy for the payment of his outstanding account amounting to Rs. 4,104-28, I think payment has not been made yet. I think that Rs. 4,104-28 was for shipping and clearing goods.

Re-exa-
mination.

**Sic.*

30 Adjourned.

6th September, 1934.

Accused present—Same Counsel.

JOSEPH PERUMAL. Sworn—Chief Correspondence Clerk, Times of Ceylon.

6th Septem-
ber 1934.

(i) Joseph
Perumal.
Examina-
tion.

EXAMINED.

I produce (P70) which is a copy of a letter written by the accountant of the Times of Ceylon to Mr. Kennedy. (Letter read). (To COURT : Dated the 23rd August 1933.) I received a reply to that dated the 24th August which I produce (P71). The pencil note at the bottom of (P71) is in the accountant's handwriting. That note in pencil is "Told Kennedy over the 'phone no good." (To COURT : The accountant is not in Ceylon at present. We received two remittances for that amount by the end of

40

September; on the 20th of September for Rs. 1,250 and on the 25th September for Rs. 1000. At present the balance due to my firm is Rs. 9,066.32. On the 22nd December Rs. 1,116.25 was paid. That message was sent in August. Towards the end of July he owed our firm Rs. 9,150.49. Those three payments which I referred to have not effected a substantial decrease in the amount due to us. The amount due at that time was Rs. 1,950.49. After December last year he did not make any payments, up to now. (To COURT: This is not rent—the rent is fully paid. This is mainly advertising, typing, printing, making blocks, etc.) The last payment we received in December was the settlement for the last month of September's rent. 10

CROSS-EXAMINED.

Kennedy & Co. advertised largely in "Times."

Q. And during the past 3 years Kennedy has paid the Times of Ceylon Co., Ltd., not less than Rs. 950,976.97 on account of advertising and rent.—A. That is the amount due to advertising printing and so on. The payments on general account were Rs. 1760.97 in 1931; Rs. 2975.42 in 1932 the whole of 1933, Rs. 3215. That is only on general account. The total amounts to Rs. 7,951.39. On rent account from February 1930 to September 1933 there was paid to us Rs. 48,627-50. The monthly rent was approximately Rs. 1,100. So that the accused paid regularly the rent from month to month right down to August. September rent was paid in December. Up to August the rents were paid regularly from month to month. 20

The bill presented now is in respect of advertising. In respect of advertising Rs. 7349.47 had been paid to me from 1922 to 25th of September 1933. The total of the two figures of payment on the general and rent accounts was Rs. 95,976-97. This sum was actually paid by Kennedy to my firm.

Q. And despite the fire the advertising went on? A.—Yes, there are debits after September. 30

(To COURT: He dealt with us after the fire.) An amount is still due to us. We do give certain amount of indulgence in payment; that is usually left to the management. At the date this letter was written on the 23rd of August this Rs. 9,150-49 was due to advertising of course. Between that date to the end of the year Kennedy advertised in my paper. His advertising charges came to Rs. 2,165.84 from September to December. That was in respect of further advertising that appeared in the Times from August up to December, 1933. And the debit balances in respect of advertising charges has fluctuated from time to time.

Q. For instance in November 1931 Kennedy's owed your firm little over Rs. 15,000 on advertising charges—Rs. 15,265? A.—I cannot make that out. 40

Up to the 5th of April 1932 the amount was only Rs. 1,976.19. Mr. Kennedy by letter (P71) promised to pay as from October, November and December. He actually paid a sum of Rs. 2,250 in September before

the promised date. I knew that the fire disorganised the whole of his business, very considerably. Stocks assessed to the value of 4½ lacs were destroyed. It must have effected the volume of his business. The details I do not know. I did not receive notice that Mr. Kennedy was shifting into Colombo Stores. It is quite possible the manager got the notice but I do not know anything about it.

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RE-EXAMINED.

I stated that the debit balance at the end of December was Rs. 9,066, and that no payment at all has been made in reduction of that amount since December last. Up to 22nd of December 1933 we have received no payments. We have not received payment in reduction of my printing bills, etc. since the 25th December. The last payment I received on account of advertising and printing was on the 25th of September, 4 days before the fire. So that it is correct to say that we have received no payments at all on account of advertising after the fire. We have had no dealings with him after December 1933. He does not advertise in the Times.

(i) Joseph
Perumal.
Re-examination.

To JURY: Why has there been no advertising since December 19; was it because you did not give credit or because Kennedy did not wish to advertise?—A. Probably the contracts had expired and they did not renew them. As far as I know we did not refuse to give credit.

(To COURT: That is the usual thing. They have a contract and renew it at the end of the year.)

R. L. WATKINS. Sworn—partner, Messrs. Duncum Watkins, Ford & Co.

(j) R. L.
Watkins.
Examination.

EXAMINED.

I am a member of the firm of Watkins, Ford & Co. They are a firm of chartered accountants. I have been keeping Mr. Kennedy's accounts for some years now. I think from about the year 1924 or 1925. We did not audit his books. We merely made up his balance sheet. We did not see certain documents. It would be correct to say that what we were concerned with was the arithmetical accuracy of his accounts. We furnished him once a year with a balance sheet and attached a report to it. I did not for that purpose check his stocks. We took such figures as were supplied to us by him. (To COURT: We did not take payment on his vouchers.) I do not think we checked the receipts. That would be auditing. I produce the balance sheet in 1919 (marked P76). All private accounts are kept in the private books, as distinct from the general books of the business relating to the actual results of the business, were analysed. I identify that balance sheet signed by my firm. That is the account at the end of December, 1929. (To COURT: That is presumably correct. At the end of 31st December, 1929, Kennedy owed Campbell Brothers Carter and Co. on his current account Rs. 96,588.88. He owed the same firm on drafts accepted by him Rs. 16,199.27. He owed certain other foreign creditors Rs. 3,006.36

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(j) R. L.
Watkins.
Examina-
tion—con-
tinued.

Then he owed other local creditors Rs. 24,600.18. So that his total liabilities at that date amounted to Rs. 140,395.69. That appears as such in the balance sheet. He owed the National Bank of India Limited Rs. 5,359.97. On loans which he had received from 5 different people he owed Rs. 82,408.53. I do not think any of those debts were secured. (TO COURT: I do not think there was any security with respect to those debts so far as I know.) The net profit for that year on the working of the business was Rs. 46,809.40. (TO COURT: Yes, all the interest on the loans would be debited in arriving at this figure.) He showed that year a stock of skins in Colombo for Rs. 17,543.64. It did not represent skins exported so far as I know. (TO COURT: He did not import skins from the United Kingdom. In the ordinary way he would draw against these skins and his cash will be credited to that amount. It would appear in his bank balance.) I produce (P77) which is the balance sheet for the year 1930. At the end of that year the amount owing to Campbell Brothers Carter & Co., on the general account was Rs. 130,652.40. As against that they owed Kennedy on the skins account Rs. 60,015.86. The result was that Kennedy owed Campbell Brothers Rs. 70,636.54. On drafts accepted by Kennedy there was a sum of Rs. 10,686.93 due. He owed sundry foreign creditors Rs. 2,114.72, sundry local creditors he owed Rs. 37,287.55. So that his total liabilities on those accounts amounted to Rs. 120,725.74. Further the overdraft at the National Bank had risen to Rs. 47,198.69. Compared with the figure at the end of 1929 that overdraft had therefore risen by Rs. 42,000 roughly. His loans stood at Rs. 90,981.21. That represented an increase of roughly Rs. 8000 on that account. TO JURY: It is not usual to show the security on the balance sheet. It is becoming more usual in recent years not to show the security on the balance sheet. (TO COURT: The stock in trade the firm made in advance were furniture and fittings the electric lift. These are the only assets.) The names of those creditors are mentioned in the balance sheet. We did go into the credit of his accounts. The trade in that year showed a profit of Rs. 10,411.91. That represents a reduction on profits from the previous year of Rs. 36,000. (TO COURT: The depression had set in by that and it had affected Kennedy's trade in 19* .) The stock-in-trade in shoes was fairly static, almost about the same. The general stock at the end of December, 1929, stood at 405,943. It had increased in December, 1930, slightly. The comparison between these 2 years was Rs. 22,000 more. The skins purchased in 1930 had all been despatched to London and were outstanding in London awaiting sale. There were no skins locally in 1930. There were skins in England amounting to Rs. 34,000 in value. They may have been disposed of but the money had not been received. I also have (P78) the account in 1931. The amount owing to Campbell Bros. Carter at the end of that year was Rs. 66,323.23. That is the nett amount owing to them. The amounts owing to them on drafts is Rs. 6,855. He owed sundry foreign creditors Rs. 2,468.63; local trade creditors Rs. 12,225.73. The local creditors had reduced that years from Rs. 37,000 to Rs. 12,000. The general bank overdraft on No.(1) account had risen from Rs. 47,198.69 at the end of the previous year to Rs. 77,214.37.

* Sic.

On the No. 2 account he owed Rs. 39,774.69 making a total of the overdraft to the bank Rs. 116,942.16. That represents roughly about Rs. 69,000 more. He owed the bank that Rs. 69,000 more at the end of that year. The loans rose to Rs. 98,625.35. The trade that year showed a nett profit of Rs. 5787.51. The stock in skins at the end of that year was Rs. 27,535.36. That year his purchases of skins were, or amounted to Rs. 107,168.68. That is the gross amount. The Rs. 27,000 figure you gave me represented the amount of skins purchased which were unsold at the end of the year. The stock-in-trade at the end of 1930 was Rs. 427,720.44. You add to that his purchases of general stock that year amounting to Rs. 71,693. Those figures total Rs. 499,413. The stock at the end of December, 1931, was Rs. 438,494. The total on the stocks at the end of 1930 was Rs. 427,720.44. You add to that figure the purchases during 1931 which amounted to Rs. 71,693. The two figures total to Rs. 499,413.44. Then the stock at the end of December, 1931, Rs. 438,494.90. The cost price of the turnover that year was Rs. 60,954. The sales realised Rs. 130,34. Comparing the cost the turnover to goods sold with what they were sold for it represents practically 100% profit. (To COURT: Well, the gross profits obtained on these sales are quite a fair profit. It was about 50%.

20 On selling price he got that year about 45%. This is the gross profit. The indication is that the sales were falling off but at the same time he was asking a fair per cent. on the sales. I got a copy of the 1932 report. That shows a nett profit of Rs. 5000/-. But in reality it was a loss to that extent, which was later ascertained. The mistake was Rs. 10,000. It should have been a loss of Rs. 5,000. I have a copy of the 1932 report. I produce that (marked P79). I explain that previous year's figure in the 1932 report in this way. Under my paragraph profit and loss account in the 3rd sentence I rectify that error of Rs. 5,000. The correct position is that at the end of 1931 there was a loss of Rs. 5,006.1. (To COURT: The error in the 1931

30 account was accepted by the accused. It was a book-keeping error. The accused accepted it because it was in fact an error and had to be put aright in the books. I ordered a rectification to be made. We explained in our report that that error has been rectified in our accounts for 1932. I have a copy of the 1932 account. The nett amount owing to Campbell Brothers Carter and Company that year was Rs. 74,540.9. That shows an increase of roughly Rs. 8,000 on the previous years figures. On drafts he owed Rs. 10,809.9. That also shows roughly an increase of Rs. 4,000. The foreign creditors that year had fallen slightly to Rs. 1,185.92. The local creditors had risen from Rs. 12,000 odd at the end of the previous year to Rs.

40 27,243.58 at end of 1932. The total outstanding are Rs. 111,778.68 as against Rs. 87,882.67 the previous year. It represents roughly an increase of Rs. 24,000 more. The overdraft at the bank: No. (1) account overdraft was Rs. 83,972.83. That compares with the previous year's figure of Rs. 77,214.37. The No. (2) account at the end of 1932 was overdrawn to Rs. 60,118.95. That compares with the previous year's figure of Rs. 39,786.55. These two figures for 1932 total Rs. 147,091.78. That is an increase as against the previous year of about Rs. 27,000. The total figure

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of loans stood at Rs. 98,847.38. The business showed a nett trading loss of Rs. 39,746.19. The adjusted figure would be Rs. 28,952.67. That is the actual loss for 1932. The stock at the end of 1931 was Rs. 78,535.36. The stock of skins at end of that year had risen to Rs. 52,979.99. I have only given the figure of the stock at the end of 1931—Rs. 438,494.90. The purchases during that year was Rs. 70,480.86. Those two figures total Rs. 508,975.76. The stock at the end of 1932 had risen slightly to Rs. 446,450.48. If you subtract those figures you get Rs. 62,525.28. The difference is the cost of the general stock he sold that year, at Rs. 115,054.69. If you compare those corresponding figures there is not much of a difference as against Rs. 60,918.54. The sales were slightly less. Having regard to those figures I should say that the trade loss has been occasioned by the increase in interest charges, on the bank overdrafts and loans. There has been a considerable decrease in the percentage of profits. The previous year there was a gross profit of 100%. This year it is 85%. It is chiefly accounted for in the form of gross profits. I commented that year on the business in skins (comment read). As regards the stock-in-trade you said this. (That statement is read.) I also produce (P80) which is a balance sheet for 1933 prepared up to the end of 30th September. I had the accused's authority to prepare this balance sheet as I was not quite sure whether I was justified in complying with the prosecution in preparing it for them without his permission. I had his authority to prepare this balance sheet practically at the date of the fire. (A statement of his in 1932 report read, I drew attention to that. In 1933 the nett amount owing to Campbell Brothers Carter Limited is Rs. 83,654.81. That represents an increase on the previous year of about Rs. 9,000. The drafts owing on drafts drawn on Campbell Brothers is Rs. 26,469.66. It represents an increase of roughly Rs. 16,000. He owed sundry foreign creditors Rs. 72,43; local trade creditors was Rs. 21,742.62. That again shows a slight decrease of about Rs. 4,000. Then you have a new item showing the liabilities to sundry customers for books destroyed by fire, Rs. 347. The total of those liabilities is Rs. 132,286.52. That compares with the previous year's figure of Rs. 111,776.58. In the National Bank the No. (1) account had increased to Rs. 99,893.72. The No. (2) account had fallen considerably to Rs. 19,441.73. Then you have a No. (3) account for the first time. That stood at Rs. 9,753.8. Overdraft to the Chartered Bank Rs. 9,852.59. These figures total Rs. 138,921.12. But we have to give him credit for a small amount for cheques not realised, Rs. 265.40. So that the nett figure is Rs. 138,655.06. That figure compares with the previous year's figure of Rs. 144,091.41. That figure was excluded as outstanding cheques. To summarise the position the No. 2 account had fallen considerably, but there were substantial increases on No. (1) account and two fresh accounts had appeared. (To COURT: His total liability was less.)

Q. You differentiate for the first time here between principal and interest?—*A.* That is due to the fact that on previous years the interest had been paid. In this year the interest appears as a separate liability because it had not been paid. The total of the principal amount due on

loans was Rs. 97,846.55. The interest due on these loans was Rs. 9,600.33. Those two figures total Rs. 107,446.88. He owed a little less than Rs. 8000 more. (To COURT: I should imagine if any interest had been outstanding for the previous year it might have been included in the local creditors and sundry goods. I cannot be certain. Some portion of the interest due for a previous year might have been shown in a different item. I should have examined to see whether the interest was outstanding to make up the balance sheet. I have no means of knowing what the rate of interest was on those loans. The nett loss was Rs. 35,639.8. Roughly the loss in 1932 was Rs. 29,000. You divide that by 12 you have about Rs. 2,400 per mensem. You take the Rs. 25,000 for the 9 months of 1933, and divide that by 9. The rate of loss had increased by Rs. 1,500. That represents a loss of 50% on Rs. 2,400. The skin stocks showed at the end of 1932 Rs. 52,979.99. Those are the stocks in Colombo and the United Kingdom. There were not all the skins in Colombo. There were Rs. 40,839 stocks of skins in the United Kingdom. Of these only Rs. 12,140/- worth were actually in Colombo. The others were afloat or in the United Kingdom. (To COURT: I think when the skins go forward the practice is to price them at the time they were despatched. Some of the monies which were got from the bank on this skin account may have been advanced to skin suppliers and the skin would not have come into stock.

Q. Does the balance sheet show any such amounts owing to the firm from skin suppliers—A. I cannot see anything here.

Q. If that was the position the balance sheet must show those skins supplied?—A. There is no specific item showing that. There is a very small possibility of it not having been marked on this balance sheet. Generally that you have put to me is correct. The skin stock on the 30th September as per insurance claim was Rs. 14,057.17. That is the skin stock in Colombo as regards which a claim was made on the Insurance people. This figure is in the balance sheet. I put it into the balance sheet because ultimately this figure was accepted by Kennedy himself.

Q. So far as you were concerned how did you get the stocks of skins for the purpose of the 1931 balance sheet?—A. Well, they were handed to us by the accused. We were not in a position to check his stock. We were not asked to check his stock. We did not check these things as to the additions and extensions of stock sheets handed to us. Therefore we did not know how they were compiled. It is not in the nature of our work to verify that. If we were acting on general orders we would have examined the stocks. In 1932 we arrived at the figures of the skins purchased from the books of the accused. For the previous years for the stock figures I took I was given stock sheets by Kennedy which I did not check. We were given a list of stocks on the sheets. (To COURT: Not a stock in statement of balance carried over, etc. In other words we got a specific statement of what the stocks were. We were given stock lists furnished by the accused which we totalled. We checked the resulting figures of the stocks but we did not know that the skins were there. I did not know anything of the relations between the accused and Mr. Ross. I worked those figures with

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Mr. Ross and I think we also got hold of the actual books from the local suppliers and we arrived at what skins they sold to Kennedy from those books. We started with the figure at end of 1932. We checked the purchases from the books of the sellers—books which were handed to us. There were two suppliers. (To COURT: I have the books.) We had the invoice to be made up as each shipment was made. I think they were carbon copied invoices. We had the invoices showing despatch. I do not think there were any sales. I came to that figure in corroboration with Mr. Ross: independently in the first instance and we did agree latterly. The accused was in the hospital at the time the balance sheet was being prepared. I have not approached the accused in any particular with regard to this balance sheet. 10

AFTER LUNCH.

R. L. WATKINS. Sworn.

Q. The next figure is the stock in United Kingdom and South Africa not realised at that date. Is that right?—A. That is in the trading account, Yes.

The date was the 30th September. I got the figure Rs. 20217/73 I got the figure from the cash invoices relating to the particular shipments to the United Kingdom and South Africa. Some were shipped to South Africa from Ceylon but I am not sure if they were shipped from Java. I think as a matter of fact they were shipped from Ceylon. The stocks to the United Kingdom and South Africa, the general stock, I added the figure Rs. 446,450/48 as to the end of 1932. 20

The purchases during this period were Rs. 37622/54.

Q. Does not that show taking the average fall of purchases, a decrease taking that period of time as comparing it with 1932 the purchases for the 12 months being 70,000/- and the purchases for the next 12 months Rs. 37000/-?—A. That is a decrease on the average as compared with the previous year. 30

Q. The stock in trade at the 30th September 1933 is shown as Rs. 447,306/40?—A. Yes.

Q. How did you get the figure?—A. That was the figure we agreed with the Insurance Companies as being the only figure. It is the usual method when a stock is non-existent, in order to ascertain what the stock should have been. It is usual to take the percentage of the gross percentage of the sales which was earned in any period. We arrived at the figure of sales for a period and we arrived at the figure of the purchases for that period and we arrived at the figure on the percentage. This is the calculation. It is an estimated value on the stock based upon the previous percentage of profits. 40

To COURT: The cost of purchases and sales plus the percentage of gross profits on the sales based on the return of the profits.

That is the estimated figure arrived at in the way I explained.

It was a preparation of statements and we were concerned with the accuracy of the arithmetical figures.

Q. Would you in preparing a trading account of his boots and shoes etc would you check the sales?—A. We did not go through each invoice of sale but we checked the postings of these debits up to each customer's account from the sales ledger and we verified the debtor's balances at the end of the period. Those were the credit sales.

The cash sales have been checked with the cash sales counterfoils. These were checked in our office. We say something about that in our report
10 of 1932. I do not think we actually checked those with the cash book but we have tested them. It is some long time ago since we did them. I think we have checked them. I have not brought the cash book.

With regard to the purchases we went into the full details with the London accounts of the invoices rendered by Campbell Brothers & Carter which was a big firm that dealt with Kennedy & Company. These invoices have agreed with Kennedy's books and we have tallied the balances on those accounts and I think the balances are in order. I do not think we have checked every sale. We did it for our own satisfaction and because it adds a little more value to the work we have done, but if we have not done so,
20 we say so.

So far as the sales were concerned the credit balances were checked with the customers' accounts and I have no reason to believe that the customers were wrongly debited.

As regards the cash sales I will not say I have checked each individual sale but I may have tested them with the particular items that have been entered in the cash book.

Q. Would it not be possible for one not to show in his books his actual profits? Some suggestion has been made in a letter that the profits shown in the books were not his actual profits but that he made much more and he
30 utilized what he called his surplus profits to buy reptile skins?—A. I am afraid I cannot say. If the accused chose to suppress any book completely I do not think we could find out. We had to rely on the accused. We had no reason to suspect the accused (Counsel reads page 159 of the Police Court evidence).

I should rather imagine that what accused meant by that was that he took the stocks at a lesser valuation.

Q. No, he bought stocks with profits which were not disclosed in the accounts?—A. No I could not see how he could do it.

Q. Was it possible for him to withhold the true state of his profits
40 unless he had a set of parallel set of books which you did not see?—A. If a man keeps one cash receipt book apart from another nobody in making up the balance sheet is the wiser if that is suppressed. Those entries would not have been given effect to in those books if the accused wished to suppress the books.

(To COURT: Anyone can falsify books.)

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I think it very unlikely that it could have been done. I cannot see how he paid for the stocks unless it was cash not accounted for. He had another bank account.

Q. I suppose if he got cash by sales those transactions might go on without your knowing it?—*A.* He might do so. He might have a special cash book printed for the purpose.

Q. Unless there was a suppression of that sort the actual state of the profits would be known to you?—*A.* That is so.

TO COURT: It is possible with the falsification of books (Shown P39). This is marked skins and stock in basement I got this file when it was handed to me by accused's wife—his attorney—I think it was on the 4th October 1934 shortly after the fire. It was handed to me in order that I might arrive at the skins which had been despatched and the present stock of skins; in other words to make a claim to the insurance Companies on account of the loss of skins. 10

Q. Could you recall whether that was before Mr. Ross arrived in Ceylon. Mr. Ross's evidence is that he inspected the building on the 6th October. *A.*—I am afraid I cannot remember. I think it was the 4th October.

Q. Had you met Mr. Ross when you got this file? *A.*—I cannot 20 recollect that.

Q. That purports to be a statement of skins in stock from July 1933 onwards? *A.*—That is so.

Q. What is the total value of skins shown in that statement. *A.*—The total value is Rs. 146,059/47.

Q. That is under various grades and kinds of skins etc.? *A.*—Yes.

Q. Later in that file there is a statement of skins despatched? *A.*—Yes.

Q. Despatched since any particular date. *A.*—It says the first despatch was from July onwards. 30

Q. What is the total value of the skins despatched? *A.*—The total value is Rs. 21,507/57. There are no dates here. It is merely a memorandum sheet. The date is the only date given here. We have been able to trace the reference number. This number refers to the shipping invoices.

Q. In other words you have been able to check the despatches, but I believe you have not been able to get any proof of the alleged stocks? *A.*—No. We could not get proof for the greater portion of stocks.

Q. The difference between the figures, the total value of skins as shown in that file and the total despatches is Rs. 124551/90. *A.*—Yes.

Q. Mr. Watkins, that figure of Rs. 21507/57 includes all despatches 40 shown there as well as two other despatches, the invoices of which you have traced but which are not entered? *A.*—There were three invoices. They were not entered here, but we actually traced the invoices. The originals were not entered here.

Q. In that same statement of stocks certain items are marked T.C. in red ink. Those items marked T.C. total Rs. 98455/03? *A.*—Yes.

Q. Were you able to obtain any documentary proof of these items of stock at the date of the fire? A.—I was not able to do so.

(To COURT: T.C. are parts of the reference numbers which I have not been able to trace. I was not able to trace the receipts by Kennedy and Company. I could get no proof of it at all.)

10 In respect of the other items I had proof in the nature that we traced the despatches of those skins when they were sold. We were able to trace those as having been in stock. I think each of those items in the list we have traced as a despatch of them say when sold or shipped which have the letters B.W. against them which means Bridge O'Weir which is actually the name of the firm which purchased the skins. I have traced them.

Q. The first in the list A3 is black and white Ceylon Pythons in lots? Can you demonstrate that? A.—I can demonstrate that. This A3 refers to the black and white pythons. These are the despatches of skins.

There were 413 despatches of black and white Python skins. I have actually traced the invoices. There was a whole lot of them.

The best evidence of their having been there is their having been shipped.

Q. You have a total stock there of Rs. 146059/-? A.—Yes.

20 Q. Leaving aside the despatches shown in that file. A.—Yes.

Q. You have traced the invoices relating to the despatches during that period? A.—Yes.

Q. These invoices total Rs. 21507 and you have been able to identify particular items contained in these invoices? A.—All of them. I have ticked them off.

Q. The items marked T.C. do not figure amongst those ticked off? A.—None of them.

Q. The figures ticked T.C. total Rs. 98456/-. A.—Yes.

30 Q. To follow that up did you check the books of the suppliers of skins with Kennedy's books? A.—Yes. I went through the books.

Q. Did the books show the sale to Kennedy of any of the items marked T.C.? A.—I had not identified them. I could not account for all the purchases which he got from Perera and Chowdary's in the books I have included everything he got from Chowdary.

Q. When you subtract the despatches from the total value you get Rs. 124000/-. A.—Yes.

Q. Were you able to get any proof of the purchase by Kennedy included in the Rs. 124000/-. A.—We got Rs. 14000/- which we arrived at as the purchases.

40 Q. The Rs. 98000/- is included in that figure?—A. Yes.

Q. (Shown P32.) These items corresponded with the items marked T.C. and total the same figure Rs. 98454/03?—A. Yes.

Q. Apart from these T.C. items are there any items there for which you could not get any documentary proof?—A. I think to the best of my recollection it was so.

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Q. Certain items have been ticked off by you?—A. Those are the items of which there is proof of despatch by Kennedy and for which there are receipts.

Q. If you look through that are there any items which you have not ticked off and which are not marked T.C.?—A. There are.

Q. They are items totalling Rs. 12000/-?—A. I have not got the total here but they have all got the marks. I do not know if there is a total of these items made.

Q. Have you any proof of receipts by Kennedy of the remaining items?—A. No, I do not think so. I cannot recollect it. I have not seen this file for so long. I have seen these items to which you refer. They are marked (2) and (3) accounts. I cannot remember where they are. There is a sum of something like Rs. 24,000/- or Rs. 25,000/- which is not ticked off and which is not T.C. items.

Q. Is there any proof of the receipt of those items by Kennedy?—A. I cannot recollect it at the moment.

To COURT: I had no documentary proof of the receipt of anything by the accused except what I could get from the sales from Perera. These items which have been referred to have not been ticked off and are not marked T.C. but they have all reference numbers. They were not traced and were therefore still in stock. In arriving at the estimate of stock we could arrive at the figure Rs. 14000/-. That figure was arrived at independently of this stock (P39).

Q. Have you a copy of the balance sheet for 1932?—A. Yes.

Q. That balance sheet shows that skins in Colombo to the end of 1932 were Rs. 12140/21.—A. Yes.

Q. You examined the books of S. A. Perera and Chowdary, skin dealers, from whom Kennedy purchased the skins. What is the total value of those purchases from those two dealers you were able to trace from January to September?—A. The total value from January to September from S. A. Perera was Rs. 17049/53 and from Chowdary Rs. 6374/- and the total is Rs. 23424/53.

Q. When you add Rs. 23000/- to the stock at the end of 1932 you get Rs. 35564/74?—A. Yes.

Q. From the invoices you were able to prove that the total cost of skins exported from the 1st January to 29th September 1932 was Rs. 21507/57?—A. Yes.

Q. When you subtract those figures you get Rs. 14060/17?—A. That was the estimate of the stock at the date of the fire according to the method of calculation.

A business like this should keep a stock book. It is usual to keep such books. It is a necessary requisite in a business of this kind. We never saw that stock book. We knew there was not one. We knew they never kept a stock book. If there was a stock book in view of some of the accounts being queried if they had one it would have been produced.

Q. To pass on to 39 again, the total is Rs. 146,059/47?—A. Yes.

Q. Granting for a moment that that is a genuine statement of skin stocks if you deduct from that figure this figure of Rs. 35564/74, which is approved figure from the total figure of 146059/47 you get a difference of Rs. 110,494/73.—A. That is the figure.

Q. You have no proof that Kennedy bought skins to that value that year?—A. No.

Q. Does the balance sheet show that he had that money to buy Rs. 110,494/- worth of skins?—A. The balance sheet does not show that.

Q. That amount of purchases does not figure in his balance sheet?—
10 A. That does not figure in his balance sheet.

To COURT: If he had those skins in stock the books would have shown them. It would appear in the books as stocks. They would have been paid for and the bank overdraft increased or the cost of stocks would have appeared as owing to the sundry suppliers, i.e. had he bought them on credit.

Q. So far as No. 2 account is concerned far from being increased in 1933 by the purchase of stock it was decreased?—A. I think so.

Q. If you turn to local trade creditors, i.e. you say if Kennedy owed Chowdary and S. A. Perera for skins purchased that would appear. I
20 suggest to you that Kennedy would not have purchased that amount of skins?—A. Yes, yes.

Q. Did you prepare Mr. Kennedy's return of Income tax for the period of 1933/34?—A. Unless I see the return I cannot recollect.

(Mr. Obeysekere proposes to read the returns showing the income tax for 1932-33.

Mr. Perera objects to it (1) as not appearing on the back of the indictment, and secondly because it is a privileged document.

Q. Did you prepare Mr. Kennedy's income return for 1933-34?—
30 A. I cannot recollect. I do not think it will appear in my firm. I have an idea we prepared it. If I see the signature on the return I can say.

To COURT: There are three members in my firm, one is at home. I have no immediate recollection of having done this myself this particular year. I believe I have a recollection of doing it one year but I am not certain of that.

I have got a copy of that document in the office. From the materials at my disposal I can say whether I prepared the return for 1933-34. If we prepared the statement the assessor must have had all the information.

I do not think there were two assessments, one for the business and one for Mr. Kennedy. It was a one man's business.

Q. I take it your firm has been auditing for several of these retail
40 firms in the Fort and Pettah?—A. Yes.

Q. Many firms in the Fort have been presenting balance sheets year after year after the depression showing that they were working at a loss?—A. That is so.

Q. Many at the Fort firms—retail firms—have been presenting balance sheets to show that the year's working has been at a loss?—A. Yes.

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Q. That has been inevitable with the depression and the reduced purchasing power of the people in Ceylon?—A. That is so.

Q. That has not been confined to Ceylon either, it is world-wide?—A. It is world-wide.

Q. With regard to Kennedy's business how long have you been auditing their accounts?—A. I think it is since 1924. We have not actually been auditing their accounts.

Q. About the year 1931 they showed a profit?—A. I have a recollection he showed profits.

Q. These profits went into Mr. Kennedy's pocket as he was the sole proprietor of the firm?—A. That went to the credit of his capital account in the firm. 10

TO COURT: If he took money out for the purpose of say, buying a house, he would take it out of the capital, and that amount would be debited to his capital. He would have had the balance to do business. If he took Rs. 20,000/- out of the business and did not include the house in his balance then he would have to debit his account with the amount he took to buy the house. I do not say that it should have appeared in his balance sheet.

Q. Every year the balance sheet shows what Kennedy has been drawing?—A. Yes. 20

Q. I think he has been invariably drawing sums over and above the sums represented by the management charges. There is a sum of Rs. 10,000/- shown as management charges?—A. As a matter of fact I think he has been drawing more than that since 1929 in some years 18,000/- and Rs. 19,000/-.

Q. The skin business has been running from the time you began auditing their accounts. From 1924?—A. I am not sure about it. I was not in the office those days. I cannot speak to them.

Q. Had Mr. Kennedy been buying skins from 1920 onwards out of his own savings there was no occasion for him to bring them into his balance sheet?—A. No. It would have been the usual thing for him to bring them into the balance sheet, unless he wanted to keep it as a secret reserve. 30

Q. If the members of your firm bought gold sovereigns as an investment you would bring that into the firm's balance sheet?—A. That had nothing to do with the business. The skins had to do with the skin business. The skin business so far as he was trading appeared regularly in his balance sheets.

Q. Are you aware he had a private collection of skins which he was accumulating?—A. I do not know. 40

TO COURT: If he bought skins from his savings and if he chose to keep them out of his balance sheet there was nothing to prevent it. There was no reason why he should, but dealing in skins I should have thought it usual for him to have brought it into his balance sheet. So far as the claims put forward by Kennedy in respect of his stock in trade, his claims were amply supported by the stocks he had other than the skins?—A. He

had. I do not know about the stock he had because I did not check that. The books showed that he should have had stocks. The entries in the books showed that he should have had that stock but we never checked the stock.

Q. The Assessor who came out from Calcutta verified that stock to the best of his ability?—A. As far as I am aware he verified it. I know he went through a lot of trouble over it. Mr. Ross' particular business is assessing damage by fire. I know he spent a number of days examining the traces of what was left after the fire for traces of stock, working out
10 stock balances. He examined the books in my office as well.

Q. At the time of this fire a good many of the books of Kennedy and Company were with you for the purpose of the balance sheet of 1932?—
A. That is right.

Q. There were certain other books in the store of Kennedy some of which were burnt and some of which were preserved, those which were in the iron safe?—A. Yes.

Q. All the receipts of cash purchases, and his own cash book which was on his desk was burnt?—A. I was not aware that the cash book was destroyed. I cannot remember the cash book being destroyed. I have not
20 seen it. I do not know that he had a cash book. I do not recollect it. I was told that the cabinet drawer in which all the receipts were was destroyed.

Q. Mr. Kennedy claimed that there were Rs. 146,000/- worth of skins?

7th September, 1934.

Accused present.

Same Counsel as before.

R. L. WATKINS. Sworn.

Q. The question Mr. Watkins is this, did you prepare Mr. Kennedy's
30 income tax returns for 1933-34?—A. Yes.

Q. I take it you prepared that return on instructions from him?—
A. On instructions from Mr. Kennedy.

Q. Do you show a stock of skins in that return?

To COURT: In this particular instance the returns for 1933-34 were based on the accounts for the year ending 31st December, 1932.

Q. Was the stocks of skins shown in that statement?—A. The figure of stocks of skins as appearing in the accounts

Mr. Pereira objects to the question on the ground that it will involve the witness's mentioning the contents of a document without it being
40 produced, which document does not appear at the back of the indictment.

Mr. Pereira subsequently agrees to withdraw his objection as it will waste a lot of time.

Q. Were you furnished with any material other than the material which you had for preparing the balance sheet, for the purpose of preparing the income tax returns?—A. Not in regard to the stock.

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Watkins.
Examina-
tion—con-
tinued.

7th Septem-
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TO COURT: For the purpose of making up the income there were other details to be considered in preparing the returns of income.

TO COURT: I was satisfied that the cash sales were supported by the books. It was verified according to the books.

My Lord, I made a mistake in referring to the date I referred to the date yesterday as being the date on which Mrs. Kennedy handed me the document of Kennedy's skins in the basement I think I said it was the 6th. It was the 4th.

CROSS-EXAMINATION.

Q. Were you able to verify whether your firm has been auditing 10 Kennedy's accounts for the last 11 years?—A. Since about 1924.

Q. As a matter of fact your firm consists of the new firm and the members of McDermott & Co.?—A. It was McDermott & Co., but the partners are the same.

Q. It was Mr. Ford of your firm who prepared the accounts for the balance sheets up to 1931?—A. He did not audit the accounts but he made up the accounts.

Q. The books were sent to your firm twice a year?—A. As far as I can recollect they were sent twice a year.

TO COURT: We had to do a lot of writing, and the books were sent 20 to us twice a year as a matter of convenience.

Q. As a matter of fact Mr. Ford introduced a new system of book-keeping?—A. I believe he did.

TO COURT: That was several years ago.

Q. The books consisted of a cash book, cash receipt book, a petty cash book, a daily cash sales book, a daily credit book sales book, a local purchases journal, a journal consisting of interest and customers' ledgers?—A. That is so.

TO COURT: I have never seen the stock book.

Q. There were in addition stock books, general stocks and skin stocks? 30 —A. I do not remember ever seeing a stock book. I did not know that a stock book existed.

TO COURT: That applies to the stock book of generals and skins.

Q. You prepared your annual statement of accounts from these books? —A. Yes.

Q. They were regularly sent to the bank, and two copies were sent to Campbell Brothers & Carter?—A. I am not sure if I was aware of that. It was not sent by us.

Q. Your account was really kept in £.s.d. in these balance sheets?—A. That was for the purpose of sending the accounts to Campbell Brothers & 40 Carter.

Q. The accounts were kept in rupees and cents and the bank did the writing up from 1929?—A. Yes. I am not sure about the last balance sheet. It was given in sterling figures which was apparently an insurance claim.

Q. These balance sheets which were prepared by you were accepted by the bank and Campbell Brothers and Carter?—A. Yes.

To COURT: I do not know that the accounts were sent, but I know that they were drafted in sterling figures and as well in two columns of rupees and cents but I did not send copies of those accounts. So far as I am aware the balance sheets were accepted by Carters. I did not send the accounts to Campbell Brothers and Carter.

Q. Neither did the local bank or Campbell Brothers & Carter send you any queries on the accounts?—A. I do not remember it.

10 Q. Your annual charge was I think Rs. 850/-?—A. Yes, I think it was.

Q. The return of gross profits is not diminished?—A. No, it remained fairly constant throughout that period from 1929 to 1933. There was a slight variation according to my recollection.

Q. Had a man been pressed for funds he could easily by reducing his gross profits, selling at a cheaper rate, have increased his turn-over, and got more cash into his hands by reducing the stocks?—A. Yes.

Q. In point of fact that has not been done?—A. That has not been done so far as the accounts disclose.

20 Q. The over-head charges also remained fairly constant in these balance sheets?—A. To the best of my recollection it did so.

Q. Round about Rs. 96,000/-?—A. Rs. 96,000/- including about 3000/- for depreciation.

Q. The accounts also show a furlough account?

To COURT: It chiefly referred to Mrs. Kennedy. It referred chiefly to the passages of Mr. & Mrs. Kennedy, voyage expenses or monies drawn at home.

Q. Right throughout this period despite the depression there was no reduction in salaries paid?—A. Not to my recollection.

30 Q. That is another item on which reductions might have been made if it was desired that the expenditure should be reduced?—A. Yes.

Q. The advertising charges were Rs. 9519/29, Rs. 5900/- in 1930, 7100/- odd in 1931, Rs. 9400/- odd in 1932, and Rs. 7400/- odd in the 9 months of 1933?—A. Those last two figures are correct. I have not the other balance sheets.

Q. So far as the balance sheets go no assistant salaries were cut?—A. I do not remember it.

Q. No deduction of salaries when men were ill or absent from duty?—A. Not that I remember.

40 Q. You are aware that Mr. Kennedy went on a business tour in 1933, from January he was absent till the 9th July?—A. Yes.

Q. We have it from Mr. Wemyss of the Chartered Bank that the skin business financed by the Chartered Bank began in September 1933, by June 1934 that the turn-over was something like Rs. 167,000/- that having been paid into the bank actually by Carter Brothers something like Rs. 167,000/-. That is a much larger volume of business so far as the

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skin business went than that he had been putting through in 1931-32?—

A. That is so.

Q. In fact the turn-over for skins in 1931 was Rs. 113,369?—A. I have got the 1932 figures. I have not got the 1931 balance sheet.

Q. In 1932 it was only Rs. 152,000/- odd?—A. Yes, that is in the skin trading account.

To COURT: That represents gross sales after deducting sales and brokerage.

Q. In 1933 up to September it was Rs. 50,000/- odd?—A. It was Rs. 50953/-. 10

Q. That was a much larger volume he had been doing in 1932, 1933 than he had been putting through during the previous months. Mr. Kennedy's trip to Europe had been of some considerable importance?—A. I presume so.

Q. To touch the figure of Rs. 189,000/- one has to go to 1930? In 1930 the figure was Rs. 183,703/39?—A. I have not the balance sheet here. It is referred to in the following year's report.

Q. You are aware that Mr. Kennedy had leased three floors of the Colombo Stores premises?—A. Yes.

Q. The floor area of each floor is considerably larger than the floor area occupied by Mr. Kennedy at the Times building?—A. Yes. 20

Q. It was three times as large?—A. I should imagine so. It was considerably larger.

Q. As a matter of fact he secured them on very favourable terms as far as the rental went?—A. So Mr. Kennedy informed me.

Q. The 1932 balance sheet shows the losses as Rs. 39,746/-. That was adjusted later to Rs. 18952/67?—A. Yes.

Q. What became of the difference? Did you carry it into the next year?—A. It was adjusted in this year—not 1932. In October in 1932 as far as I recollect. 30

Q. It went to alter a credit balance into a debit balance?—A. That is so.

Q. Did you throughout the period your firm checked these accounts at any time find any falsification of books?—A. No.

Q. With regard to the skin claim, the claim on skins, you gave us the figure yesterday, the total value in the books was Rs. 46,000/- odd?—A. Yes.

Q. Excepting Rs. 21,000/- leaves a balance of Rs. 24,000/- odd?—A. Yes.

Q. Out of that you deducted Rs. 98,000/-?—A. Yes, the difference is Rs. 26096/87. 40

Q. Actually the claim put forward to the Insurance Companies under the head of skins is Rs. 14557/17?—A. I think Rs. 26077/- is the figure unaccounted for.

Q. You deduct the skins from the date of the fire from the stocks shown in the books as 146559/79. Then you get—

The actual submitted to the Insurance Company was Rs. 154557/17. That leaves Rs. 12039/70 unclaimed from the Insurance Companies?—

Q. One gets Rs. 12079/70. Quite apart from the skins marked T.C. there are other skins of which you had no proof of purchase?—A. That is right.

Q. In point of fact were you aware that you obtained your figures of the skins purchased, from S. A. Perera and Chowdary?—A. Yes.

Q. S. A. Perera had a complete account from 1933 onwards?—A. Yes.

Q. Chowdary's accounts he only kept from the 27th July 1933 as this statement P69 shows Chowdary's accounts stated on the 27th July 1933?—

10 A. Yes, as far as the document goes.

Q. You show a total of Rs. 18000/- odd?—A. P69 was just handed to me. I cannot recollect the document now. I think the transactions started very recently at the time.

Q. The details for that statement are in the document marked P69A?—

A. Yes, I may have probably, but I cannot recollect now.

Q. Are you aware that Chowdary has said that his transactions prior to the 27th July 1933 were cash and thereafter he kept books?—A. I do not think. I did not see the books in the case of Chowdary.

To COURT: I do not think I was aware that Chowdary said all his 20 transactions were for cash.

Q. That statement shows that Chowdary had supplied Kennedy with skins down to the same day, in 1934, February, to the value of Rs. 18800/- odd?—A. Yes.

Q. As a matter of fact this Rs. 14,000/- which you accepted was the figure Mr. Ross helped you to arrive at?—A. I do not think he helped me to arrive at it, but he agreed with my figure.

Q. I find that Mr. Ross has in the course of his evidence said he examined accounts and passed the details on to Mr. Watkins?—A. He did pass some accounts to me.

30 Q. In point of fact Mr. Watkins you accepted Chowdary's figures only from the 27th July onwards because he had nothing to support the earlier sales to Kennedy?—A. Yes, but I agreed Chowdary's figures with the figures appearing in Kennedy's books—the account of payments made. I did not go on Chowdary's account alone.

To COURT: I got some figures. The C.I.D. got some figures for me. That is as far as I can explain—the receipts which Chowdary gave to Kennedy for cash paid to him in Kennedy's books of cash paid to Chowdary showed the payments to Chowdary went through the books.

40 Q. Is it not the case that you and Mr. Ross declined to accept Kennedy's books unless they were supported by the books kept by Perera and Chowdary?—A. We verified those accounts.

Q. Is it not the case that you were not prepared to accept P39 the stock shown in P39 unless it was supported by either the sellers' book or by receipts?—A. Yes.

To COURT: Kennedy had a statement. We were not going to accept the account without some proof.

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Q. The cabinet containing the receipts had been burnt up during the fire?—A. There were no receipts available after the fire. I cannot recollect whether there were receipts.

Q. There were no receipts at all?—A. We asked for receipts.

Q. And none could be produced?—A. I do not think any were produced. It is about 2 years ago.

Q. The fact that the receipts were burnt is not a fact that you could have forgotten?—A. I could not swear to it. I have done a lot of work since then but I cannot remember if they were produced.

Q. You had to obtain verification of what you obtained in P69 with the sellers' books?—A. We had quite a number of receipts from Chowdary and from S. A. Perera. I remember now they were produced by Kennedy. 10

To COURT: Those were in Kennedy's possession. That was before the fire. That was in July. I have never checked the payments subsequent to the fire. Those receipts were in respect of payments made before the fire. I suppose we handed them back to the firm of Kennedy & Co.

Q. Is it not the fact that you called upon S. A. Perera and Chowdary to produce their accounts?—A. I did not call upon them but they were brought in, I mean, their accounts were brought in by the C.I.D.

Q. The Rs. 12039/70 figure I gave you represented stocks not covered by the stock marked T.C. and not supported by entries in either Perera's or Chowdary's books?—A. That is so. 20

Q. Were you aware that Chowdary admits that he had been supplying Kennedy with skins from 1932, that he had been supplying skins for cash right through?—A. I was not aware of that.

Q. Are you aware that Mr. Kennedy had it pointed out to him by Ross that if he disputed the skin account there was the danger of the insurance companies declining to accept the general stock as ascertained by Mr. Ross?—A. Mr. Ross himself told me that himself. That was the position he took up. I remember his telling me. 30

Q. And that Mr. Kennedy was left on the horns of a dilemma to litigate with the insurance companies for a large sum or to compromise and accept the situation as offered by Mr. Ross?—A. Yes.

Q. That would have entailed a loss of Rs. 110,000/- to Mr. Kennedy?—A. Yes.

Q. Rs. 110,000/- against an admission by a company of their liability in something like Rs. 470,000/- general stocks Rs. 449,000/- and general fittings, skins Rs. 14,000/-?—A. About Rs. 460,000/-.

Q. For a man who had taken a lease of a big store, that was a case that would have landed him on the rocks, even if he won the case, against the insurance companies?—A. Yes. 40

Q. So far as insurance went there was no policy of insurance against loss of profits?—A. Yes.

Q. Mr. Kennedy had taken a lease of the Colombo Store premises for 32 years.—A. I have not seen the lease.

Q. A 32 year lease. Are you aware that the deed was drawn up for signature at the time of the fire when Mr. Kennedy was taken to Hospital?—
A. I am not aware of it.

Q. Mr. Kennedy is actually in possession of the premises and that the deed was drawn up by Messrs. Julius & Creasy?—A. —

Q. Can you tell me whether under the heading “due to sundry creditors” did he include charges to the Times?—A. Yes.

Q. You told us that P32 contains a statement of skins which appears in P39 with the letters T.C. as against particular items embodied in P39?—

10 A. That is a document I saw yesterday.

Q. P39 contains all the skins in P32 and certain other skins?—A. Yes.

Q. Now are you aware granting that the letters T.C. meant Tannery Colour?—A. I am not aware of it. I do not know what they meant.

Q. As a matter of fact were you shown a telegram by Kennedy to his London Agents offering them a stock of 1847/- skins in August 1933?—A. It is very likely but I do not remember.

Q. Are you aware that on the 25th August a telegram had been sent to his London Agents by Kennedy “shipment referred to, entirely free of advance.”

20 Q. Have you got P66 in your hands?—A. No.

(Shown P66). There is a second telegram of the 26th August which sets out certain stocks that were to go from Java and he says we control stocks from suppliers—2388 pythons, 1603, and 1836 skins appearing in P39 with the letters tacked on them? All three T.C. items and all three items with regard to which you and Mr. Ross advised us to withdraw his claim?—A. Yes.

Q. As a matter of fact the telegram as produced shows that on the 26th August that they were offered in identical lots to Campbell Brothers?—
A. I am not aware of it. I have forgotten the actual address of Campbell

30 Brothers but I remember it is in London.

Q. None of the skins in the telegram 5487 in as much as they are marked T.C. and had no documentary evidence in support of his possession of the skins none of these 5487 skins came into the claim of Rs. 14,000/- submitted to the Insurance Company on your and Mr. Ross’s recommendation?—A. No.

Q. These 5847 skins are all marked T.C. The 2308 all following them etc. have all got T.C. letters against them?—A. I don’t know where to look for them. That is right.

40 Q. All three are in document P39 with letters T.C. against them.—A. Yes.

Q. You told us none of the items with T.C. marked against them were included in the Rs. 14,000/- account?—A. None were included in the Rs. 14,000/- item.

Q. Mrs. Kennedy it was who brought P39 to you?—A. Yes.

Q. About the 4th of October.—A. I believe it was the 4th.

Q. When Mr. Kennedy was seriously ill in Hospital?—A. Yes.

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Q. Did Mr. Kennedy show you P32 as well?—*A.* I cannot remember. No, she showed me certain files relating to Perera, but I cannot remember P32.

Mr. Obeyesekera objects to this question being put to the witness.

Mr. Pereira says that if the witness says "Yes" he will be calling Mrs. Kennedy but that if he says "No" there will be no obligation on him to call Mrs. Kennedy or that if the witness says that he does not remember he will not call Mrs. Kennedy.

Mr. Pereira does not now press his question.

Q. Mrs. Kennedy at that time held a power of attorney from the 10 accused?—*A.* I believe so.

To COURT: That was the time after the fire.

Q. She was helped by the bank to write the earlier letters to yourself and the insurance firms?—*A.* Yes.

Q. The document P66 the first telegram says shipment entirely free of advance, contains words of similar import "refer to the first telegram"—makes it clear that the stocks were not financed by Kennedy as Agent of Campbell Brothers or otherwise as agent of Campbell Brothers?—*A.* No. No.

Re-exa-
mination.

RE-EXAMINED.

20

Q. Mr. Watkins, I will question you first as regards the balance sheets up to the end of 1932. Is it the position that those were really statements of accounts prepared by you from material supplied by Kennedy?—*A.* Yes chiefly, not altogether.

Q. As regards the purchases they were verified by you. The purchases so far as you were concerned came from Campbell Brothers and were you able to verify them?—*A.* Yes.

Q. So far as the skins were concerned in 1932 was there any verification by you or did you accept any statement which Kennedy gave you?—*A.* I think I must have accepted his figure, the figure which Kennedy 30 must have given those days. I think I took the purchases from the actual cash books.

To COURT: I had no material for the stocks of skins except the material given me by Kennedy.

Q. You never knew Kennedy to keep a stock book?—*A.* I believe I said so.

Q. Does that apply to both?—*A.* Yes.

To COURT: In the case of skins the actual cash which went out for payment of skins were included as purchases of skins.

Q. Were you able to check the payments, did the payments you check 40 in that way for the purpose of skins tally with the stock skins supplied by Kennedy?—*A.* It was not possible to tally them. I do not think it is possible to do that with skins. It is the practice to assess certain prices for them. I did not know what the prices were. It is possible to line up the actual physical stock with the prices in the book. It is not possible to verify them.

Q. That balance sheet for the 9th months of 1933 which you prepared was at the request of the Criminal Investigating Department and you also said that Kennedy agreed to that being prepared?—A. Yes.

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To COURT: It was Mrs. Kennedy who first gave it to me after the fire. So far as I recollect the primary object for making the balance sheet was to get at the amount of stock. Before I was proceeding with the preparation of the accounts and before I sent the Police the copies of the account I communicated with Mrs. Kennedy or Kennedy & Co. and asked them whether they had any objection to my supplying the Police although I had
10 no right to do so. The Police did not help me. They produced two files of Chowdary's and Perera's.

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Q. In that statement of accounts for 1933 you have shown a certain figure of stocks of skins at the date of the fire. The Rs. 14000/- figure?—
A. Yes.

Q. That is the figure you had independently arrived at with Mr. Ross?—
A. No I arrived at it from books.

Q. Apart from the figure you arrived at with Mr. Ross?—A. I arrived at it for the purpose of assessment.

Q. Is it correct to say that Rs. 14,000/- is an arithmetical figure without
20 actual reference to identification of stock. That is a figure you arrived at by a method of calculation?—A. It is actually arrived at by the cash gone out for skins.

Q. You started with the stocks in 1932. That is the figure you accepted. You did not check it. For the purpose of the skins in those 9 months did you check the actual payments that had been made by Kennedy & Co.?—
A. Yes.

Q. Did you also check those figures by referring to the receipts which Kennedy had received from the sellers?—A. Yes.

To COURT: I saw those receipts. I saw Chowdary's receipts and
30 S. A. Perera's receipts. I saw the receipts for practically the whole of the item.

Q. Those were receipts which were in Kennedy's possession, do you know that?—A. I believe Mrs. Kennedy brought them to me.

Q. Then as regards the purchases you had the actual invoices?—
A. Copies of the invoices.

Q. In arriving at the figure you were not concerned with the identification of the actual items of stock?—A. Yes.

Q. Then I pass on to P39. In P39 you told us you marked off the
40 particular items which you were able to identify with the items shown in the despatches?—A. Yes.

Q. You identify those marks?—A. I made the marks.

Q. You have not so ticked off any T.C. items?—A. None.

Q. Then would it be correct to say that you had no proof of purchase or despatch by Kennedy of the T.C. items?—A. I traced all the despatches.

Q. Every item shown in the despatches you have ticked off in P39?
A. Yes.

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Q. You have identified each of the T.C. items in P32?—A. No. I have not done that.

Q. Then are you left with items which you have not ticked off and which are not T.C. items?—A. That is to the extent of Rs. 25000/-

Q. As a matter of pure calculation deducting from 26000/- Rs. 14000/- which you arrived at arithmetically there is still an amount of Rs. 12000/- not proved?—A. Yes.

(Mr. Obeysekere repeats the following figures to the court)

The total figures of items shown in P39 is 146059/47 deducting from that the T.C. items which amounts to 98455/03 then you get the amount 47600/44 10

Q. Is that right?—A. Yes.

Deducting from that the items that have been ticked off which are the items of despatches which are 21507/57—

That figure is the amount of stocks shown in P89 which are neither marked T.C. nor despatched. If from that is deducted the figure of Rs. 14,000/- arrived at independently as stock at the time we are still left with the sum of Rs. 12000/- not proved.

To COURT: I compared Perera's statement or books or whatever they were with the result which I effected from Kennedy's books I think there was a book more or less written for the occasion. That had cash purchases too. There was something due to Perera which has been brought in as purchases and is owing as stock. That money is due to Perera at the end of the year if he has been credited and the stock has been debited. Most of Perera's purchases, I think I am right, in 1933 the majority of the purchases from Perera were on credit. 20

Where that happened Perera would figure as a local trade creditor and that amounts gets checked up. That appears as a purchase.

Q. So far as S. A. Perera is concerned there is a book of accounts (2) which is an independent book of figures. That is an account and goes as far back as 1932. Was this book available to you?—A. I have not seen it. 30

Q. Did Ross check from it?—A. I do not know.

Q. So far as Chawdary's was concerned do you know that his evidence is that credit transactions with Kennedy commenced in July?—A. No. I cannot say so.

Q. (Shown P69A). This is a statement produced by Chawdary. First of all this is a copy of an invoice of skins supplied to Kennedy. Those are abstracted into a statement here. Did you check them?—A. No, I have got a copy. These are payments to Chawdary taken from Kennedy's books and from Chawdary's books and they agreed. 40

To COURT: The check from Kennedy to Chawdary appeared in Kennedy's books. I traced them to Chawdary's books. The amounts agreed.

Chawdary actually owed some money. Actually previously to the 26th July skins had been supplied by Chawdary about Rs. 15,000/- and there was a balance. Owing to Chawdary 457/70 and that amount has to

be added to the purchase of skins. Kennedy owed Chawdary about Rs. 457/-. It appears as purchases for the period of 9 months. It was prior to July. It was not actually correct that credit sales started on the 27th July to Chawdary.

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To COURT: I advised my client that I could not make up a claim for more than Rs. 14,000/-. I had asked for more material more than the material supplied to me. I asked for those materials from Mrs. Kennedy. No particulars were forthcoming at all. I cannot remember if I was told that any of the material in support of the excess was destroyed by the fire.
10 It seems to me that if these stocks had been purchased that must have been paid for sometime or another.

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To COURT: I suppose I did ask for more material to support the excess. I wanted all the books. The skins must have been paid for. I had no other documentary evidence. I remember to have heard, I cannot remember who told me, but it was that he had certain stocks which he did not take into account into previous balance sheets. Probably it was Mrs. Kennedy. In fact it should have been Mrs. Kennedy.

Q. That was after the fire?—A. Yes after the fire. It was Mrs. Kennedy. Nobody else could have told me.

20 To COURT: I was the technical adviser of Mr. Kennedy in the matter of the claim. I asked for that proof for the documentary proof to show that it was a reserve stock. I do not know when they quite told me about a reserve stock but I found they had not the documents. I was given no documentary proof of the other documents. The skins were burnt and they had no documentary evidence as proof. I found that it was a hopeless position. I could not press them more than I had done.

AFTER LUNCH.

RE-EXAMINATION (continued).

(P66 is handed over to witness.) I have never seen this telegram.
30 I do not remember it at all. I never seen a copy of it before.

Q. In the next telegram he refers to certain stock. "We control stocks from suppliers not financed by us?" Could that possibly refer to stocks which are the property of Kennedy?—A. I do not know. It might.

(To COURT: I would not understand it to be that he bought the stock; but that he could get hold of the stocks by having to pay for them. I should imagine he was not storing the stocks. But I do not remember being cross-examined on this. (Balance sheet of 1929 is handed to witness.) That profit and loss account shows a payment of Rs. 10,200/- as management salary. That is presumably Mr. Kennedy's salary.

40 Q. Was that amount of Rs. 10,200 drawn by him as salary paid back into the capital account?—A. No, that is added to the capital account and he draws against that. It was credited to his account. He drew against that Rs. 13,000/-. For the profit and loss there is a debit of Rs. 10,200. This was not a cash payment at all. It was a book entry charging profit

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and loss and crediting Mr. Kennedy's capital. He draws out more than the salary. The actual drawings however for the whole year was Rs. 13,767.54. That was a very good year. Personally that was all he got. (Balance sheet for 1930 is handed to witness.) (To COURT: There is nothing wrong in entering into that account.) In 1930 the actual drawings is again the same; management salary is charged to crediting and capital account. The actual drawings that year was Rs. 15,194/14. In 1931 similarly the drawings for the year were Rs. 19,946/11. That of course was the year in which the loss first commenced. In 1932 the drawing were Rs. 19,309.78. The drawings in 1933 up to September were 10
Rs. 18,475.23. The drawings it would be correct to say increased progressively during that period and in 3 of those years he drew sums averaging Rs. 18,000/-, when the business was showing a loss.

Q. My learned friend suggested to you that Kennedy could have increased his turnover by reducing his gross profits? In other words by selling his goods at a smaller margin of profit?—A. Yes.

Q. And in fact you suggested that he had done so? I think you have already said that you had done or audited Kennedy's accounts for a very long period of time and yet you had not come across a stock book?—A. I have not personally done these accounts until the year 1932. I have never 20
seen a stock.* I asked a man who previously did the auditing and he said there was never one kept, as far as I remember. It was common knowledge in our office that there was no stock.* A private journal kept by auditors is a journal giving effect to the final entries. That is a private ledger and journal in which they keep the private accounts and actual results of the business, but we do not want their assistance to know actually what they are doing. They keep those accounts relating to profit and loss.

Q. The book was referred to as "private journal kept by auditors?"
—A. It was kept in our office always. We do a certain amount of writing matter. That was kept more or less with us. The private journal was 30
always in our custody.

Q. You have already said that all profits went to the credit of the capital account from year to year?—A. Yes, they have. The balance sheet shows that.

Q. In so far as the profits which was shown in the balance sheet concerned—those profits are accounted for and they could not have furnished the means of buying this so called private stock of skins?—
A. Quite so.

Q. Supposing a balance sheet shows that you are carrying your profits to your capital? Is it not possible for him to draw up those profits for himself and show it?—A. No, I think not. If any part of those profits had been derived for any other purpose that will have to be shown. This is a current account, not to be called a capital account. That is not a capital account though it is called a capital account. But because this is owned by one man it does not matter what it is called. It was called a capital account. It is really a current account. Personal account being really his capital account in this instance. 40

* *Sic.*

Q. Would it be a correct statement to make that if any amount in excess of the actual drawings shown in the balance sheet went into Kennedy's pocket that would have meant some suppression of the actual state of accounts?—A. He could not do so. It must appear in his account if he had taken any money out of the business.

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Q. Therefore as you can make out would there have been any money available to Kennedy for the purchase of skins which were not shown in the accounts?—A. No, not out of the business.

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10 I was questioned by Defending Counsel about the floor space of new premises into which Kennedy was moving, namely, Colombo Stores. I am aware that a portion of that was to be let to Volkaart Brothers and also to Mackwoods. I was told all that. I do not know whether he has not had any lease of those premises as yet.

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mination—
continued.

To JURY (P32 is handed to the Jury.) Q. I noticed that this file is called Ceylon Tannery? In the 1st page there is written "consignment stock with Kennedy & Co., against possible sales?"—A. I have never seen that file. (To COURT: (P39 was given to me but not (P32).)

20 Q. As an accountant I would ask you what you understood by the expression "Consignment at stock with Kennedy & Co., against possible sales, if Kennedy had reserved this stock?"—A. I do not know what this document is. It is not S. A. Perera's book. It will be guess work if I answer that question.

(HIS LORDSHIP TO THE JURY): "That would mean that those goods if they were in the basement were not Kennedy & Co.'s but held at their disposal in the event of their finding a market for their sales.

30 I would not understand from that file that any money had passed between Kennedy and Co. and the other persons concerned, apart from advancements which may be a matter of arrangement. Kennedy & Co. have an account called Trading account which is more or less a liabilities account and in that trading account, the 1st entry in that trading account, is the stock-in-trade, the value of stock-in-trade at the commencement of the year. There are two trading accounts—one general stock, and the other skins. And the 1st entry in that account should be the value of the stock at the opening day of the year; and the stock that is finally ascertained at the end of the year is also entered in that account. I do not think they make an actual stock account. It is not a stock account; only it is taken from the stock lists. The balance is transferred of course. The stock balance is, I think, actually brought down on the account and appears as an opening in the next balance sheet. That is shown in the
40 balance sheet as stock-in-trade. That account agrees with the stock because that entry of the stock at the close of the period is the total of those stock lists.

Q. In the balance sheet for 30th September was there such an account at that date?—A. We had no stock. No, we wrote up the books. The books did not show stocks. There was no stock account. The position on the 30th September was essentially different from any of the previous

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years because there was no record of what stocks had been had. In that trade account was shown the balance of the stock at the 1st January 1933 and nothing else. The books might have been written up but all real accounts in that entry would have been shown in the final balance sheet from purchases, allowances, discounts. There are no other entries regarding stocks. So that we have no means from the book to find out the balance on the 30th September because in the whole statement on the one side account is cost price and the other side sale price. The only possible thing was to estimate that. (The balance sheets are handed to the Jury.)

Q. You have had a certain amount of questions asked on the financial 10 position of Kennedy & Co., at the time of the fire? I do not think the gentlemen of the Jury are altogether clear over the very confusing examination-in-chief yesterday? At any rate during the periods when Kennedy was making a profit the financial position of Kennedy and Co., were perfectly sound?—A. Yes, as far as I am aware.

Q. On the 31st December 1932, on the assets side in regard to stock-in-trade, you have no knowledge I suppose of the method adopted for valuation?—A. The valuation of the general stock was taken at the invoice price, cost price, and I think at one time they brought in their purchases into the books as an exchange at an allowance of 5 per cent. credit from 20 that value.

Q. Was there any allowance for depreciation?—A. I do not think. If there was of stock it was up to Kennedy to do so. There was no general allowance for depreciation.

Q. This stock of Rs. 446,000 shown on 31st December is rather a large stock for a turnover of Rs. 115,000/-. That means it will take 3 years to clear the stock, and therefore there must be I should imagine in a business of this nature considerable depreciation of stock?—A. Yes, there should be.

Q. In other words it is quite possible that the stock, unless there is 30 a fairly considerable depreciation on the stock, it is not actually worth the figure of Rs. 446,000/—?—A. Yes. I know that no skin allowance was usually made.

Q. Could you tell us at 31st December what the excess of current assets, disposable assets, was, according to the balance sheet?—A. It was Rs. 190,000. That is to the credit of Kennedy's capital account. That is the nett amount by which the assets exceed the firm's liabilities. The position at 30th September is reduced to Rs. 140,000.

Q. At the 29th of September, assuming that this balance sheet is a correct one representing the state of affairs at that date, would you 40 consider that Kennedy and Co., were in financial difficulties?—A. Well, their trading was on borrowed capital and this balance sheet at the end of 1933 was by no means an unusual balance sheet considering the time.

Q. Would you consider on this balance sheet that Kennedy & Co. were in financial difficulties?—A. I would not if trade improves.

Q. Had you known that the National Bank of India was calling upon Mr. Kennedy to reduce the No. (1) account to Rs. 50,000 from 31st December and to wipe out the No. 3 account in a comparatively short time would you on that not consider that Kennedy was in financial difficulties?—*A.* I should say they were in slight financial difficulties that time. During this period in many balance sheets you have no excess of the assets over liabilities. If he was pressed by his bankers then I say he is in financial difficulties.

Q. Would you consider that a possible means of raising money was the one being suggested of reducing the gross profits and thereby presumably disposing of the goods?—*A.* Yes, in this case that would be a practical means of reducing stock.

P. S. CHAWDARY. Affirmed.

EXAMINED.

I am employed in the Eastern River Tannery as a works manager. I am working on a contract basis. They do not pay me fixed salary, but according to the work I do. This Eastern River Tannery belongs to Mr. Niblett of Australia. (To Court): The tannery is in Kosgama. Mr. Niblett is the sole proprietor of the Tannery. I know Mr. Kennedy. He had no interest in that business; no proprietary interest of any sort. My firm have had dealings with Mr. Kennedy since about 3 years from now. I was supplying skins to him, tan skins, on my personal account.

(To COURT: I was working this tannery on a definite basis. I had to pay the owner so much for the skins turned out. Quite apart from that I could do business with the skins. I pay the tannery commission on whatever I do there. I pay this Australian Gentleman so much per skin. I have all the working expenses of the tannery on me. Whatever I do in the factory I must give him payment for that. Then I do my own business too—tanning of reptile skins. Mr. Niblett has got to get what is due to him for reptile hide. I purchase those reptile skins on my own account; reptile skins that I supply to others. I pay Mr. Niblett a commission. What I do with these hides is my own business so long as I pay him so much for hide and skins.) My dealings with Mr. Kennedy were purely personally that is between myself and Mr. Kennedy. (Shown P69A.) This belongs to me. I gave that to the Police. I produced it in the Police Court. At the commencement my dealings with Mr. Kennedy were on a cash basis. I delivered skins to him and he paid for it. I took the skins to his bungalow or office. From the commencement of this file I first dealt with him on a credit basis. This file has copies of invoices. I got this invoice No. 21. It starts with invoice No. 1 and is continued. Some of them are letters. I did not sell to him on credit. Well, some time he may have paid me cash one or two days later. I cannot remember any small deliveries of skins to him on credit before that date. The total value of skins sold to Kennedy by me from the beginning up to September 1933 is Rs. 5,846.29. I know that Kennedy was in England from January that year to some date in July. During that period while he was in

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England I believe I delivered one lot of skins to Mrs. Kennedy and she paid me for it in cash. That lot was roughly about Rs. 500/- worth. It could not be more than Rs. 500/- worth.

Q. So the position is this then: That between January and July the only delivery of skins you made which have not figured there was this Rs. 500/- worth of skins?—*A.* I cannot remember the time. But previous to that, before this lot I have delivered some other skins to Mr. Kennedy.

Q. During the period Kennedy was in England you made only one delivery to Mrs. Kennedy estimate at Rs. 500/- roughly?—*A.* I cannot remember so far away.

I can definitely tell you that before this file I have delivered 2 lots. I am not sure whether it was after Mr. Kennedy left or while he was here. And one lot has been returned; that is, I wanted payment and Mrs. Kennedy said she would pay me for the other lot and she asked me to take them back saying they had no demand for the stock just at present. In 1933 at all events the only skins Kennedy purchased from me which was not shown in this file are these 2 lots one of which was returned. I have no doubt about it. The file is handed over to the witness. He has paid me up to the end of September 1933 Rs. 4,750. There was due to me a little over Rs. 1000/-. I have done more business after that, and he has been going on paying me. I have had a skin account with him since. He is still my debtor at the present moment. He owes me about 2000/- odd. I cannot give you the approximate figure of what the value was of that delivery which Mrs. Kennedy kept. I cannot give the amount roughly. It is now 2 or 3 years. The average lots which I deliver is worth sometimes Rs. 2000, sometimes Rs. 3000/-, and sometimes Rs. 5000/-. It varies.

(To COURT: For each lot we were paid in full settlement. Sometimes the payment was by cheque sometimes by cash. There was no account. I was settled by actual currency.

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I was settled by cheque or by cash the next day. There was no credit given. Thereafter from the 27th of July I began giving credit. That is the first time I began keeping an account. (To COURT: I have treated this as a separate business. I have got accounts.

Q. Did you keep accounts of the sales during that cash period?—*A.* I have entered these items. I have kept accounts of my cash transactions. I have got them and could bring them if necessary. These credit transactions have run on from the 27th of July practically up to date. The accounts were produced only to February 1934. Up to February 1934 I had supplied to the accused Rs. 8,888 worth of skins. The transactions have gone on since then. I have supplied him further skins since then.

Q. To-day the transactions between yourself and Kennedy would run to over Rs. 25,000?—*A.* I cannot say.

But there is only some Rs. 2000 due to me on the current account. During this period Mr. Kennedy has been the largest buyer. He has been the only buyer. And he used to tell me the tannage to employ for the European market. He used to give me samples and instructions as to what I should do to get out a particular colour. Before the Eastern River tannery was owned by Mr. Niblett I have not taken a lease. I am a sort of contractor. These skins do not belong to the Eastern River Tannery. These were my skins. I purchased the hide from the Eastern River Co., The skins supplied to Mr. Kennedy were my own. Eastern River Tannery was a big Co., one time, and they are in liquidation now and Mr. Niblett bought up the plant. Although Mr. Niblett is proprietor the name Eastern River Tannery continues. It was limited then. Now Mr. Niblett is sole proprietor. I know that the exportation of Kabaragoya and Thalagoya skins after 1932 was prohibited. Prior to that date there was a large number of men who used to buy up Thalagoya and Kabaragoya skins from villages and tan them. To do tanning you do not want a large tannery. With a couple of tubs you can do tanning in a little way. It is more or less a cottage industry. There were a number of small men who were doing it in Ceylon before the exportation of Thalagoya and Kabaragoya skins were prohibited. Since the beginning of 1933 most of those places have closed.

(To COURT. Before this period there was no credit. He had no paying account with me. He paid me for each consignment.)

Q. This account dates from 27th July? Have you got the accounts prior to that?—A. No accounts. I have only the amounts entered as cash sales. There is no mention there of the person's name. I have got those accounts. I have kept certain books. One for the purpose of Income tax. Before that I had no books. Before that I had no books. I bought with my own money and sold for cash. I have sold sometimes to the firm also where I work, namely, to the Eastern River tannery. Nobody else. I cannot differentiate between the Tannery's account and Kennedy's account. It is in Mr. Foenander's handwriting. The book is in Kosgama. I have got books which will not show to whom the sales were. (The witness is asked to bring his books on Monday.) (To COURT: Mr. Foenander is working in some Colombo office. There are no Colombo agents for the Eastern River Tannery.) Mr. Foenander goes to do these books to Kosgama twice a week. (His Lordship orders that Mr. Foenander be requested to bring all books relating to that period on Monday.)

(This witness was recalled, see page 129)

40 S. A. PERERA. Sworn—age 33 years; tanner; living at Wewelduwa.

EXAMINED.

I am the proprietor of what is known as the Wewelduwa tannery which is somewhere off Kelaniya, about 6 miles from Colombo. I am the sole

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proprietor of that business. It is registered under the Business Name Ordinance. In that registration my name appears as the sole proprietor. I know Mr. Kennedy. I have been supplying skins to him for about 7 or 8 years. I deliver very few raw skins mostly tanned skins. I deliver only reptile skins. To deliver goods I used to go to his house but to get payment from him I used to go to his shop. I cannot recall a single occasion on which I delivered skins at the shop. (TO COURT: After December 1932 I used to deliver skins of Pimburas, crocodiles, Thalagoyas, not Kabaragoyas. Nobody bought crocodiles after 1933. That business stopped altogether. There was practically no profit on that business.) Mr. Kennedy had no interest in my business except that of an ordinary customer. He did not finance my business in any way. He never advanced any money to me even as a loan. I have a certain stock of machinery at my tannery. (TO COURT: There is an Engine and machinery at my tannery.) Yes, Mr. Kennedy suggested to me to install a power Engine at my tannery somewhere in 1932, according to my recollection. 10

I had no Engine at the tannery, then. I adopted that suggestion and installed an Engine. No, he bought the machine for me and the amount that he had paid for that machine was deducted out of the money that he owed me. It was a second hand Engine for Rs. 400. I paid for the Engine, 20 but the accessories, such as drums, polishing machine, etc, were paid for by the accused. He paid himself at one instalment. The next time that I brought him a supply of skins he deducted the amount. For the accessories about Rs. 1,500 was spent, independent of the machine. Those accessories were bought earlier before the machine. The Engine was bought in 1932 I think, before the end of 1932. Kennedy did not buy anything for the Tannery in the shape of accessories for the Engine after 1932.

Q. Was there any proposal thereafter to improve your business either in the form of a larger building or more machinery?—A. Not to my knowledge. 30

(TO COURT: I was quite content with my old machine and machinery; according to the times it was quite enough. (Shown letter P64.) which Kennedy wrote to the Chartered bank. (A sentence of that letter is read to the witness. It was written to the Chartered Bank on the 5th September 1933.) The sentence read is as follows:—"For several years past we have had a tannery under our control just a few miles out of Colombo with a fair amount of machinery installed. At the moment we are drawing up plans for a more up-to-date building and modern form of machinery to cope with the increased business and to improve our work generally."

Q. Could that statement refer to your tannery?—A. I cannot say. 40 (TO COURT: It is not I who wrote this. No, I cannot believe that it was for my tannery. No such person ever intimated to me of any such intention of improving my machinery, in my tannery.

Adjourned.

10th September, 1934.

Accused present.

Same counsel as on previous day.

S. A. PERERA. Sworn.

EXAMINATION-IN-CHIEF—*continued.*

It would be correct to say that my stock of skins would be kept in my tannery. I had not at any time kept any part of my stock of skins with Mr. Kennedy except what I sold to him. I had not at any time kept any skins with accused for sale on my account. Prior to the fire the accused had not kept any of his skins at my tannery. Once the accused sent me a lot of his skins which had been mildewed for me to clean and brush them up. This was before the fire. I cannot say how much they were worth. I think the skins sent to be brushed up were worth about Rs. 20,000/-. I returned them to the accused in three days after attending to the work. That was in July. Somewhere about the middle of July. (To COURT: I did not charge the accused for doing this work.) Shown page 1 of P32, dated 13th July, 1933. It is in my hand writing. The stock of skins referred to in this document were those sent to me for brushing up. I gave the approximate value of the skins and I cannot say exactly what they were worth. On this document it appears to me that the skins may be valued at about Rs. 10,000/-. Yes this document contains a correct statement of the skins received by me for brushing up. (Referring to page 1 of P32.) This page is in my hand writing—page 1 of P32 read. I understand what the words “consignment stock” mean. These are goods belonging to me which are left at Messrs. Kennedy’s for sale on my account. Then follows a whole list of skins with their values stated up to a total of Rs. 98,454/03. I had none of my goods at Messrs. Kennedy & Co. for sale, or any other purpose at all. (To COURT: If any skins Mr. Kennedy had were those bought from me it would appear in my books.)

I see the piece of paper pasted on the file cover marked “Wewelduwa Tanneries.” I tore this from a letter head belonging to me. I pasted it on the cover of P32. On the same cover are the words “Consignment stock with Kennedy & Co.” These words are also in my hand writing. About the middle of July I came to Messrs. Kennedy’s shop to get money. (To COURT: I had to get some money at that date for sale. When I asked accused for the money he gave me a rough scribbling (note) which may be in his hand writing and asked me to copy it in my writing. The accused speaks to me in English when I go there. I can understand English all right, but there are some words which I fail to understand. I studied up to the 6th. Standard at St. Joseph’s. When I make speeches at Associations, I do in Singhalese). I asked the accused why he wanted me to copy out this list and he told me “There are some goods which I have bought from you and some from outsiders. As I cannot find a market for them at present, for my reference I should like you to have this copied out for me.” At the time I wrote this document I could not clearly understand it to be

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a statement of the skins belonging to me at Kennedy & Co., because he told me "I have such and such stocks, therefore you better copy it as it is" therefore I could not understand all of them were mine." Yes the list was headed "Wewelduwa Tanneries." I copied it exactly as the rough scribbling given to me. Yes by this I mean to convey that the rough scribbling contained the words "Wewelduwa Tanneries." There was no reference to skins bought from anywhere else in this list. Yes it occurred to me that what I was copying out was not in accordance with the facts. I did so because of certain explanations which the accused gave to me and I believed that and therefore wrote this. 10

(To COURT: I did not want to cross-question the accused thinking he might be annoyed. From what the accused said I understood that the accused wanted to copy this for his reference. I did not at that time understand for what purpose the accused wanted this. I saw that the stock which appears in the list were not mine. I did not realise that it was a document which the accused could have used, if he wanted to do so, to show that he had those goods in stock. Yes on the face of it that is how it appears, but I paid no attention to it at the time. I trusted the accused and relied on his words. The file cover of P32 belongs to the accused. I had a sheet of note paper with the heading of my Tannery in my pocket. I had not gone prepared to write this. I knew nothing until it was given to me. Yes it would be correct to say that I was taken by surprise. I usually carry note paper with me and this happened to be with me. I do so in case I have to write a letter to my customers. I have not got any now. The accused did not know that I carry note heads. When the accused asked me to write the words "Wewelduwa Tannery" I did not as I had a note paper from which I cut it and pasted it. I wrote the rest. I did this and handed the list to Mr. Kennedy. I tore the rough scribbling note on my own as it was of no use to me. Yes ordinarily I would hand back both the rough draft together with the copy of the document which I have made. In 20 my office I have one or two files in which I keep invoices. They are files like P32, with two punctures and fastened like this. I cannot say from which particular shop I bought them. My own files have no paper pasted with the words "Wewelduwa Tannery" nor with the words written out. (To COURT: I kept no copy book. I make copies of certain important letters which I send out. The majority of my skins I buy locally but I do buy some from outside the Island as well.) I was given the file cover of P32 separately and the paper separately. What I copied came to two sheets and I filed only two sheets and not the remaining blank sheets. No I cannot remember whether I filed the two sheets I copied out. Yes 30 these pages are numbered up to 11. I did not do the numbering of the pages and I cannot say who did so. My recollection is that I wrote the two pages dealing with the consignment stock and the other dealing with skins received for touching up on the same day.

Q. Can you recall whether the skins sent to you to be brushed were with you at the date you wrote that?—A. I have no clear recollection of that.

Q. Can you say they were received for brushing before you wrote this or after?—A. My recollection is that I wrote this after I had returned the skins after brushing them. I am not quite clear but my recollection is that the skins had been brushed and returned at the time I wrote this.

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(To COURT: My recollection is that these goods were given to me to be brushed up somewhere in July and they were not with me for more than two or three days. "Messrs. Kennedy & Co. skins received for touching up must be ready for August." I do not remember whether we had returned the skins or not at the time I wrote this as I did not pay any attention to what I wrote out. My books will contain no reference whatever *re* these skins being sent to me for brushing up.)

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Shown P55. This is my ledger account. Apart from this I kept a Cash Book. Messrs. Kennedy's account with me commences at page 33 of P55 and the account itself begins on the 5th October, 1932, which is the first entry. The 1st entry "490 dyed talas"—meaning Talagoya skins. The first credit is a cheque for Rs. 400/-. The entries on that page were closed on the 24th March, 1933 with a balance due to me of Rs. 7,127/22. The account was continued on page 35 with that balance to March, 1934.

The value of skins sold by me from the beginning of January 1933 to the end of September 1933 to Mr. Kennedy was Rs. 17,157/54. I enter the approximate value of each consignment in pencil and Mr. Kennedy sometimes makes a reduction. I added this in a hurry and I may not be quite accurate. At the end of September 1933 there was due to me about Rs. 684/-. The slight variations in the figures given by me in the Police Court and in this Court may be due to my faulty addition. At the end of 1933 the accused had paid me about Rs. 23,000/-. Most of the payments were made by cheque and the rest by cash. They were cheques of Kennedy & Co. As far as I know he had no other accounts. The majority of the cheques were on the National Bank and one or two on the Chartered Bank. The Chartered Bank cheques were towards the end of that period. I heard of the fire on the Monday or Tuesday after the incident. The fire took place on Friday night 29th September. I had gone for a festival at Manderipu and I heard of it there. I went to see the accused several times after the fire. I cannot say definitely when I first met the accused. I went twice to the hospital to see him but did not meet him. Once I went to see how the accused was getting on in hospital. On the second occasion I went as I had received some of his skins for tanning and I wanted to get instructions from the accused regarding them. I handed the file P32 to the accused on the day on which I wrote it.

Q. Did you ask him about this file at any time after that?—A. Nothing whatever. I am certain of this.

Q. Did you ask him what had happened to it?—A. Nothing whatever.

Q. Or whether it had been put to any use?—A. No, nothing whatever.

(To COURT: Inspector Koelmeyer showed the file P32 to me and then I made a statement to him. It may be in October that I did so. I am

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not certain. I only remember the fact that Mr. Koelmeyer questioned me but I cannot say whether it was in October or not. (The Acting Deputy Solicitor General states it was on 24th October). I made a similar statement to him about this file. (To COURT: Yes I do keep a stock book.)

Q. If this large quantity of Rs. 98,000/- odd worth of skins had gone to Mr. Kennedy would there be an entry in your stock book?—A. Yes, it ought to appear in my stock book. So far as I am concerned I have no feeling against Mr. Kennedy. Yes the accused is a gentleman I had a regard for and he treated me well.

(Acting Deputy Solicitor General at this stage states his examination of the witness is over and that he does not propose to examine him as regards his Police Court evidence on the question relating to the petrol tins. Argument is heard on both sides, and His Lordship in reserving his order says that it would be best for the Crown to put before the Jury the evidence referred to in the opening. Acting Deputy Solicitor General leads the evidence contending that he is under no obligation to do so). 10

I remember the date of the fire. Inspector Stewart came to my garage after the fire. My garage is near my house. My house and the tannery are in the same garden. I cannot recall the date on which the Inspector came. It was in October—may be about the middle of October. 20
The Inspector did not remove anything from my garage. Nobody else took anything. After Inspector Stewart visited me another person came and removed something. It was about one week after the visit by Inspector Stewart. A person wearing a coat and cloth removed something saying he came from the Police. He asked for the two petrol tins and removed them. Inspector Stewart asked me whether Mr. Kennedy gave me two petrol tins. He asked me “Where are the two petrol tins you took from Mr. Kennedy.” I showed him two tins. I got those two tins from the accused. At the time Inspector Stewart came there was petrol in one tin and not in the other. Mr. Kennedy gave me two tins. One was in the car and one in the garage. The former contained petrol. The accused 30
gave me these two tins may be in July. Yes it was in July. I have no doubt about that. (Shown P32). Yes I remember writing this. It was after I wrote this document that I was given the petrol. About two weeks after I wrote P32. Not more. One day I took a sample of skins to Mr. Kennedy at his house. After examining the samples he asked me whether stains could be removed from the skins by applying petrol. I told him not to use petrol on leather skins at any time as it would damage the skins. Then the accused said “If that is so, I have got two petrol tins with me, which are of no use to me.” The two tins were in the room where the skins were. I told the accused “If it is of no use to you, as I have to do 40
long trips give them to me.” I meant by this that I wanted the tins to carry extra petrol when doing long journeys. (To COURT: Yes I knew the accused had a car. Yes he needed petrol. From what the accused said I thought that he had no use for the tins. The accused could have emptied the tins, but did not and handed them to me in the condition in which they

were. The accused has two cars. They are two big cars. The petrol consumption on them is probably high. My car is a Clyno. I get about 22 to 25 miles per gallon on it. It was bought about the end of 1929. My tank holds four gallons. It is a four-seater car. I had never filled my tank to its capacity. I had never put in more than four gallons, but it does not hold more than five gallons. I think the car holds about five gallons. I have never tested it. What I think is that it would not hold more than four or five gallons. I go on the Madhu road and also to Welawaya and Matara and Galle. I go to distant places. My longest trip has been about 300 or 400 miles. I go to Galle, Matara, Welawaya, Batticaloa, Anuradhapura and back to Colombo. I go on those trips to see my customers and also to look into accounts. Ordinarily I would fill the tank with about four gallons of petrol and carry two extra gallons in a tin. I had two extra petrol tins before I got these two from the accused. As the accused told me he was not in need of them I asked for them. There is no frame to which to fix these extra tins on the car. Usually I take one extra tin with me. I do not bring skins in my car. Usually I keep a petrol tin and a tin of lubricating oil in the car. The two tins removed were two new ones similar to P21 and P22. I paid no particular attention to the difference between the old and new type of petrol tins, but I notice it now.

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tion—con-
tinued.

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Yes sometimes I am away from Colombo for a week or more, sometimes buying skins and booking orders for skins. I cannot say whether the accused knew but he ought to have known this. The accused told me he had bought these two tins of petrol for the purpose of removing stains from skins. When he told me about it I advised him not to use petrol as skins tended to rot early when treated with petrol. The accused told me definitely he bought the petrol for the purpose of cleaning skins. It is easier to have petrol in tins for this purpose than to have to remove it from a car. Yes petrol costs considerably more the further one goes from Colombo. Yes I like to save as much money as I can on the price of petrol. I have been selling skins to Mr. Kennedy for the last 8 years. I remember the time the accused stayed in a house in Bagatelle Road. I do not know where the accused kept his skins then, but I used to deliver skins to him at his bungalow. Yes I have seen the accused having a room in his bungalow at Bagatelle Road, with expanded metal fixed on to the room. Yes when the accused shifted to "Monsoon Lodge" he removed the expanded metal with the frames and fixed them there. Seeing those at Monsoon Lodge I asked the accused for them and he gave them to me. Now they are fixed to my tannery. It was soon after he went to "Monsoon Lodge" that he gave them to me on my asking for them. I used to consult Mr. Kennedy before I made any improvements in my tannery. I would inform the accused sometimes if I make any extensions to my building. The accused helped me in the matter of buying engines and also polishing machinery. The accused got down some machine parts for me for which I paid him. Yes I used to tell the accused what I was doing to the tannery and ask his

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advice. In the first instance the accused paid for the machinery and deducted the cost of it later on.

Adjourned for lunch.

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10th September, 1934.

AFTER LUNCH.

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S. A. PERERA.

CROSS-EXAMINED.

Q. Now as a matter of fact the bulk of the output from your tannery was sold to Kennedy?—A. Yes.

Q. Mr. Kennedy was advising you as to what skins you should buy and how to tan them?—A. Yes. 10

Q. And you generally followed his advice in the matter of the particular colour developed in the process of tanning?—A. Yes.

Q. So that in that limited sense he does control the quality and even the quantity of the output from your mills, tannery?—A. Yes.

Q. There were quite a number of people who set up little tanneries in Colombo and outside?—A. Yes.

Q. The greater majority of them have closed down after the Ordinance came into force forbidding the exportation of Thalagoya skins?—A. Yes.

Q. Now you told us that these two cans Mr. Kennedy told you he had got for removing stains on skins, and you advised him it was no good, and he asked you to take the cans?—A. Yes. 20

Q. Now it has been proved that Mr. Kennedy bought these two cans on the 23rd August?—A. Yes.

Q. Is it possible that you are making a mistake when you say that you got the cans in July, because it is proved that it was in August?—A. It is quite possible that I made a mistake as regards the date on which I was given them.

Q. You had made no entry as regards the date on which you got them?—A. No. 30

Q. In point of fact till Mr. Stewart came to your house you did not know what bearing the tins would have?—A. No.

Q. We have it proved in this case that he went to your house on the 7th October?—A. It is quite possible.

Q. Had you seen Mr. Kennedy at all, any day before the fire?—A. No.

Q. You say you called on him twice when he was in Hospital?—A. Yes.

Q. Once to inquire how he was?—A. Yes.

Q. On that occasion were you permitted to go into the ward?—A. No.

Q. On the ground that visitors were not allowed into the ward?—A.

Yes.

Q. He was too seriously ill?—A. Yes. 40

Q. On the second occasion you said you wished to inquire from him how he wanted certain skins tanned?—A. Yes.

Q. Those I think were certain skins that had come here from Java, raw skins?—A. Yes.

Q. 500 lizard skins?—A. Yes.

Q. And you did tan them for Mr. Kennedy according to his instructions?—A. Yes.

Q. I think that is practically the only occasion on which Mr. Kennedy gave you raw skins for tanning?—A. Yes.

Q. Your own stocks, you used to buy the bulk of them in Ceylon?—A. Yes.

10 To COURT: I used to get skins from outside Ceylon.

Q. You also imported a certain number of raw skins from India?—A. Yes.

Q. You imported mainly Talagoya skins?—A. Yes.

Q. Because of the prohibition in Ceylon?—A. Even before the prohibition I used to get skins from India.

Q. As for the python and crocodile skins they are available in Ceylon?—A. Yes.

Q. According to your books you told us I think that in 1933 alone, Mr. Kennedy bought off you some Rs. 24,000/- worth of skins?—A. Yes.

20 Q. As a matter of fact you supplied him with skins this year also?—A. Yes.

Q. And in the course of the last 8 years you must have supplied him with over a lakh of skins?—A. Yes.

I cannot say from memory. Up to December 1933 the total value of skins sold to Mr. Kennedy was Rs. 26,671/03.

Q. This year the total purchases by Kennedy were?—A. I have got the purchases up to March in this book.

Q. You surrendered this book to the Police, and after this you started a new book?—A. Yes.

30 Down to March this year it was Rs. 14,184/30.

Q. For the first three months you sold Rs. 14184/30 worth of skins?—A. Yes.

Q. And you have been making further supplies up to date?—A. Yes.

Q. So that one might safely say that you have been supplying skins from the date you started well over a lakh?—A. Yes. It was much over a lakh during the 8 years.

Q. You told us that so far as this file P32 went you wrote the three pages of it on the same day?—A. Yes.

40 Q. Now from the file it is easy to fix the date because according to the date in the book, the date skins were given to you for brushing up was on the 13th July?—A. Yes.

Q. That is the date on which skins were given to you to be brushed?—A. I have no clear recollection as to whether that was the date on which I got the skins to be brushed, but it was in July.

(Counsel reads P32.)

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continued.

It must be on that date I received the skins.

Q. In point of fact you said so definitely to Mr. Ferguson in the Police Court giving evidence on the 16th April last?—A. I cannot remember what I stated in the Police Court but I said it was in July.

Q. It must be so because in the Police Court you had no reason to tell an untruth?—A. I had no reason to say what was untrue in the Police Court but I cannot remember if that is the date.

Q. These skins, are you aware, that these skins were bought out of monies advanced by the National Bank?—A. I cannot say that.

(The document P65 of the 19th August is handed up to the Foreman of the Jury.) 10

Q. You told us that the brushing up took 2 or 3 days?—A. Yes.

Q. Now you told us how the book P32 came to be prepared?—A. Yes. (The witness's statement on page 33 (Record) is read out.)

Q. Did you say this in the Police Court "I have a portion of skins bought from you and skins bought from others and they cannot be sold in the Market"?—A. Yes.

Q. He said he wanted this book for a reference?—A. Yes.

To COURT: So that it might be out of the books. It was to be kept separate from the books. 20

Q. You said this "He said he wanted them dyed afterwards." Those are the crucial words?—A. Yes, he told me he wanted them dyed afterwards.

Q. You said that Mr. Kennedy represented to you that the skins could not be sold in the Market?—A. Yes.

Q. And he wanted them—redyed?—A. He said he wanted them to be dyed.

Q. And as a matter of fact he gave you a sample of the skins and asked you get them a particular tan?—A. He gave me a sample and asked me to get them a particular dye. 30

Q. The brushing skins were only to be brushed?—A. Yes, they cannot be dyed.

Q. You told us he had another set of skins which could not be sold and he wanted them dyed?—A. Yes.

Q. Once a skin is repolished, you cannot dye it?—A. The dye would not catch on to the skin.

Q. Dye has to be put on unpolished skins?—A. It is only then the skins will have a proper effect.

Q. And he gave you certain samples of skins and certain undyed skins and told you to get a shade on the sample he gave you on the skins he wanted dyed?—A. Yes he gave me a skin or two and told me I should have them dyed according to the sample. 40

Q. It was on that day you wrote the book or about that time?—A. I cannot say if it was that day but it was somewhere about that time.

Q. As a matter of fact you had taken some skins to Mr. Kennedy and they were condemned by Mr. Kennedy as not being up to sample?—A. Yes, he said the dye would not suit him.

Q. And he wanted you to try again?—A. Yes.

Q. And it was while you were trying to get this shade that the fire occurred?—A. Yes the fire took place during that time.

Q. When and if you got the right shade you were to be given a number of skins to be dyed to match that?—A. Yes.

Q. That was the arrangement. And the book P32 was written for the purpose of its being a check on the skins that were to be advanced to you to be ticked off on this book as they were given to Mr. Kennedy?—A. I do not know that.

10 Q. But this much is certain, that you had not got the right shade on the untanned skins that were given to you. You had not succeeded in bringing them up the specimens?—A. Yes.

Q. You know this much. Mr. Kennedy always had a large stock of skins in the bungalows which he occupied?—A. Yes I know he had skins, most of the skins were in almirahs. I did not open the almirahs but I did not know how much of skins he had.

Q. He had a large amount of skins?—A. He had several almirahs.

To COURT: He had skins on racks when he was at Bagatelle Road but at "Monsoon Lodge" the skins were in almirahs.

20 Q. Some of these skins are quite small (witness is shown an Indian Lizard skin)?—A. Most of the skins were small.

Q. Thousands of these would get into a normal almirah?—A. Yes.

To COURT: A crocodile skin would not get into an almirah.

Q. In the Police Court were you asked what was meant by the words T.C. in P39?—A. Yes.

Q. You said You did not know?—Yes.

To COURT: I know the skins that were to be brushed. I cannot say that those skins were bought from me. I can say that some were bought from me. I cannot say that all were bought from me.

30 Q. You cannot say what skins were sold?—A. It is difficult to say.

Q. Once a skin is tanned and sold out of your hands unless it had an identifying mark it is difficult to say?—A. Yes.

Q. We have it that you sold a lakh of skins last year?—A. Yes.

Q. You know that down to 1932 Mr. Kennedy was buying skins from others besides you?—A. Yes.

To COURT: He used to make purchases from the Eastern River Tanneries and from Ita Dawood Saibo. That is all I know.

I do not put a trade mark on the skins in my tannery.

40 Q. As a matter of fact Mr. Kennedy has been helping you in getting machinery for the polishing of glass?—A. He had got me a dozen polishing glasses.

Q. Mr. Kennedy brought a manager or assistant manager of the Chartered Bank, you remember, to the tannery?—A. He came with a gentleman. I do not know who he was.

Q. He was an European?—A. Yes.

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mination—
continued.

Q. That was I believe this year?—A. Yes.
Q. You told us you destroyed a copy of P32 you had?—A. Yes.
Q. Was that before or after the fire, you destroyed it?—A. That was
on the date I wrote it.

Q. Then and there?—A. Yes.
Q. You did that of your own accord?—A. I had it in my hands and
I tore it off.

Q. You remember before you extended your tannery you took Mr.
Kennedy there and took his advice?—A. On several occasions I did that.

Q. In fact the necessity for extending your tannery arose on one 10
occasion when Mr. Kennedy gave you an order for Rs. 50,000/- worth of
skins on one order?—A. Yes that was in 1929 or 1930. He gave me an
order for Rs. 50,000/- and there was not sufficient space and the tannery
had to be extended.

Q. There was not sufficient drying room?—A. Yes.

Q. In wet weather that was the greatest advantage?—A. Yes.

Q. This year Mr. Kennedy has been doing a lot of business with Java?—
A. He told me he was purchasing goods from Java.

To COURT: I do not know the extent of the business he was doing
except from what he told me. 20

Q. He told you that the bulk of those skins went untanned to England
and were tanned in England?—A. He told me so.

Q. You know that latterly, formerly, any sort of skins found a market?
—A. Yes.

Q. Latterly the buyers had become more particular?—A. They were
particular about the tanning.

Q. They were particular about the finish?—A. Yes.

Q. I think it was about 500 skins he got from Java—ring lizards. You
got Rs. 150/- as tanning charges?—A. I charged him Rs. 150/-.

To COURT: For polishing on fawn colour it does not cost us extra. 30
For polishing and tanning it is the same. For the white colour for polishing
we charge a cent or two extra. For polishing skins I made no charge as
Kennedy was in the habit of making large purchase from me, I did that
work free. The greater part of the skins given for brushing were skins given
by me.

Re-
examina-
tion.

RE-EXAMINED.

Q. It was suggested to you that petrol costs more the further you go
from Colombo?—A. Yes.

Q. But despite that circumstance do you say that on these long trips
you never took more than 5 gallons?—A. The petrol tank in the car holds 40
only 4 gallons and usually I take a 2 gallon can with me and on some occasions
I have taken two cans.

Q. On any occasion you never took more than 2 cans?—A. Yes.

Q. You have no doubt that you wrote P32 on the 13th July?—A. Yes.

Q. The date on which you wrote P32 you have no doubt it was the
13th July?—A. I have got the date there, that is why I am certain.

Q. I understand that you were not certain on the date you wrote this whether you had the skins or not?—A. Yes.

Q. You also told me that not more than 2 weeks had elapsed from this date on which you wrote this when you got the two petrol tins. At the most 2 weeks had elapsed when you got the two petrol tins?—A. It may be that.

Q. So that when you say that you got the two petrol tins in July you cannot be making a mistake?—A. I can say that it is right so far as my recollection goes.

10 Q. Had you at anytime seen Kennedy's stock of skins before the fire?—
A. Yes, not at Monsoon Lodge but when he was at Bagatelle I saw all those. They were on racks.

Q. Do you know when he left Bagatelle Road?—A. I have no recollection of that.

Q. Would it be before 1933?—A. Yes.

Q. You cannot undertake to say then that in 1933 his stock of skins was say more than Rs. 14,000/-?—A. I cannot say that.

Q. Where did you get delivery of the skins for brushing?—A. At his house Monsoon Lodge.

20 Q. You told us you heard of this fire on Monday or Tuesday?—A. On Tuesday.

Q. You must have been very concerned when you heard about it?—
A. Yes.

Q. Did you come immediately to town to find out the extent of the Fire?—A. I did not come immediately, I live about 32 miles away. After my meal I came at 3 p.m.

Q. That was before Inspector Stewart visited you at your tannery?—
A. Yes.

30 Q. Where did you come to?—A. I had gone out for a festival and I returned home with my family and I came to Colombo alone.

To COURT : That was after 6 p.m. It was about 7 o'clock when I reached home.

Q. That was before Inspector Stewart came to see you?—A. Yes. I cannot remember the number of days before that.

Q. Whom did you go to see in Colombo?—A. I went to Mr. Kennedy's bungalow.

Q. Met him?—A. No he was in Hospital.

Q. Met Mrs. Kennedy?—A. It was not Mrs. Kennedy. It was Mr. Ogle or his sister.

40 Q. You must remember whether it was a man or woman you saw?

To COURT : Mr. Kennedy, Mrs. Kennedy, Mr. Kennedy's sister and Mr. Ogle lived together.

Q. You say you met Mr. Ogle and Mr. Kennedy's sister?—A. Yes.

To COURT : I cannot remember whom I met when I went after the fire.

Q. You told us that Kennedy to your knowledge bought skins from two people the Eastern River Tanneries and Dawood Saibo. Do you

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know that Dawood Saibo is Chowdary's agent?—*A.* No he is a contractor for the Eastern River Tanneries.

Q. Chowdary is the Eastern River Tannery Contractor?—*A.* Yes.

Q. Does Dawood Saibo act as Chowdary's agent?—*A.* That I do not know.

TO COURT: After the Eastern River Tannery was closed down a gentleman in Australia worked it and Chowdary looked after it. I know Chowdary bought goods from Saibo.

Q. You recall the visit which Mr. Kennedy paid to your tannery early somewhere in February this year with the manager or Submanager of the Bank?—*A.* I remember that he came with a gentleman. 10

Q. At the date of that visit did you have in your tannery any skins belonging to Kennedy?—*A.* Yes I had 500 Java Lizards which I had been given for tanning.

Q. Was that the only stock?—*A.* Yes.

Generally I think those 500 Java Lizard skins would be worth about Rs. 3000/-. I do not know the market for Java Lizards but approximately it would be about Rs. 5/- or Rs. 6/- a skin.

Q. Your attention was drawn to a statement made in the Police Court regarding P32. It was suggested that this stock of skins shown in P32 would be given to you from time to time and ticked off?—*A.* I cannot say that. 20

Q. Was there any such arrangement between you and Mr. Kennedy?—*A.* He gave me a sample saying there were stocks to be dyed. He told me he had a large stock to be dyed and if the dye came up to the sample he would give me the stock.

TO COURT: He did not specifically tell me that P32 was a list of the stock to be given to me for treatment.

Q. If skins were given to you to be dyed that would not become the property of the tannery?—*A.* No. 30

Q. You would not describe skins given to you for dyeing as skins belonging to the Waver-Duwal Tannery?—*A.* I could not say that.

TO COURT: When petrol is applied to skins, and if the leather is stained with grease or tar, the stains could be removed with petrol. If petrol is used for removing grease the skins will begin to rot, but not immediately. If Mr. Kennedy knew that petrol would spoil a skin, he would not have questioned me. Mr. Kennedy may have known that by applying petrol that he could remove stains but as to whether he knew that the skins would be damaged or not I cannot say.

When I heard of the fire and until Mr. Koelmeyer showed me the document I did not know what had happened to the document. After I heard of the fire it did not occur to me that there would be any trouble with regard to the document P32. 40

I know nothing about insurance. My tannery is not insured. On the occasions when Mr. Kennedy came and gave me advice as to the extension of the tannery he did not speak to me about insuring my business.

I know what fire insurance is. If a property is insured and it catches fire I can show evidence of the fire, and claim compensation, I know that many business people have insured their business and their shops and shop goods.

Once the fire occurred I realised that he could have used the document as proof of stocks he had in my tannery if he desired to. That occurred to me after Mr. Koelmeyer directed my attention to it.

From my books I cannot prove that Rs. 98,000/- worth of skins were in Kennedy's possession. I cannot prove it because it did not happen. The stocks that went from my stores to Kennedy's stores were paid for by Kennedy, and sometimes there was a small balance left. Up to the date of the fire there was Rs. 648/- due to me. That was the balance. The amount of goods that had been bought to the date of the fire in 1933 would be entered in the books. Between January and March no skins were delivered.

Q. (To Mr. Obeyesekera.) On page 33 the debit side the last entry is in December?—A. Yes.

Q. But the credit side goes to the 24th March?—A. Yes.

Q. At that date you show a balance of Rs. 7127/22 close the page and carry it on to the next page?—A. Yes.

Q. After the 12th December the next date of purchase was in April?—A. Yes.

Q. As a matter of fact the purchase of skins from that date up to the 28th September was?—A. Rs. 15480/- including the balance.

To COURT: I got a stock book. If I had been faking a stock book would have supported the statement that I had Rs. 98,000/- of skins but not as it is.

P. S. CHAWDARY. Affirmed. (Recalled.)

I produce the ledger X5. This is my ledger. Mr. Kennedy's account commences in July 1933. This was kept by Mr. Foenander.

I produce the journal marked X6. Mr. Foenander kept X6 too. Mr. Foenander can go through these items and refer to the items showing the sales to Mr. Kennedy. There was one sale to Mr. Kennedy when Mr. Kennedy was here. That was in January. The sale to Mr. Kennedy before he left appears on page 74 or X5 which is marked X5A against the 31st January for an amount of Rs. 1,042/32.

He paid by cheque for this amount.

Q. The name of Kennedy did not appear in these books before 1933?—A. Yes.

Q. In your journal there are no entries either?—A. Yes.

Q. The accounts of Kennedy & Co. started on the 31st July 1933?—A. Yes.

Q. You have not got the dates in September when supplies were sent to Kennedy?—A. Yes.

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(m) P. S.
Chawdary
(recalled).
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tion—con-
tinued.

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tember,
1934.

Q. Then sales to the Eastern River Tannery? There is no caption to indicate that, to whom the hide, purchases and sales were put through. What is there to show that this is to the Eastern Tannery?—A. It is not only to the Eastern Tannery but also to Kennedy & Co. They were purchases and sales.

Q. Are there sales to Eastern River Tannery?—

Q. Your purchases are shown only from the 31st January 1932 not earlier than that?—A. Not earlier than that.

Q. Is it correct that down to September 1932 you sold nothing to Kennedy?—A. I sold, in his account you will find it.

Q. Mr. Kennedy's account begins on the 31st July 1933? So far as this book goes 8 lots of skins were sold.

11th September, 1934.

Accused present.

Same Counsel as on previous day.

P. S. CHAWDARY. Affirmed. Recalled.

(TO JURY:—Shown X5—On the debit side under the date 28th February, there is an entry of a cash sale of 30 pythons valued at Rs. 347/85. Can you state to whom these were sold?—A. They were sold to Mr. Kennedy. I speak from recollection. On the 30th November, 1932, there is an entry, value of 26 python skins valued at Rs. 185/-. This was not sold to Mr. Kennedy. On the 31st January, 1933 there is an entry showing the proceeds of the sale of 125 pythons as Rs. 1042/32. These were sold to Mr. Kennedy. I am sure of this. There is another lot that I cannot see here for which I received cash twice. I have nothing to show this item just referred to nor is it in this book).

(n) P. Foe-
nander.
Examina-
tion.

P. FOENANDER. Sworn.

I am an accountant at the Eastern River Tanneries. This is a part time job. I am there permanently more or less. At present I work at the Coop Stores also. I work three days at each place. That is the arrangement for the last one month. Shown X5—The accounts shown in X5 have been kept by me. Mr. Kennedy's account commenced somewhere in July and I speak to the accuracy of this and also in the book of the Hide Purchases and Sales account and to the item X5A, which shows a sale on the 31st January of 125 pythons for that amount. I also produce the journal X6—a book which shows the journal account from January 1933 onwards. These accounts have been kept by me.

Cross-exa-
mination.

CROSS-EXAMINED.

The accused has not had any account with the Eastern River Tanneries for the last three and a half years. Before that I cannot say

definitely. These are Mr. Chawdary's books, and not those of the Eastern River Tanneries. (To COURT: He had no accounts and he was not even a purchaser. The Eastern River Tanneries is now a private company. It was a Limited company before that. The partners are Mr. Bently-Backle and Mr. Niblette. Mr. Chawdary is our contractor. We pay him a certain sum for every skin he tans for us. The skins are ours. These books are of skins sold by Mr. Chawdary. He also does his own business and sells those skins sometimes outside and sometimes to us and these are the books of those transactions.)

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(n) P. Foer-
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Cross-exa-
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continued.

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JOHN ROSS. Sworn.

I am employed by the firm of Langdale Clark & Co., Calcutta. It is a firm of Jute merchants, Fire Assessors, Loss adjustors and Salvage contractors. A surveyor would examine any property which has been damaged and would assess the loss thereon and submit a report direct to Insurance companies and we examine the damage always upon property and we make an assessment and discuss the matter with the actual owners and if possible reach an agreement on our figures and if everything is in order, we say that the Insurance companies will admit liability. I have about 10 years experience of Fire Assessing. My firm handle altogether on an average about 200 cases a year for India, Burma and Ceylon and I am concerned personally at least with half of them. I take part in at least half of them. Shortly after this fire I came to Ceylon at the instance of the leading Insurance Company, the Commercial Union. By 'leading Insurance Co.' I mean the Company which has the greatest liability. I arrived in Ceylon on the 6th October, 1933.

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After breakfast I went to the accused's shop. As far as I am aware the premises were then in the same condition in which they were after the fire. There was a Police guard on the premises still. I was informed the pieces of glass had been cleared up from Main Street and I was also informed the "Times" basement of the stock had been cleaned of bricks etc., Kennedy's section looked what premises would look like after a fire. When I went to the premises I met Mr. Fergusson and Mr. Clubb of Harrison & Crossfields and as far as I remember Mr. Smith of the same company was also there. I was taken there by Mr. Crossman of the Commercial Union. I think Mr. Ogle came across, probably about one hour after I arrived there. I did not know him to be Mr. Ogle then but do so now. I then proceeded to make an assessment of the damage. I informed the Police that my first duty was to work through all the debris and collect everything that was recognizable as part of the stock and asked for permission to begin that work as soon as possible. (To COURT: I was not immediately concerned with the question of how the fire originated. Our first duty is to minimize the loss on behalf of the concerned and it is not possible to do so unless we actually check through all the stock. The clearing of the debris and the assortment took nearly two weeks and I did not finish with that work till the 20th or 21st of October, 1933.) I did the ground floor first,

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the basement afterwards and finished up with the first floor. I also differentiated between general Stock, viz., shoes and the skins. In regard to General stock I came to the conclusion that there was a large stock of the 1st quality goods and the stock was fairly badly damaged and I was not able to pick any portion or part of the General stock and be in a position as to describe it as Old stock. I saw no books till after the 20th or 21st of October. (To COURT: It gave me the impression that it was a shop that dealt in expensive and high class goods.) I obtained from Mr. Watkins the auditor, the stock sheets, three files, purporting to show the stocks held in all three floors at the 31st December, 1932. After an examination of these stock sheets I found that part of the stock sheets were lacking in descriptive detail, particularly in the Gents Outfitting Department. Articles presumably pyjamas and dressing gowns and that sort of thing, were not mentioned by name specifically in the stock sheets. It simply gave a number, the quantity of that particular article and the total value. There was nothing to show what particular article it was. Then in the matter of stocks of boots and shoes, the stock sheets made it apparent that these were boots and shoes and I totalled up all these quantities of boots and shoes shown in the stock sheet. The figures so obtained agreed fairly closely with the figures I arrived at by an inspection of the debris. I am referring to the boots and shoes. (To COURT: Some of them were burnt beyond recognition, but our experience is that no matter how severe the fire, the heels always remain and where I found two heels I counted that as a pair of boots or shoes. The shirts were folded and on shelves and the fire went up the side of the shelf and burnt the edge and I could easily recognise each article. I should not think any of the articles of the Gents Outfitting Department were entirely consumed.

Q. Is it correct to state that the stocks of the Gents Outfitting Department were on the ground floor?—A. Yes, some portion of that stock were actually found in the basement, fallen presumably and the rest of it on racks, at the south east corner, viz., at the entrance to the lavatory. The result of my examination of the General stock was that I was prepared to accept the stock sheets at the end of December, 1932, as a fair representation of the stocks at that date. Passing on to the skins, I looked for traces of burnt skins and I found them in the basement at the north side.

Q. Could you assess what amount of skins there were?—A. It was not possible to count the skins because they were in small pieces and one or two heaps of the skins had become pulpy. (Shown P39.) This document was given to me by Mr. Watkins probably on the 20th or 21st of October 1933. It was the date when I was completing my examination of the debris. He said that he had been given this file on the 4th October by Mrs. Kennedy as being the stock statement of skins in the basement of the Times Building. When I saw this file originally there was a small piece of paper attached on the top with a note by Mr. Watkins that this file had been received on the 4th October. The file has the words "Skins stock in basement." Having regard to my examination of the skins which I saw in the basement and this file, I formed the opinion that the stock of reptile skins in the basement at

the time of the fire was a small one and in no way would be worth about Rs. 140,000/-, which is the figure shown in this file. I was not prepared from my examination of the basement to say that there had been anything like reptile skins in the basement worth about Rs. 125,000/-.

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Two or three times Mr. Ogle had asked me how things were going and he indicated to me that he was worried. The remark was that he had a wife and children at home to think about and if anything was going wrong he had another job offered to him and he was prepared to go there, if anything went wrong in Kennedy & Co.'s show. In consequence I saw Mr. Kennedy on Saturday the 28th October, 1933 in the new shop, at 2.30 p.m. in the old Colombo Stores building. Kennedy was allowed out from hospital that day but I do not know whether he had been definitely discharged. I saw him on Monday the 9th October in hospital. When I saw him on the 9th October I accompanied Mrs. Kennedy to the hospital and saw the accused there and I told them what our duties were, that in the first instance we had to assort the stock and check up everything we possibly could, as far as possible and I said I would have to go into book records and that sort of thing and the accused said that all his records and proofs of stock were with the Auditors and that anything I required I would get from the Auditors.

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tinued.

Q. Did the accused on that day, 9th October, suggest that any document in proof of stocks had been destroyed?—*A.* No. There was no mention whatsoever of any particular class of goods. Then I told the accused that another of our duties was to minimize the loss as far as possible, sort out any saleable salvage and make the most out of that if we could, and I asked the accused if he would be agreeable to taking over slightly damaged stock at a figure agreed on. He is permitted by agreement to sell damaged stock and in the event of the company accepting liability, the company gets credit for the stock sold by him. The accused said he would be very pleased to co-operate in any way he could and would be quite agreeable to take over damaged stock which he could sell. I mentioned of course that stock which he could not reasonably be asked to take over, we would sell on behalf of the concerned by auction. At the stage when we find it necessary to dispose of perishable salvage, the question whether liability has arisen or not has very seldom been determined and we cannot allow damaged stock to lie for a long period while the question of liability is determined, and it is our duty to handle damaged stock so as to minimize the loss on behalf of the concerned. The "concerned" being both parties. The auction did take place and I have the figures showing what was realized at that auction. The gross proceeds were Rs. 6,597.—Auction Expenses came to Rs. 495.24, the nett proceeds being Rs. 6101.76. These nett proceeds are retained by us on behalf of the concerned till the determination of the question of liability.

Q. What was the value of the damaged stock which was taken over by the accused at an agreed price?—*A.* The agreed price was Rs. 11,706.10. I do not know how much Kennedy realized by their sale. That was all we discussed on the 9th October, 1933. No, the accused asked me if I had any

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idea of how the fire could have started and I remarked that it might have arisen from the electrical gear, meaning cables and switches etc in the basement. I have certainly had reason to revise that opinion since. The reasons for saying that was that I had been warned that Mr. Kennedy was still in danger and I was not to say too much to him or upset him. It was mere conjecture on my part. I had not made any observations or any particular study of this aspect of the matter. I was still working in the ground floor sorting the debris. I had not made a thorough examination of the debris at that time. I was told not to say too much to the accused. I made this statement merely as a reply though I had not formed any definite opinion 10 about it. I have since revised that opinion. As a result of my fuller examination of the basement I do not think it could have been due to any fault of the electrical gear. That was all the conversation on the 9th October. When I met him again on the 28th October, the purpose of that was to discuss the matter with the accused. When I met him on the 28th October I had formed my conclusions as regards to values and I was going on the normal duty of discussing the matter with the claimant so as to arrive at an agreement if possible. That was on the 28th October. On the 28th October I told the accused that as far as the General stock was concerned I was satisfied 20 that the stock was a large one of good quality goods and that I was prepared to accept the auditors figure which was to be arrived at in the trial balance which they were then making. I then told Mr. Kennedy that in regard to the skin stocks I was not satisfied with the stock figure of Rs 130,000/-, as correct. It is the figure obtained from P39. I told Mr. Kennedy that I was not satisfied that a large stock of skins were in the basement at the time of the fire. I also said where we found very few traces of stock we could only include those items for which we could get satisfactory documentary proof. I then told Mr. Kennedy that I was prepared to accept the stock figure of skins shown in the balance sheet of 31st. December, 1932, approximately 30 Rs. 12,000/-, and that I would add thereto all purchases of skins for which I had seen receipts and that I would deduct for the same period the value of those skins which had been shipped, i.e. from 1st January to the 29th September, the date of the fire. I wanted the actual stamped receipts. There were only two dealers, S. A. Perera and Mr. Chawdary. I did so only as regards two dealers. (To COURT : At that time he did not tell me that there were any others besides those two dealers.) I then told the accused that the resultant stock figure of skins on the date of the fire would not exceed Rs. 17,000/-. The figure had not been actually worked out then. One or two invoices had not been checked then. The actual figure was a little over 40 Rs. 14,000/-. I simply gave the accused the basis on which I was to arrive at the valuation. We as assessors go on the basis that if there is any wrong intention in a fire, that the man does not prepare for a long period before hand, and also I considered that in business such as the accused's Rs. 12,000/- was not an excessive figure. I thought it was a safe period to go back to. As regards my methods of checking skin purchases by the accused from the 1st January to the 29th September, 1933, I actually examined a document given by Mr. Kennedy to suppliers. These receipts were on a file and I must

have got the file from the Police or from the Auditors, because all documents in files were between them.

Q. What was the stock in skins at the end of 1932 which you accept?—

A. Rs. 12,140.21. (At this stage the Acting Deputy Solicitor General hands to the jury copies of figures prepared and which were taken from the balance sheet.)

From these invoices the total figure of skins purchased during those nine months was Rs. 23,424.53.

Q. How did you arrive at the figure of skins exported?—A. From the
 10 statement of invoices of the exports which I got from the auditors, as far as I can remember. I do not know who prepared it. The total exports came to Rs. 21,507.57. The resultant figure of stock at date of fire was Rs. 14,057.17 and I told the accused that I was prepared to assess his skins in the basement at approximately Rs. 17,000/-. The accused told me he was perfectly willing to be guided by me in the matter and follow on any suggestion I could make. The accused remarked that he had not anticipated the fire and that it was unfortunate they had not kept records in proof of the purchase of these stocks. The accused said the stocks were there. Presumably as shown in document P39, were there. The only balance sheet I saw was the one for the
 20 period ending December, 1932, which shows the stock held for the previous three years. I did not go through the books. The accused told me that a considerable quantity of skins had been purchased in previous years. The profits were good, with what he called " Excess profits " and that they looked on those purchases as a form of investment. He remarked that he used to keep a large stock of skins in his old bungalow and that those were transferred to his new bungalow in Colpetty and then the whole lot transferred to the basement of the Times building as he found on his return from England, that the skins being so near to the sea were damaged. I thought it improbable because I recall that the basement being below street level and fairly close
 30 to the sea, the skins would be more liable to get damaged there than at the bungalow. I had driven along Galle Face in a car and seen how the salt air clings to the windscreen and so on. The other point that occurred to me that the story was improbable was that I recollect that at the bungalow there was much more space to put out the skins for airing from time to time, than at the basement of the Times building. The ventilation at the basement would also be very little. The only ventilation would be through the chute and the spiral staircase. I am not an expert on the line of accounting. The accused made no remark at all about his having about Rs. 90,000/- odd worth of skins of Pereras. He made no suggestion that he could produce
 40 any proof of any sort.

Q. Did you tell Kennedy that from your examination of the documents put before you, you were only able to find purchases of skins by him from Chawdary and S. A. Perera?—A. Yes. He merely said these skins were there, but they did not anticipate this fire and that it was unfortunate these records had not been kept. He did not suggest that those were purchases from other people. Yes I think the accused remarked that they used to purchase from petty dealers who used to stray into Colombo from time to

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time. He did not give their names. I did not ask if there were receipts for these purchases nor did he suggest that receipts were available at any time or that they had been destroyed. The onus of proof is on the claimant. The accused said he was prepared to fall in with any suggestion I could make in the matter. On the 28th October I did not discuss with the accused the cause of the fire. I took a statement from which I made my covering report to the Companies, asking him about his business and how long he had been in business and the hours at which the shop are usually opened and I asked him what had occurred on that day. I took his statement but it was not a signed statement. We never take signed statements. I made a record of what he told me in his presence. It was only a rough copy which I kept on my file. I have it with me. I asked him what had occurred that day.

(Witness refers to the document to refresh his memory.)

(Witness reads document—put in marked X7.) Mr. Kennedy told me that he was prepared to fall in with any suggestion I could make and asked what he should do in the matter. My reply was that if he wished to avoid trouble, the only course he could follow was to make his claim for skins on the basis of my assessment. The accused fell in readily with my argument. (TO COURT: It was merely advice. We did not refer to the companies. It would not bind the accused as I had no signed statement. It was merely good advice I gave to Mr. Kennedy and he was wise enough to accept it. Yes I know that at that date the Police were investigating into the cause of the fire.)

Q. Did you also know on that day two petrol tins were said to have been found in a suit case on the ground floor?—A. I knew that. I never discussed with the accused the finding of those petrol tins. It was the business of the Police and had nothing to do with me. Yes I remarked to the accused that as it appeared that we were in agreement in regard to the amount of the loss, there would not be anything detrimental to him in my assessment report to the Insurance Companies. Yes it was after the accused had agreed to adopt my suggestion. Not in regard to the cause of the fire, because the matter being the subject of a Police investigation was out of our hands as assessors. We were there to assess the amount of the loss. The Police were investigating before I arrived in Colombo. We would simply mention the whole circumstances of the fire and we would state in our report the values or amounts of the loss at which we had arrived and would report we considered this fair and reasonable in the circumstances and that the assured was prepared to accept it. As a matter of fact in our report we did state that the stock records showed a stock to this value but that documentary proof in support was not available and could not be produced and that we had discussed the matter with the assured who had agreed to make his claim on the basis of our assessment. I think I suggested that my examination of the debris did not bear out the stock indicated in P39. We stated in our report that documentary evidence could not be produced and that the few traces of stock in the basement did not support a claim of that size. Had the accused indicated to me that he would have persisted in his claim, say Rs. 130,000/—, we would have

mentioned in our report that this claim was grossly excessive and was not supported by documentary evidence or oral evidence in the basement, and the matter would have been taken up by the Insurance Companies themselves, and it is practically certain they would have repudiated liability on the ground that the claim was grossly exaggerated. That is certainly the procedure the companies would have adopted. Insurance Companies in my experience desire nothing more than a reasonable settlement and where books or documents purport to show a huge stock which cannot be supported, Insurance Companies would take no notice of that provided
 10 the man is reasonable and could make a claim which could be supported. If he persists they take the extreme view and repudiate on the ground of fraud. If the accused had not agreed to my suggestion I would have reported that this claim could not be supported either by documentary or oral evidence of stock and that in our opinion such a stock was not in the affected premises, and destroyed by fire. If I did report in those terms it would have been definitely a report by me that a fraudulent claim had been put forward. If the man is prepared to make a reasonable claim the Company is prepared to accept it. It was the only conversation on the
 20 28th October and after that I took that statement X 7. I had no desire to scale it down at all. I am in a third party position and we only get a daily fee.

I am not concerned at all with the eventual claim submitted. I did not meet the accused again after that before I left. I left Ceylon either on the 31st October or on the 1st of November, It was on a Wednesday. I was in Ceylon about 25 days.

Yes. I know the skins were mostly covered with the Policy of 17th July, taken with the Commercial Union for Rs. 125,000/-. The only other Policy which covered skins was the Manchester Insurance Co. Policy of the
 30 15th April, 1932, to the value of Rs. 250,000/-, which covered General stock and skins. It is what is called a non-concurrent Policy and if to cover General Stock and skins, it has a liability towards General stock and skins in proportion to the value of the General Stock and skins at the time of the fire and before any loss can be adjusted the assured has to get the total value of General stock and skins on the date of the fire and it must be apportioned with General stock and skins. The apportionment of part of that to skins would result in a reduction of the apportionment to the General stock. The Policies for General stock are the Caledonian Insurance for Rs. 75,000/-. No it is one of Rs. 60,000/- on General Stock and Rs. 15,000/- on furniture and fittings. The Commercial Union had a
 40 General Stock Policy for Rs. 175,000/-. Of this Rs. 163,000/- covered General stock and Rs. 12,000/- covered the shop fittings. That is what we call a specific item. In the Manchester Insurance Co. Policy of Rs. 250,000/- we made for our own benefit certain figures. We made the apportionment on what we call an independent liability. It had a liability towards General Stock and also a liability against goods held in trust. Also a specific liability on shop furniture and on the rubber flooring, and one on the lift and also a liability on the stock of reptile skins. According to

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the values we assessed the independent liability on General Stock at the time of the fire was Rs. 224,278.07. From the values which we assessed the total value on skins being Rs. 14,000/-. The liability of the Manchester Co. on skins was Rs. 7047.95. That specific Policy for skins with the Commercial Union was taken on the 17th July 1933.

Q. Suppose the accused had a stock of Rs. 125,000/- in skins would it be correct to say up to the 17th July the greater portion of it was uncovered?

—A. There would have been a proportionate cover on skins and he would have been under insured on both items.

The general turnover in 1929 was Rs. 170,931.56 and it dropped the 10 next year to Rs. 130,756.42 and dropped in 1931 to Rs. 120,034.31 and there was a further drop to Rs. 115,054.69. In 1933 at the end of September it was Rs. 65,492. The average general stock turnover would be about Rs. 120,000/-, taking the figures of the three years prior to the fire. Having regard to these figures I do not think he could have made a turnover of Rs. *108,00/- or £8,000/- sterling, in the remaining three months of 1933. I ascertained the overhead charges for the year immediately before the fire. It came to about Rs. 96,123.34. (vide Profit and Loss account in the Balance Sheet). Having regard to the Gross profits what turnover would be necessary before you could make a profit?—A. To clear overhead 20 charges, assuming the normal profit ratio of 40 to 42 per cent I estimate that there should be a General turnover of Rs. 24,200/- before a nett profit could be made, that is assuming the same ratio of Gross profits, to cost.

I remember going to the accused's bungalow with Mr. Koelmeyer of the Police and certain files were taken over. (Shown P32.) Yes I remember this one in particular. The seal of that safe was broken by Inspector Koelmeyer in the presence of Mrs. Kennedy and we allowed her to remove the files from the safe. She and I stood at one side of the table and Inspector Koelmeyer sat at the corner, and Mrs. Kennedy roughly searched the documents as there were a number of private papers and she handed them 30 up to me and I handed over those I thought may have a bearing on the question of assessment to Inspector Koelmeyer, who numbered every page. When this file P32 came up Mrs. Kennedy told me it was an old record. She simply held it in her hand and made certain remarks and I took it from her and handed it to Inspector Koelmeyer. She was reluctant to give it over. She did not attempt to tear it. No force was used. She became agitated and changed colour slightly and Inspector Koelmeyer also observed it and we discussed it on the way back to town, in the car. (To COURT: I did look at P32 and it reminded me of one file I had seen at the Chartered Bank.) In my opinion it would not have been possible for Kennedy to 40 make a turnover of Rs. 108,000/- in two and a half months. His General stock was about Rs. 447,000/- odd at the date of the fire. In my opinion it would have taken Kennedy about three or three and a half years to turn over that stock completely, i.e. to completely turn it over. My reason for saying so was on the average turnover figure for the previous three years and as far as I could ascertain then there could be no improvement in trade at that period.

CROSS-EXAMINED.

We are engaged in the first instance by Insurance Companies but we are entirely a third party and our duty is to arrive at what we consider a fair valuation between the two parties. Our services were engaged by the Insurance Companies and my firm deputed me to come out to Colombo. The first guiding principle was to minimize the loss as far as I could in regard to the salvage, viz. the damaged stock. Our duty was to ascertain the amount of the loss. The question of whether the companies do or do not admit the loss is finally decided by the Companies and not by us.

10 Barring legal objections like arson, or the accused setting fire, the companies usually pay on our figure. There have been some cases where Insurance Companies have considered that we have been over generous. This has been infrequently. For practical purposes with regard to the measure of the damage they accept our figure. Yes we have to ascertain the actual degree of loss. Yes to do this I spent 14 or 15 days going through the stock. So far as the General stock went I was quite satisfied that the stock shown in the stock sheets had actually been there and I was able to ascertain that from the remnants of the Gents Outfitting Department and from the heels of the shoes. There was said to have been about Rs. 200,000/- worth of

20 stock in the basement alone according to the stock list at 31st December, 1932. From the basement we got a good number of shoes which were only water damaged and a good number of cardboard boxes remained in the basement. Relatively I would say, if one could draw any conjectures, the fire damage was slightly more on the ground floor. The point was that on the ground floor the stocks were laid out for display and in the basement they were closely stocked, and hence on the ground floor would be burnt rapidly. I had ascertained Kennedys were shifting to the Colombo Stores building & a good part of the stock had been removed from the shelves, which were laid out on the floor and elsewhere to be transported across. I valued the

30 General Stock at Rs. 447,000/-. Apart from General stock, furniture and fittings were covered by the Commercial Union to the extent of Rs. 12,000/-, the Manchester Policy Rs. 5,500/- and the Caledonian Policy Rs. 15,000/-. The Manchester Policy had specifically insured the rubber flooring at Rs. 86,000/-. Rubber is particularly inflammable. Yes the whole of that rubber flooring had been taken across to the new shop when the fire took place. Until the 17th of July the position was this. There were two Policies to the value of Rs. 250,000/- covering General Stock and a third Policy of Rs. 250,000/- covering General Stock and skins. In the ordinary course not much more than Rs. 50,000/- would have been available under head

40 'Skins' of the three Policies in force, but it would depend on the value of the skins? No, in a thing like that one cannot be definite and put a definite figure at any time unless one knows the value of skins and the stock at that time, in relation one to the other. Assuming Rs. 450,000/- was the value of the stocks, it is possible the amount covering the skins might have been raised, and on the stock lowered. I still do not know that after July the accused did more business in skins. I have no knowledge of

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the volume of the business. I did know at that stage the accused was negotiating with the Chartered Bank for financial assistance. The letter I saw mentioned he had a stock of skins in Colombo worth Rs. 98,000/-. (Letter referred to is P64.) The letter says nothing about the skins being free from a lien to the National Bank.

(This Witness was recalled, see page 141.)

ADJOURNED FOR LUNCH.

11th September, 1934.

(AFTER LUNCH).

CHARLES ELDER GRAHAM. Sworn. (Recalled).

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CROSS-EXAMINED.

Q. I think you were asked Mr. Graham to have a statement of the deposits made by accused from 1928 to the end of 1932?—A. Yes.

Q. (Shown the document). That is a document prepared at your instance and certified by Mr. Nicholson?—A. This is a document we prepared.

Q. He is an official of your bank, Mr. Nicholson?—A. Yes.

Q. You have given the deposits for the several years. You have worked out in the margin the percentage?—A. For the year 1932 the sales from 1st October to the 31st December come to 37% of the sales for the 20 whole year.

Q. Have you got a note of it yourself?—A. Yes.

Q. From the 1st January to 30th September 1932 the figures were 78,300/- odd?—A. Yes.

Q. From the 1st October to 31st December the figure was 46,000/- odd?—A. Yes.

Q. In the year 1931, for the first three quarters the figure was Rs. 103,000/-?—A. Yes.

Q. For the last quarter it was Rs. 47,800/- odd?—A. Yes.

Q. In the year 1931 the percentage was 31%?—A. Yes.

(Mr. Obeyesekere marks the document produced by Mr. Graham X8.)

Q. I notice that on the 14th July 1931 you obtained what was called a trust receipt?—A. A shipping lien.

Q. In respect of a sum of Rs. 52,000/- which you agreed to advance to him from time to time? (No answer.)

RE-EXAMINED.

These are the sterling amounts in the accounts which represent the proceeds of the bills and that sort of thing I was asked to give his local takings in Rupees paid to us.

For the first three quarters of 1927 it was Rs. 127,000/-. In the last 40 quarter of 1928 it was Rs. 174,000/- an increase of 50%. For the three

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quarters of 1929 it was 59,000/- and for the last quarter it was Rs. 52,000/-. In the last quarter of 1929 it was less than the 3 quarters for the rest of the year.

In 1930 for the first three quarters there was an average of 37,000/- roughly. For the last quarter the figures were Rs. 45,000/- about 22%.

To COURT: They did a bigger trade in the last three months up to December.

I think in one of these letters he states that the stocks were stored in his premises. The first one is a shipping lien and the second letter dis-
10 tinctly states that the stores are at Kennedy's stores.

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Evidence for
Prosecution.

(p) C. E.
Graham
(recalled).
Re-exa-
mination—
continued.

JOHN ROSS. Sworn. (Recalled.)

CROSS-EXAMINED.

Q. The letter to the bank is dated the 5th September (shown a copy of the letter). The second but the last paragraph refers to the stocks?—
A. Yes.

Q. That I think is the letter you had in mind?—A. Yes.

Q. Quite apart from this letter did you see a telegram sent to London by Kennedy to his London Agents Campbell Bros & Carter offering them 5,847 skins altogether?—A. I saw several telegrams. I do not recollect
20 that one in particular.

Q. Will you look at that one in particular. (Shown P66). Have you seen that before?—A. I think I have.

Q. You told us already with regard to the general stock you found them to be first quality goods?—A. Yes.

Q. And well kept?—A. Yes.

Q. With regard to the skins you had not sufficient evidence that they were in stock?—A. No.

Q. The bulk of the skins were little Lizard skins like that (shown a skin)?—A. And some crocodile skins as well.

30 Q. Skins of this sort burn up very rapidly?—A. I do not know that.

Q. If they were in paper parcels and the paper was close to the fire that would cause the skins to take fire?—A. In my experience things wrapped in paper and things like that the paper would char round the edge but the goods would not burn quickly.

Q. If they were on racks against the wall and the fire was to the middle of the room?—A. I would expect them to be charred on the outside.

Q. If they were where the fire was raging they would burn quite readily?—A. Yes.

40 Q. As a matter of fact you told us that some of the shoes had been soaked in water. You know that the local fire brigade had been playing up on this building for hours and that the basement was flooded?—A. I was told that it was a foot under water.

Q. As a matter of fact the fire had extended right up to the 5th floor of the building through the chute or the lift well?—A. The fire had extended to the roof.

(q) John
Ross (re-
called).
Cross-exa-
mination.

*In the
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Evidence for
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(g) John
Ross (re-
called).
Cross-exa-
mination—
continued.

Q. And the rooms abutting the lift had been burnt?—A. The only floor where the fire had penetrated was the fourth floor and the reason for it was because the newspaper people had put quite a quantity of office furniture and paper and stationary by the doorway and that carried the fire to the northern windows.

Q. I suppose you would say that the fire was so intense in spots that the H iron girders were actually twisted?—A. Yes.

Q. The basement girders are pretty wide girders about 10 to 12 inches? A. Some of them were.

Q. From the point of view of your Insurance Co. in regard to any 10 claims in respect of which there is no proof documentary or otherwise of the presence of stock at the time the fire occurred would you place them in the category of untrue or false claims?—A. They would not necessarily be false claims, but the company will have regard to all the circumstances from which the loss arose. The Insurance company in arriving at a final opinion will recognize and observe all the circumstances of the loss, and if there is no reason to suspect foul play, in our opinion or in the opinion of the Police, the Insurance Company might meet the claim or not it will depend on the circumstances of the loss.

Q. In this particular case you had advised Mr. Kennedy to accept your 20 figure of Rs. 14,000/- for the skins to avoid trouble?—A. Yes.

Q. You definitely represented to him that if he expected or wanted to have a speedy settlement an agreement with your figures would be the best course to be followed?—A. That was the only course possible.

Q. You did not know that if the Company failed to pay, the question of litigation will take a long time to decide?—A. It takes two months in India to settle a claim. The appeals are usually heard after two years in India. Sometimes cases like this go before the Privy Council.

Q. You had advised Mr. Kennedy that a repudiation of the claim under the head of skins would involve a repudiation of the claim 30 under general stock as well?—A. So far as the Manchester Policy extended that was my opinion.

Q. They would be still two lakhs behind your own assessment of general stock?—A. Yes.

Q. And if Mr. Kennedy agreed to the figures?—A. He agreed to restrict his claim to 14,000/-.

Q. He wished to have an early settlement?—A. That is not the opinion I formed at that time. That is not what occurred to me at that time.

Q. That is what would normally influence a person. Nobody would like to have litigation if he would avoid it?—A. Certainly. 40

Q. So far as the proof of the items are concerned Mr. Kennedy told you these skins were accumulation of stocks?—A. He told me that out of the proceeds of the good years these were purchases made during those years.

To COURT : The idea he gave me was that this had been purchased over a period of years and he had big stocks at his bungalow.

Q. And that these stocks, the bulk of those stocks had not at any time be shown in the balance sheets?—A. That was what I was told.

Q. You wanted him I think to produce the cart receipts for the transport of stocks from “ Monsoon Lodge ” to the Times Building?—A. I never asked for them. The question that was put to me in the Police Court was “ Did I ask for anything like that ” and I said “ No.” That question was not put to me by Counsel for the defence but by Mr. Ferguson.

Q. Mr. Kennedy did tell you that he had bought a number of these skins from petty dealers?—A. Yes.

10 Q. And I think he did tell you that prior to the exportation of certain skins from Ceylon there were quite a number of people who used to tan those skins?—A. Yes I think he did.

Q. And he told you these skins were originally kept at his own bungalow?—A. Yes.

Q. Did he tell you it was at Bagatelle Road?—A. I do not remember that he said so.

Q. And that it was transferred to “ Monsoon Lodge ” Colpetty?—A. No.

20 Q. Are you familiar with Monsoon conditions in Colombo?—A. I have not been here in the months of April, May and June.

Q. Did you find the cement floor oozing with wet?—A. I am not aware of it.

Q. You have been to Monsoon Lodge?—A. There is nothing between that and the sea? There is a big garden.

Q. You have not been to that bungalow in the months of April or June?—A. No.

30 Q. The basement at Kennedy’s may be below sea-level, but it was stated by experts who have given evidence in this case to be quite water-tight?—A. It might be water tight from the point of view of floor water but I would expect it to be damp, also because the ventilation was low and because there were not windows, and any concrete floor will sweat.

Q. The ventilation he had consisted of nothing more than 48” at the opening of the chute and spiral staircase?—A. Yes.

Q. That ventilation faces the north east?—A. Yes.

Q. There are a great many upstairs buildings between the Times building and the Sea?—A. Yes.

Q. So much of the sea area that abuts on the land is mostly enclosed by the walls of the Harbour?—A. Yes.

40 Q. The waves are not as big as the waves behind “ Monsoon Lodge ” ? Behind the bungalow there are huge boulders?—A. Yes.

Q. So that the conditions from the point of view of sea air getting into the basement, the chance of sea air getting in, are nil?—A. I would not agree it was nil.

Q. The chances of sea spray getting there would be nil?—A. Yes.

Q. What Mr. Kennedy did tell you was that on his return from Europe early in July 1933 he found that skins were being affected by reason of his bungalow being so close to the sea?—A. Yes.

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No. 8.
Evidence for
Prosecution.

(g) John
Ross (re-
called).
Cross-exa-
mination—
continued.

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(q) John
Ross (re-
called).
Cross-exa-
mination—
continued.

Q. And he therefore had them transferred to the basement of his shop. I suppose that the Police did search the house for any skins and that the search disclosed no skins?—A. I have no knowledge of the Police searching for skins.

Q. You were there once or twice?—A. I was there when a search was made for documents. We were in a little room off the verandah.

Q. Are you aware that the floor area of the new premises he was going to across the street was three times as big as the ground floor of the Times building?—A. The total area was 46,000/- or 47,000/- as against a single floor of about 3000 square feet. The basement was bigger? It extended 10
to the front of the verandah.

Q. The basement for the purpose of exposing goods for sale was of no use?—A. So far as I know it was no use for stock purposes. Customers would not go down there. The new shop offered considerable facilities for displaying goods than the Times Building.

Q. That was a matter of course that would effect sales?—A. It might.

Q. Did you ever ask Mr. Kennedy what the letters T.C. against some of those items signified?—A. I disregarded them entirely.

Q. You were shown a file P32 as the one that had been handed by Mrs. Kennedy?—A. I thought that is the one you meant. 20

Q. Mrs. Kennedy definitely told you that the file had not come into operation?

(At this stage Mr. Pereira says that he will be calling Mrs. Kennedy).

The statement to me was that the file was an old record and therefore it was of no use to me. I did not accept Mrs. Kennedy's statement that it was an obsolete statement. I had not the time. Mrs. Kennedy had the file in her hands. It was not a statement of old stocks they had at the time. Mrs. Kennedy had the record in her hands and she said it was an old record and it was of no use to me. I do not recollect that she wanted to write across the file the words "cancelled." I do not recollect that. 30

I am not in a position to say which of the two files (shown P32 and P39) is the older. These things have been handled many times. The first page of P39 is dirtier than the first page of P32 but I do not know which is the older. I do not know who has been handling these files.

Q. You find that all the items marked T.C. on P39 are copied into the other book?—That I do not know.

Q. You say Mrs. Kennedy so far as you can recollect said this was of no use to you?—A. Yes.

Q. And I think in answer to Court you said that she was reluctant to part with the file?—A. Yes. 40

She held on to the file and said it was an old record and of no use to me. My reply was that it referred to skins and that I must take it.

Q. This was about the 28th October?—A. It was about the 25th. I had not given the date but it was about the 25th. The safe was sealed by the Police half an hour after the fire had taken place.

Q. As to your valuation of the stock that brings it up to Rs. 459,800/-? —A. About that.

Q. Did you want separate figures for the valuation of general stocks?

The total loss was assessed at Rs. 468,84/43 but there was a slight amount of under insurance. After we had arrived at the independent liability of the various policies one or two items remained under-insured. That loss has not been paid in full. There was an under-insurance of goods held on trust that was boots and shoes returned for repairs of an amount of Rs. 173/02 and on general stocks there was an under-insurance of Rs. 28/33. That was after we had determined the independent liability of each individual risk. The general stock was still under-insured by

10 Rs. 28-03.

Q. That is a total of just over Rs. 200/-?—A. Yes.

Q. The overhead charges of the business had not been reduced despite the depression and the reduced salaries?—A. Not so far as I know.

Q. The valuations of the stock exceeded the liabilities in 1933 by 140,000/-?—A. Yes.

Q. The previous year it exceeded by 182,000?—A. Yes it would be about that.

To COURT: I had not checked up individual prices because it was not possible for me to make a full descriptive list of all the stocks. In case of

20 some pairs of shoes only a pair of heels remained.

Ordinarily I would have done it if it was possible—I would have made a detailed list—and everything would have been valued separately. That is our general system. In this case it was arrived at by computation. I understand from the balance sheets that sums were set aside for depreciation on the balance sheets annually by Mr. Kennedy and I accepted it. So far as I know quite a number of pairs of shoes were tried by people and not purchased and handled and handled and then there was a depreciation in costs.

RE-EXAMINED.

30 The only passage for air to come into the basement was the chute entrance and the spiral stair case. There would be much less air in the basement than in the ground floor. Any fire requires a good deal of oxygen and the air keeps on rising and the incoming air would be restricted.

Q. Now do you know that parcels of skins ready for despatch were wrapped in jute hessian?—A. I was told that.

To COURT: I cannot recollect who it was but some one told me the custom was to wrap it in jute hessian.

40 Q. Given that as data would it follow that the fire would spread less rapidly?—A. The combustion would depend on how the goods were wrapped.

There were heaps of skins wrapped in parcels. There were 2 or 3 heaps but they were not recognizable as parcels of skins. The size of the biggest heap was $2 \times 2 \times 2$.

Q. It was put to you in cross-examination that Mr. Kennedy for a period of time had been purchasing skins from petty dealers? Did you try to verify that?—A. I made inquiries from the proprietors brought in by

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(g) John
Ross (re-
called).
Cross-exa-
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mination.

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(g) John
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Re-exa-
mination—
continued.

the C.I.D. They informed me that petty dealers were never in possession of more than Rs. 20/- worth of skins and these were raw skins. There were inquiries made and from tannery owners and I was present at those inquiries.

Q. (Referring to P.32.) The date 13th July occurs on page 11?—A. Yes.

Q. In fact that is the date that occurs in the file?—Yes.

Q. I understood you to say that when you came across this file Mrs. Kennedy struck to it and told you it was an old record?—Yes.

To COURT: There was a fair number of private documents and I felt particularly uncomfortable myself and I allowed Mrs. Kennedy to sort the papers out. 10

Q. When she made that statement to you you had no means of verifying it?—A. I merely saw from the way it was drawn up that it was a skin statement.

Q. You saw it was a skin statement and it would be of use to you and insisted on having it?—A. Yes.

Q. Apart from what she told you she was perturbed?—A. She was agitated.

(r) James
Classen.
Examina-
tion.

JAMES CLASSEN. Sworn.

20

I was employed as a clerk under Kennedy & Co. I have been there for a little over 6 years. I am still in Mr. Kennedy's employ. My particular job was to write up the general books, of the firm. That would be the ledgers and the cash books, and the cash receipt books. I am a sort of Ledger clerk and book keeper. I have not worked in the basement but I worked in the ground floor.

To COURT: There is no one above me. I am looking after the accounts.

Mr. Kennedy supervised my work and the auditors wrote up the accounts.

The day the fire occurred I worked till about 6 p.m. I was on the ground floor of the old shop attending to the accounts and supervising the work in connection with the moving away of the goods. They were arranging these boxes of shoes in tiers to be taken across and I supervised the work. That is not my ordinary job. After that I left for the new building. Mr. Kennedy came to dictate some letters to the typist and I moved over to the Colombo Stores and I was there assisting Mr. Ogle in laying down the rubber flooring. 30

I worked till a little after 8.30 p.m. I came back to the old shop about 8.30 p.m. or 9 p.m. to take my hat. When I came back there were Hossen and the typist John and 5 coolies. They were working on the ground floor. 40

To COURT: They were on the ground floor. They were getting the stocks ready for removal on the next day.

Mr. Kennedy was not there at the time. He was in the Colombo Stores building. Mrs. Kennedy came along. She followed me when I was leaving the stores. She came from the bungalow with Mr. Kennedy after dinner. I worked in the Colombo Stores till about 8.30 p.m. Then I came

to the old shop to fetch my hat. When I came to the old shop there were two clerks and 5 coolies working. Mr. Kennedy left earlier in the day for dinner and he came with Mrs. Kennedy to the Colombo Stores premises about 8 o'clock. When I came to the old shop Mr. Kennedy remained behind in the Colombo Stores and Mrs. Kennedy came to the Times building. She followed me. Those were the only people then. I know the main shop door from Main Street the glass door. That was closed. At the time I left the premises at 8.30 p.m. it was closed. It was closed at 8.30 when I returned. I know the door at the chute entrance. It was closed. It was
 10 locked, and the expanding door too. There is a door leading from the spiral staircase landing. At the time I left at 6 p.m. it was locked but I did not go back to test it at 6.30 p.m.

(To COURT: The door was locked. It was usually locked by the labourers. It was locked when I tested it about 6 p.m.)

It would be correct to say that the only door open when I went back at 6.30 p.m. was the door leading to the vestibule.

(To COURT: The main door was also closed when I left.)

We had not commenced the removal. We were to start the following day. Not a single part of the stock was removed that night. I did not
 20 observe whether the basement lights were on or off. There were none so far as I know working in the basement. It would be unusual to have the lights in the basement if none were working there so that probably the lights were off. The light on the ground floor were off. I could not say whether the fans were working. The first floor was entirely closed between 6 and 7 p.m. and the lights were out. I kept the materials for sealing parcels—the sealing wax and box of matches in my desk. The candles are usually purchased as necessary. Parcels were actually sealed in the basement. It was done by Sangaran. Whenever Sangaran needed the sealing wax he would come to me for that and return them to me. It was a normal business carried
 30 out. That was not a special precaution. We did not want to let the coolies to have access to the materials and they were left in my desk. It is normal state of business. (Shown P39.) Q. Is this in your handwriting?—A. Yes.

Q. Pages 1 to 5 in that file contain what is said to be skins in stock from July 1933?—A. Yes.

Q. Did you write this at any particular time?—A. I can not remember when it was but it was supplied to me by Mr. Kennedy on pieces of paper.

Q. Did you write it up in one instalment or at different times?—A. I wrote them at different times.

Q. How many?—A. I could not say. It was a long time ago since I
 40 wrote them up.

I made a statement to the Police. I think that was a short while after the fire. I can not remember the date. That was written shortly after Mr. Kennedy's return from England. I could not say it was completed in July but I think it was.

To COURT: I can not say when I completed it.

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 Evidence for
 Prosecution.

(r) James
 Classen.
 Examination—con-
 tinued.

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(r) James
Classen.
Examina-
tion—con-
tinued.

When I completed it I handed it to Mr. Kennedy. Directly I finished what I had written I handed them to Mr. Kennedy.

Q. Who supplied you with the particulars to be entered in P39?—A. Mr. Kennedy.

Q. Were you given it orally or in writing?—A. In writing. I acted as a copyist. Mr. Kennedy returned from England early in July about the 9th Mr. Kennedy asked me to write this file before the end of the month. I could not say how many days after he returned. I remember Mr. Kennedy taking out a policy of insurance for the skins. I do not remember the amount. I cannot say whether I had written anything in this file before 10 the policy was taken out.

I know that a policy of insurance on skins was taken out. I did not know it at the time it was taken out.

Q. Did Mr. Kennedy tell you at the time he took out this policy of insurance he was doing so?—A. Mr. Kennedy told me he had drawn out a policy of insurance for the stocks in the basement and the insurance men would be coming along to examine the stocks. I think it was the Commercial Union.

Q. When he told you that had you commenced to write P39?—A. I had commenced to write P39. 20

Q. How many entries had you made?—A. I cannot remember. I think I had completed it by the time Mr. Kennedy told me he had drawn out a policy.

Q. This was in July?—A. In July.

Q. This file is in two sections. One section deals with skins in stocks, and the other with skins despatched?—A. Yes.

Q. You told us this section deals with skins in stocks in July you wrote up on statements furnished by Mr. Kennedy?—A. Yes.

Q. When did you commence to write the section dealing with skins despatched?—A. Those were given to me as we had despatches as each 30 consignment went out.

Q. There are signs against each allotment marked A/3, etc. You wrote those in red ink?—A. I wrote them.

Q. Were they supplied to you?—A. No they were not statements supplied by Mr. Kennedy. I do not know what they mean.

Q. They are in addition to the letters T.C. written by you?—A. Yes.

Q. They were supplied by Mr. Kennedy?—A. They were supplied by Mr. Kennedy.

Q. Do you know that T.C. means ?—A. At present I know it means Tannery Colour. I read that in the report of this trial in the newspapers. 40 Apart from the newspapers I do not know what it is.

To COURT : Those were marks he gave me for his guidance. I do not know what they meant.

When I happened to meet Mr. Kennedy in the store I said to him that T.C. meant Tannery Colour and he said yes. I did not ask Mr. Kennedy

what the letters T.C. or the other symbols meant until this trial started. I took the items of skins despatched against each allotment.

Q. It is a reference number. Did you write that?—*A.* I wrote that. That is a reference to the invoice. That is a means of readily identifying the items with the items in the invoices.

Q. Was there a separate invoice book for foreign despatches and local despatches? (No answer.)

To COURT: We did not press copy the invoices but we keep carbon copies. They are serial numbers. They are progressive numbers.

10 We have a separate file called the skin file.

To COURT: The invoices are all typewritten on printed skeleton forms.

He used to keep the file in his attache case. It was not kept in the office. He did not keep the other files. The other files were in the office. This was a file kept for his private information.

To COURT: Mr. Kennedy had his own private rough skin stock book.

I have seen the rough stock skin book. That was kept in his desk in the shop. That has been burnt up in the fire because the desk has been destroyed and other files have also been destroyed.

20 To COURT: This is a list of stocks in the basement. It has also notes of despatches. It was more or less a rough book in which he entered all his skin business, his purchases from which he supplies all his particulars to be entered into this.

To COURT: He gave me papers on which these were written which he took from his book.

It was made up by himself. I had seen him make it up. He did not give me this rough book.

30 To COURT: It was from his rough book that he took the figures. In this he had all the entries of the stock in the basement and all his shipments in the file. In the book he had the rough entries from which he gave the clean entries.

He had not them all arranged but he selected the shipments from them from different places. There is no material in P39 which does not occur in the rough book. There would be more in the rough book.

To COURT: I had not taken the book into my hands but I had seen it on Mr. Kennedy's table from which he took the figures.

40 On many occasions I had seen him take the figures from this rough book of his. I have never looked into this rough book. I do not know why if there is any particular reason why he should be taking this book up and down. This was in his desk.

Q. Were you concerned at anytime with the inspection or looking at special stocks of skins?—*A.* No.

Q. Had you any idea of the stocks of skins in the basement?—*A.* Yes.

Q. You had counted them or helped to count them?—*A.* Yes.

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—
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—
(r) James
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tinued.

There was a large quantity of skins in parcels I could not say how many parcels there were.

Q. Roughly speaking would you say there were in the basement a stock of skins to the extent shown in this file?—*A.* Yes.

I have seen the skins in the basement. I knew for certain they were there. I knew there was a large quantity of skins.

Whether that large quantity corresponded with P39 I cannot say. Some of them were in parcels ready for despatch by post and some were loose.

To COURT : The majority of them were sent by parcel post. 10

I may have come down to the basement to see the clerk John working. He makes the entries of the despatches. I last went to the basement about 2 weeks before the fire. At that time I think there were very nearly a hundred parcels of skins. When I say parcels I mean those were ready for the post and there were loose ones too. John is not in a better position to speak of the number of parcels in the basement. He does not despatch all the skins. The skins are sent by Mr. Kennedy direct. Mr. Kennedy supplied me with the entries with regard to the despatches. If there were any parcels for despatch Mr. Kennedy would tell me so and he would ask me to prepare the necessary labels for them. I would not agree with John that there were only 30 parcels because John's work is entirely different. He was in the basement I admit. I prepared the labels for the parcels I had not handled the parcels of skins. One of the coolies Sanganam did the parcelling. I would not say that there were over 100 parcels but there were about 100. My estimate is not formed from my visit to the basement but because I knew they were there. I handled the documents. 20

Q. Quite apart from the documents I asked you whether you had any independent knowledge of the parcels in that basement?—*A.* I had not.

Q. Whether the parcels corresponded with the particulars furnished to you or not you do not know?—*A.* No. 30

(Shown P32.) Did you see that file at any time?—*A.* No.

Q. Have you seen that for the first time now?—*A.* Yes.

Q. Can you say whether you saw it in his attache case in company with P39?—*A.* No.

To COURT : That was not shown to me before this case.

Q. Generally speaking you helped Mr. Kennedy with the writing up of the accounts in connection with the skin business?—*A.* Yes.

Q. If Kennedy wanted your assistance to write up P32 from some rough list you could have done it for him?—*A.* No I did not.

Q. You know the electric lights in Mr. Kennedy's shop?—*A.* Yes. 40

Q. Were they at fault at any time?—*A.* Several times.

Q. What were the faults?—*A.* There was a failure of the lights in the basement which we took to be because of the defective bulbs at first.

To COURT : That was about 6 or 7 months before the fire.

Q. What do you think now?—A. I do not know what to think now. We had to complain of the continued failure of the lights to the Times of Ceylon not in writing but by verbal messages to the electrician, Paul.

Q. Would you be surprised if Paul says there was only one occasion?—A. I would be surprised if he says so.

To COURT: To my knowledge there were three occasions when I complained. I think there were about 8 or 10 lights in the basement. There were no fans.

Q. On each of those occasions did all the lights go out?—A. Not all. It was the failure of one or two lights.

Q. On all these occasions it was the Times electrician who put the faults to right? From the time we complained?—A. Yes.

To COURT: He came and adjusted things. I do not know what he did.

Q. Was that the only trouble you had?—A. The last occasion I reported the matter to him he came and said there was a fuse and one of the bulbs had burnt and dropped on the floor.

Q. Do you know what the practice is when closing the door when putting off all the lights to put off the switch?—A. Mr. Kennedy was usually the person who was the last to leave.

20 12th September 1934.

Accused present.

12th September 1934.

Same Counsel as on previous day.

J. CLASSEN. Sworn.

Cross-examination.

CROSS-EXAMINED.

I was the head clerk and book-keeper of Messrs Kennedy & Co. The other clerks were subordinate to me. On the 29th September I left the premises about 9 o'clock. (To COURT: The old premises.) The premises of the Times building. I have been with Kennedy for some 6 years. I was there when he shifted to the Times Building also. About 2 years ago when Kennedy's shop was shifted from the old "Times" building, the procedure adopted for shifting was similar. The stock was transferred by coolies from the old Times building to the New Times building by hand; and the preparations for the transfer of stock went on for a few days prior to the transfer. The shoes and some other things were taken down from the shelves and arranged box over box as many as the coolies could have carried over. They were not tied up. The actual transfer of stock took place at night. We started directly the doors were closed ordinarily for business and went on into the night. The fittings of the Colombo Stores premises, namely, the racks etc. were not quite ready on the 29th September. Mr. Steel, Messrs. Walker's Engineer, was engaged in supervising that work, at the Colombo Stores building late that night. When I left he was there still. No stock had been transferred to the Colombo Stores building; not a single part of the stock was transferred to the Colombo Stores building. Some of the fittings had been transferred like the rubber flooring. There was a rubber flooring on the ground floor and one on the basement.

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(TO COURT : On the basement there was a Ceylon made rubber floor.)
And the flooring really was in the fitting room in the old premises. As there
was no place to put it in it was put in the basement. And a coloured rubber
flooring was put on the rubber floor of the new Times building. Both those
rubber mats on the ground floor and basement had been removed to the New
premises. They were in pieces 12 ft by 12 ft wide but fitting in. The rubber
flooring on the ladies' department, the 1st floor, had also been transferred.
I was at the New premises myself till about 8 or 8.30. It was before I left
the new premises that Mr. and Mrs. Kennedy returned after dinner. There
was Miss Kennedy, and Mr. Ogle in the Colombo premises working there
supervising the work. Miss Kennedy is Mr. Kennedy's sister. Mr. and Mrs.
Kennedy returned after dinner to the Colombo Stores direct. (TO COURT :
And they went in.) Mr. Kennedy remained there and Mrs. Kennedy came
across to the Times building and was supervising the work that was being
carried on there by 5 Kochin labourers and Hossen. At the time the main
door opening into main Street, and the chute door, were closed when I left
at that time. The chute door is two doors—a steel expanding door and a
wooden door over that. This chute door was opened once a day only except
on days when stock arrived from Europe, and it is opened regularly once a
day whether the stock arrived or not for the purpose of sweeping the place
out and then the steel door is kept closed. That is the door which allows the
ingress and egress of air. (TO COURT : The wooden door is opened in the
morning and is left open in the evening as long as the men were working.)
As a result of the explosion both those doors had been driven out of their
hinges and the steel expanding metal door was lying not far from the
premises on the ground with the padlock intact. It is still lying there. And
the pieces of the wooden door had been blown further away, torn from the
hinges. It is part of my duty to write up (P39) the stock file. And I began
entering it after Kennedy's return; Kennedy having returned in July.
Before Kennedy's return all the skins used to be left at his bungalow. After
his return the stock was transferred to the basement. It took several days
to bring the stock in; and as the stock came in I entered up this book
according to the particulars given, according to the chits handed to me by
Kennedy himself. It took about a week to get this stock into the basement
of the Times building. Some of them came in Kennedy's car and some of
them came by carts. Kennedy's car did several trips up and down for a few
days, bringing them. As they came in Kennedy gave me the particulars to
be entered up.

Q. Later in this book there are several 2½ pages of entries of skins
despatched?—A. That was also done as the goods were despatched from
time to time. (TO COURT : Those were made contemporaneously, that is, at
time of the despatch.) In July certain skins black and white crocodile
etc., were shipped by the Mangapore. The majority was sent by parcel post.

Q. The 1st 2 items here is skins with Mangapore?—A. Apparently that
was shipments in boxes. Shipments were in boxes. The goods sent in parcel
post were sent in parcels encased in jute hessian on the top. The parcels of

skins were wrapped up in paper and over that covered with jute hessian. That was entered in from time to time.

Q. The 1st page is first 2 by the Mangapore and 2 parcel post?—A. Yes. (To COURT: The rest were parcel post.) Apparently that was also sent by post. I wrote out all the tags that had to be fixed to these parcels, addresses and so forth. That was part of my job. I had no reason whatever to doubt that these stocks which Kennedy asked me to enter up did not in fact arrive at the basement. These valuation figures are also mine given to me by Kennedy. These figures in pencil are not mine. So far as I was concerned
 10 the totals had never been added up. The maximum weight of a postal parcel is 22 lbs and about 230 to 240 Talagoya skins can be put in a parcel weighing 22 lbs. They are quite small skins. I said I was told by Kennedy about the Insurance some time after the skins had been insured. Until the skins were actually transferred to the basement so far as I was aware there was no separate policy covering skins. (To COURT: I was not aware of any separate policy covering skins.) I knew that there was a policy covering the general stock. I did not know that there was a general policy over the skins. As a matter of fact Kennedy had asked me to show the Insurance
 20 Co., agents stocks of skins if they came round. In case Mr. Kennedy was not personally present and the Insurance agent came round I was told to go and show the insurance agent the stocks. So far as I am aware no one came. I stated in the Police Court that there were thousands of skins in stock. That is right. Many of them were in the shape of parcels and the rest were loose. Those loose skins formed the bulk of the stock, and they were mainly stocked by the wall of the Times dynamo room. That is the room below the lift wells. I said I did not see the rough book that Kennedy had with him at all. But I am aware of the fact that there was a rough book in the drawer of his desk. I had never seen the inside of the book. I had seen the outside of the book. I had not read the contents of the book at any time. So that
 30 I cannot say whether this book (P39) contains a full entry of what was in that book or not. This book contains apart from the stock of skins in stock from July 1932 the shipments as well. Kennedy's stock book was mainly consisting of stocks that he received out of which I gathered out these figures.

(To COURT: Yes, it was from the contents of the book that he gave me the entry, after looking into it. He took the figures off the book in a piece of paper which he handed to me. Well, I made up the invoices from that. And also wrote them in P39.) I am aware that some Rs. 42,000 worth of skins had been shipped in 1933 according to the balance sheet. During the 6 years I was with Kennedy I have known Mr. Kennedy to buy
 40 skins from the shop as well. I did not work in the bungalow at any time. Dealers used to bring skins to the shop. The skins were brought on many an occasion and paid for in cash. Small parcels were brought as well as large parcels. (To COURT: Varying sizes of skins. Small and large purchases; a small quantity and large quantity of skins.) A small quantity would be between Rs. 75 and Rs. 100. Anything to the value of Rs. 75 I would call a small parcel. Anything above Rs. 100 I would call a large parcel. Rs. 200 would be a large parcel. The biggest parcel I

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remember is one of Rs. 250. The cash for these payments were taken from what we had in the store, adjusted from Mr. Kennedy's private funds. He took the cash from the till and adjusted it out of his (Kennedy's) private funds. The money was taken from the office till and later adjusted with Mr. Kennedy's private funds. There was no necessity for any book entry. These were mainly Kennedy's private dealings. Kennedy had no banking account other than this to my knowledge.

Q. Were entries in respect of the cash taken out of the till made in the ordinary books kept by a firm?—A. There was no necessity because they were adjusted by Mr. Kennedy putting in those monies into the till. He replaced the cash. It may be the next day that he adjusted it.) The door leading to the vestibule was the last door to be closed everyday. That was invariably closed by Mr. Kennedy himself. Mr. Kennedy was invariably the last to leave. I told the crown counsel that there had been trouble with the electric lights on several occasions. (To COURT: Only in the basement.) The last of them was about 6 weeks before the fire. And that was put to right by the Electrician Mr. Paul. Yes, there was trouble with regard to the gas supplied to the Times building. That must have been about 3 months before the fire. Some workmen had to go down to my basement. The machine men from Times machine shop came along with some other workmen and were asked to go down to the basement and examine the pipes. And Mr. Lornie of the Gas Co. also came. Kennedy's got a private lift from the ground floor to the 1st floor. That is actually outside the ground floor near the vestibule. Very often we did notice some smell but we could not say what it was. I had often noticed a smell of gas. (To COURT: I could not say what it was because there was a workshop on the other side. There was a telephone repairing branch of the Government telephone department on the other side of Duke Street which leads at right angles to Main Street on the North Eastern side of Times building. That is the Lotus pond side. (To COURT: We did get a smell but we could not say what it was. We could not say that it was gas. But we did get a smell. I could not distinguish which gas. I smelt something. I could not tell if it was cold gas or butumen gas. I had often smelt it. We often thought it was due to the burning of these waste materials. It was attributable to that source. The Government telephone repairs shop is still there. The distance between that telephone repairs shop and the Times is about from where I am to that box. (Indicating distance.) My table is just in the corner towards that side of the workshop, more towards the spiral staircase. I went to assist the Police in the opening of the iron safe. I went to assist Inspector Koelmeyer. The Police had taken the safe from us. We went to assist the Police in opening the safe. It was rather a difficult thing to open the safe, but I understood how to do so, as I had done it even before, and so they asked me to assist them in opening it. There was no loose cash in the iron safe but in the cash desk. There was cash in the cash desk where we receive cash payments. There was no cash in the safe. The cash desk was burnt. No, the cheques were in the iron safe. When I went across Mr. Koelmeyer was there. To COURT:

Cheques banked in Mr. Kennedy and Co., not cashed were ready to be sent to the bank the following day.) The cheques were removed by Mr. Koelmeyer. He took the cheques and gave me a receipt, and he called me up to the Colombo Stores and asked me to make a list of the cheques which he signed. The actual list of cheques were made by me at the Colombo Stores, and was initialled by Mr. Koelmeyer. (Shown list marked A1.) It bears the date of 6th October. This is the list. Apart from cheques there were records of bank bills, bank policies, books; these were all put into a little canvas bag, the cheques together with the record of the bills due to the bank and so on. (To COURT: The current cheque books were in the safe. There was no correspondence book.) The cash was handed over to Mr. Ogle by Superintendent Marriot. There was more than Rs. 90. The cheques were handed over to me by Mr. Koelmeyer on that date. They were all damaged cheques, damaged by the water. No, the cheques were handed over to me. This list was made as a record of those that were handed over to me by the Police. The cheques were all damaged by the water that was pumped. I think I signed a similar list and handed it to Mr. Koelmeyer. They were alright. To COURT: There was water inside the iron safe. The iron safe was blown on to the window sill, off its space into the window sill. The iron safe was shifted right on from where it was to the window sill, about 3 feet from where it first stood, right over on to the window sill of the show room and it was on its back. It was removed afterwards. Well, the safe was about I think $1\frac{1}{2}$ feet by 5. It was 5 feet high. It was a narrow one, a square, about 5 feet high and about 18 inches square. There were certain books also in that iron safe. I think there was one ledger and some other books in it. They were retained by the Police. This cash till as I called it is the desk in which we receive payments for any goods bought. Mostly I received payments. I acted as cashier as well. That is not a desk in which I ordinarily sit. That is just behind my desk where I ordinarily work. The cash desk was a wooden structure. The cash was in the little drawer. It had not been burnt. It was charred. It has been the habit for customers to leave things behind at the shop. They come in and want things to be kept for them. The name of the person who left the article is attached to the article and it is left in one of the cupboards there, a closed cupboard. I remember some time before the fire one of my assistants, a man called Mannan who works ordinarily in the ladies' department telling me that a gentleman wanted to leave his suitcase there. And it was left behind actually by this gentleman. I cannot remember the man who left the suitcase. He was an European gentleman. Mannan came to me and mentioned the fact and he handed me the name of the party and I wrote the tag for it and attached it to the suitcase. I do not know the name of that person. Mannan gave me the suitcase with the name. (Shown P9). It was a suitcase like this. I could not say whether suitcase was removed before the fire. As a matter of fact there were other things left behind by customers also. I think this suitcase was left a short while after Mr. Kennedy's return, about the middle of July.

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I stated that my principal occupation here was that of a book-keeper. Generally I do clerical work, and also act as cashier. It would be correct to say that the storekeeper and those working in the basement would be directly concerned with receipt and despatches.

Q. You would not be concerned with the actual receipt of goods in the basement? If for instance let us say packages of shoes arrived from England it would be the people in the basement who would take charge?—*A.* Yes, they would take charge, but I supply the necessary information about the invoices. I do not check it personally during arrival. Personally or otherwise I do not check at all. I do not go myself to check the stocks. I have not got to check it at all. No, the checking of the stock is not by me. 10

Q. If any supply of skins was received to be stocked in the basement the same consideration would apply? The storekeeper there would take charge and you would have no first hand knowledge of the receipt of such a stock or what it consisted of?—*A.* No.

I told you in examination-in-chief that I wrote that document (P30) that file containing stock of skins from slips of paper given to me by Mr. Kennedy. I also told you that he took those slips or rather the slips were copied over from this rough stock book. Then I cannot say whether those 20 slips that were handed to me had anything to do with the alleged receipt of skins in the basement. (To COURT: They were the stocks that were entered up.)

Q. When you wrote an entry in (P39) from the slips given by Mr. Kennedy were you able to make that entry out at the time of your writing with any particulars of it brought at the basement?—*A.* What Kennedy brought he gave me the particulars of to enter into this file (P39).

Mr. Kennedy would come to me and he would make some notes and give it to me to enter it in (P39). I was aware that the stocks were coming into the basement. Yes, when Kennedy gave me the particulars I thought 30 that they represented the stock that was brought.

Q. Supposing the entry you wrote referred to 600 skins? Did you know at the time you were entering it that it referred to any number of skins that were come?—*A.* I only took it that they were stocks brought to the basement. When I made the entry I did not note that it referred to any stock in the basement.

Q. Apart therefore from the slips given to you by Kennedy you had no independent knowledge of what was received in the basement?—*A.* No, none at all except for the fact that there were skins in the basement.

Q. In answer to my learned friend you said you entered up (P39) as 40 the stock of skins came in? That would not be correct?—*A.* As Mr. Kennedy brought these stocks in he gave me in reference to them the slips and those I entered up. I know that he gave me certain slips of paper. I know that those slips of paper were copied over from a rough book. I also know that some skins were being received but that was not my business. I was not in any way concerned with that.

Q. How can you say that this was written in as stock of skins came in ?

—A. I was aware that the skins did come into the store and when Kennedy gave me the slips I assumed that they were in reference to the skins that came in. It would not be accurate to say that I entered up (P39) as the stocks came in. (To COURT: He did not tell me, “Mr. Classen here a number of skins have come in. Enter them up.” I also told the Defending Counsel that these skins were brought to the basement after Kennedy returned from England up to the 9th July. And to bring it to be basement it would have taken about a week. I was aware that there were the carts
10 and the car coming in up and down carrying in the stock. Portion of the stock came in half-carts which would be paid for. I paid for them, but took no receipts. I paid out of the petty cash. It would go into the petty cash book, and these entries appear in the petty cash book. That petty cash book is with the auditors. I believe they still have it.

(To COURT: Those items were not adjusted.) Yes, I was told that after the fire Mr. Kennedy was asked what proof he had of the possession of these stocks.

Q. And you realise that if such entries appear in the petty cash book they would afford some proof of the transport of skins from the basement ?—

20 A. I merely state in the petty book cash hire. The items are not differentiated. I put merely cart hire. (To COURT: Kennedy checks my petty cash book. No, we would merely state cart hire in the petty cash book. That would be ordinary. When the man delivers the stock in the basement he comes up and tells me that so much cart men brought this stock and I pay him. I take the petty cash and pay this man and I enter it in the petty cash book. If there was a receipt that would afford some check when Mr. Kennedy goes into it. There was no receipt as “To cart hire from Monsoon Lodge to Fort.” If there was such an item that would again be a check. I would have been able to say whether it was a reasonable amount.
30 But I did not get any receipts for it.

(To COURT: I have not done petty cash books before this. I was at Cumber Batch and Co., as a clerk before I came to Kennedy. I had nothing to do with the cash book.) I cannot say when it was that I made the last entry in (P39). It may have been about 2 months before the fire that I made the last entry in (P39) in reference to that stock. I did not total that amount. I was not asked to. (To COURT: I am not quite certain about the time. It would be about the end of July. It was certainly never made in September. I could not say whether I made it in August. If I made it in August it might be early in August. I could not say.) I do not think there
40 was any transport of skins from Monsoon Lodge to the Times building after July. I am not aware of any. I said these entries (P39) were made from chits made out of the rough book. I have never seen the contents of that rough book. There is no reason why he should not have handed me the rough book and asked me to copy these entries. He had complete trust in me. Kennedy always kept that rough book himself in his drawer. The majority of the books are put into the safe every day. I myself put

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them into the safe. They are in my custody but the rough book was never in my custody nor (P39). (TO COURT: The letter books are in the cabinet. That has been destroyed. In the rough book that Kennedy had all these skins had to be grouped up and according to the sizes and from the rough book he took off these entries and made it up. Mr. Kennedy had always this rough book with him because he had all the record of skins in (P39) and because very often when in his bungalow he received reference to the supply of skins. The rough book was not put into the cabinet because it was of great value to Kennedy.) The rough book was in existence for some time before I came into his employ. I recall seeing it 3 years ago. He got me to write (P34) only in July. Up to that date his only record was that rough book to my knowledge. And during that period he kept that rough book in the drawer. Directly he brought this up (P39) he took it up and down in his attache case. So far as I know this book of Mr. Kennedy's was taken up and down. Telegrams addressed Culdoon would be delivered at the shop. Yes, the telegraphic officers were given instructions to hand any telegram received after close of office hours at the bungalow. And I am aware of telegrams handed to him at his bungalow. Certain petty dealers brought skins to the shop. And they were paid for in cash. The average purchases on each occasion would range between Rs. 100 to Rs. 200. I am quite certain they were paid in cash. 10

Q. No reason why they should not be paid in cheque?—A. The petty dealers prefer cash. Mr. Kennedy always replaced this cash in the till. The average cash taken sometimes may be between Rs. 150 and Rs. 250 and the cash is sent to the bank the next day. There are a fair number of such payments in cash and cheque. If on any particular day we made a good number of purchases the money would be over and Mr. Kennedy would have to get money from the bungalow. (TO COURT: Some of them asked for cheques.) I do not know from where he brought the cash. It may be is personal cash. (TO COURT: He may have brought it on the morrow next day morning because I usually check up the accounts on the following morning. There was no book entry. I did not know that Mr. Kennedy had any banking account other than the firm's account. I know that Mr. and Mrs. Kennedy had a joint account at the P. & O. bank. That was their personal account. 30

Q. For instance any monies which Kennedy drew out of the firm's account might be carried into that account?—A. I am not certain of that. I have not seen the pass book of that account at any time. I have seen cheques drawn by Mrs. Kennedy or by Mr. Kennedy on that bank. I did not know that that account stood at Rs. 60 at the date of the fire. I am not aware of any resources Mr. Kennedy had apart from his drawings from the firm. I am not aware that Mrs. Kennedy has any private property, nor that she is in possession of any house property. To my recollection these purchase of skins from petty dealers did not go along right up to the date of the fire. I think the last purchases made from petty dealers was about the early part of August. The purchases went up to July. Mr. Kennedy kept those records of those purchases in his rough book stock. I cannot 40

say whether any of those purchases went into (P39). I cannot point to any of those accounts. (To COURT: Whether they went into the rough book I cannot say.) If (P39) is an accurate statement of the skins in the basement there is no reason why a receipt which I referred to should not go in here. And I myself said that Kennedy at any rate in July and thereafter appeared to attach more importance to (P39) than to the rough book. I told the defending Counsel that there was some trouble about the gas pipes about 3 months before the fire. Well, the machine men came and asked permission to go and examine the pipes because they said the meter was not sufficient and the machine could not be worked. The supply of gas was not sufficient. The complaint was made by the machine men of the Times printing department. There was no suggestion of the leakage of gas at that time. It was merely a complaint at the Times end and they came over to our workshop purely because those pipes passed our basement. In connection with that Mr. Lornie came, I think, about a week or 10 days after. Mr. Lornie must know that. No, Mr. Lornie came up to the office and asked permission from Mr. Rogel to send his men to repair the pipe. I was not sure of the time he came, but I know that the Times office made the complaint. He may have come to the Times but he did not come there. This is the first occasion on which I am referring to this incident. I did not tell Mr. Ferguson that because I was not asked by him in reference to the gas. So far as I am concerned all that happened was that these people came and asked me permission to go down to the basement and I gave that permission. Mr. Kennedy was not in the basement at that time. When he came down I told him that the Times men had come there that day. I know the smell of coal gas. I have not been inside a laboratory. I have been living in a house lit by gas. This smell which I said I had smelt from time to time was similar to the smell of coal gas, but I would not say it was the same. I got a smell of gas but I could not say what it was. I would not say it was gas at all. This smell was generally in the basement or in the ground floor. I would not say it was on the first floor because I seldom go to the 1st floor. (To COURT: We complained of this smell one or 2 times to Mr. Kennedy. We attributed the smell to the burning of these waste materials in the telegraphic workshop. We often got the smell right through that period at different times. We got the smell right through the time we went into Kennedy's shop. People in the basement must have got it too. (To COURT: Very frequently the smell troubled us, and in fact when Mrs. Kennedy came she used to go round to see from where the smell emanated. Either I or anybody else did not attribute the smell to the leakage of coal gas. I remember the date of the fire. I got the smell that day. I would not say that on that day the smell was particularly pungent. The smell was not worse than on previous days on that day. I have not been to the building after the fire apart from going to open the safe. You may smell it if you were on the pavement of the shop. When I was standing out on the other side of the verandah I would smell it. It may be that Sangaran and the other cooly John did not get any peculiar smell at all. I know that. I do not know whether the customers that come into the shop pay much

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attention to the smell for them to get the smell. We did get the smell. Customers at any time did not complain of any bad smell. No, we did not at any time complain to the gas people that there was this smell. It is not our concern. (To COURT: Very often we tried to find out whether this smell came from any part of our apartment. Mrs. Kennedy very often had gone round the building to locate the place from where the smell came but one could not get the exact place from where it came.) You are correct in saying that the smell was the same right through this period of 1½ years. It did not become worse. (To COURT: This smell could not be from the Lotus pond. It was a good deal off.) The cheques which were in the safe that day amounted to Rs. 237/40. The cash was Rs. 94. odd. This safe was placed on a wooden pedestal, on a wooden stand. It was not built into the wall or built on the ground, and it had just toppled over. I believe the stand had been burnt. If a customer came along there and if he was going somewhere else he used to leave something there and he used to call for it later. If a man buys something in my shop and he leaves the parcel he says he would call for it later in the day. They were seldom left for more than a day or two. Small parcels like that would be claimed. (To COURT: The majority of parcels left were claimed the same day.)

Q. And you had a cupboard where you put them away?—A. No, it was not these parcels. Sometimes we might place them on the table there. (To COURT: This was not very frequent.) This cupboard was by the side of that entrance there to the vestibule door. It is a closed cupboard. No, we had closed cupboards there too. Not locked at night. (To COURT: No, if it was handed over to me I would mention to Kennedy that such a thing has been handed over.) Well, not frequently would people keep large suitcases. I could recall about 3, 4, or 5 occasions during the last 6 years on which people had left suitcases and they were always claimed to my knowledge, and claimed within the day or the next. Mannan is a salesman upstairs. He is a Malay man. Upstairs we sell ladies' footwear only. Mannan came and told me on this day that a gentleman wanted to keep a suitcase. On this particular day when this suitcase was left behind all the people were engaged and Mr. Kennedy wanted Mannan downstairs to attend to the work. I saw the gentleman. I do not know him. I do not know if I could recognise him if I see him. I do not think he was a long standing customer of ours. He was a customer. That was not the 1st day he walked into Kennedy's shop. I think this was an upcountry customer. He left this suitcase behind somewhere about the middle of July. I put the suitcase in the closed cupboard. I put the name on it, a tag. I could not say when I saw the suitcase last. I did not open the cupboard. I had the tag put on to the suitcase and asked the cooly in my basement to put the suitcase into the cupboard. I had no concern with it after that. A suitcase was left there in the middle of July and for all I know it may have been taken away the next day. In fact I did not on one occasion see it after that. I just put the tag on it and asked the cooly to put it inside. There is no reason why a person should come and keep a suitcase containing 2 tins of petrol in our shop. (To COURT: I presumed that the suitcase was locked but I cannot say exactly whether it

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was locked or not.) I believe that suitcase was one of those expanding suitcases. It was not a revelation suitcase. It was an expanding suitcase. After the fire I went there to open the safe and that was the only occasion I went there. I became aware that 2 tins of petrol were found with a suitcase, the day after the fire. And I realised that that was a matter of very considerable importance. I made a statement to Mr. Ferguson, on the 5th of October. I did not refer to this incident in that statement. (To COURT: At that time this suitcase did not occur to my mind.) When I was called upon later to give evidence in the Police Court then I thought about this suitcase. At the date

10 I made a statement to Ferguson I was aware of the finding of the suitcase and 2 tins of petrol and I realised that it was a matter of some importance, but I did not mention then the incident in July. I further told that that was because I did not recall it then. I first recalled it at the time I was called upon to give evidence in the Police Court but I did not mention it in the Police Court, because I was not asked about it. (To COURT: I realised at that time that my employer Kennedy was alleged to have taken those tins. I realised that that was the suggestion before I gave evidence in the Police Court. The suggestion was that petrol had been used for the fire and that that was alleged to have been done by my employer. Right up to the day on which I gave

20 evidence in the Police Court I continued in Kennedy's employ and I am still in his employ. Before I gave evidence, in the Police Court I did not recall Mr. Kennedy about this suitcase. I had no particular reason for it. I had recalled it in my own mind. I did not tell Kennedy about the suitcase before I gave evidence in the Police Court. I say that at that date I realised that the finding of the tins and the suitcase was a matter of very considerable importance and a matter of very considerable importance to my employer and it did not occur to my mind that this incident about the middle of July was a possible explanation of it. I was aware of the fact, but I did not connect that with the case at all. (The Witness examines the suitcase and says it is

30 an expanding suitcase.) I did not see this suitcase before. It is the 1st time that I see it now. It was wrapt in brown paper when I came in to give evidence. I did not mention about the suitcase brought by the man to Kennedy personally, but attention was drawn to it by someone else, that is, that a suitcase had been kept in July by a certain customer. It was I believe Mannan who drew Kennedy's attention to it.) Yes, after I gave evidence in the Police Court Mr. Kennedy has discussed this with me. He has talked about it. I could not say just when, after I gave evidence in the Police Court. He said that his attention had been drawn to the fact that there was a suitcase. He did not suggest that it was the very suitcase, nor did I.

40 This was merely an academical suggestion that this might be the suitcase. The suitcase that the customer brought in was an expanding one. When Kennedy discussed this with me he did not tell me here this suitcase produced in Court is an expanding suitcase. He said there was a suitcase presented in court, but he did not describe it to me. I did not tell him that the customer had brought an expanding suitcase. The conversation about this suitcase was in the course of talk. Suitcases are more or less alike. Most suitcases have fixed straps. No, I made no description about the suitcase.

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Evidence for
Prosecution.

(r) James
Classen.
Re-exa-
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(r) James
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I remember Ferguson questioning me. No, he did not ask me if I recalled anybody bringing a suitcase at any time. (A portion of his statement regarding this point is put to him.) To my knowledge Mr. Ferguson asked me whether Kennedy brought any suitcase. If Ferguson did ask me at that particular moment when I made the statement perhaps I lost recollection of it. (His signature is shown to him.) He identifies it. The statement was read to me and explained and I understand English of course. I said this, that I did not see anyone bringing in a suitcase into the shop during the last fortnight, and also that I had not seen anyone bringing any petrol tins into the shop. When Ferguson put this specific question to me and I said "No" I did not recall this incident about the middle of July. It did not occur to me. It escaped my attention at the time. If I remember it I would have said it was not during the fortnight but during July, because I realised at the time that this was a vital point in the case,—something that affected my employer and through him me, this statement was given 6 days after the fire. Mr. Kennedy used to carry a attache case, an ordinary one, about 15 by 10". I did not see him bringing a suitcase into the shop, never. (To COURT: He brought the case in which he had the traveller's goods. I am remembering it now. No, he did bring suitcases which contained the traveller's articles. His statement to Ferguson is read, on this point.) That is correct. Occasionally Kennedy may take away and bring back a suitcase containing travellers samples. (To COURT: When the question was put to me I thought it was Kennedy's personal property.) I have seen Kennedy occasionally take a suitcase from the shop and bring it back. Generally I could say what that suitcase contains. On every occasion I could not say what that suitcase contains. In fact I would not be particularly concerned with what Kennedy brought or took away. I could not say definitely the last occasion on which Kennedy brought a suitcase to the building. No, I could not say whether the week before or after the fire that he brought a suitcase. I think on one occasion after he came from England in the early part of August he brought a suitcase. I did not what the suitcase contained on that occasion. A traveller came on that occasion and I presumed that it was that but I did not know. Mr. Kennedy's car usually takes him home for lunch and the car would bring him back. On the day of the fire Kennedy went back to the bungalow to have his dinner and came back with Mrs. Kennedy about 8 o'clock. What he brought on that occasion I do not know or whether he brought anything. I was then in the Colombo Stores. I will admit that it would have been the easiest thing for him to have brought the suitcase on that occasion inside the shop unobserved. (To JURY: No receipts were given for these suitcases and for the parcels left in the shop by customers. So that there is no means of finding out the name of the person who left this particular suitcase. I said that it was a customer who came before. It was a country customer. I cannot identify the man in any way apart from that. I could not say whether I would know him again if I saw him. From his name at that particular time I thought he was an upcountry customer. I did not know his particular name. (To COURT: By his name I thought he was an upcountry person. I mean address. We

have had the address.) I know a revelation case is a suitcase that can expand. This suitcase produced in court is what I would call one of the expanding cases. It seems to be of that category. I remember the one that was given to me was a revelation. I said it was no revelation before. This was a type of case which we call an expanding case. The revelation is as far as I know with the rachets on the 2 sides of the case. Suitcases have been left before by customers apart from the one I mentioned. Just about 10 days or a week before the fire there was a traveller who left one of his suitcases. It was not removed. It was burnt up in the fire. It was not that type. That
 10 was another kind of suitcase. The upcountry gentleman who left this suitcase said he will return the following day or the same day. There was no smell of petrol in that suitcase. A number of bulbs failed in the basement. I have no recollection of the number of bulbs, but a large number of bulbs were replaced by us. During the time I occupied the Times building namely 18 months may be a dozen bulbs were replaced in our basement. In that period of 18 months to my knowledge there were 3 occasions when there were fuses. One occasion a bulb actually burst and the fragments fell to the ground. On the night the fire occurred there was in the safe one
 20 ledger, a daily sales journal, a petty cash book. No, these books were given over to Duncan Watkins after the fire. It was damaged. I do not know the names of any of those small skin dealers who came and sold skins to the shop. One or two of them came several times. I do not know from where they came nor did they give me their address. I myself did not have any dealings with them beyond the fact of handing the money to them and getting a receipt. Those receipts were burnt up in the fire. They were in the filing cabinet in a separate file; receipt file which we call. They were along with all the receipts. Well, we usually just put them into the file. Those receipts were not handed over to the authorities, they were not checked up at all.

30 Q. You cannot get any outside evidence of any one outside seeing those receipts?—A. No.

(This Witness was recalled, see page 182).

12th September, 1934.

AFTER LUNCH.

J. M. S. CROSSMAN. Sworn.

Q. (Shown P83) That is a policy for Rs. 125,000/- covering skins in the basement which was issued on the 18th July. Is that right?—A. Yes.

Q. Mr. Kennedy came in regard to that policy?—A. Yes.

40 Q. And said he wished he take out that policy?—A. Yes. I presume he came on the 17th, because we have issued cover from the 17th. The policy was issued on the next day. I gave him cover by word of mouth.

Q. Is there a written application?—A. No.

Q. Why did you not ask for a written application?—A. When it was an increase of the amount I would not ask for a written application. The

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(s) J. M. S.
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insurance he had was a standing policy and I regarded this as an increase of the policy.

Q. Did you inspect Mr. Kennedy's stock of skins in regard to this policy?—A. No.

Q. Did you propose to do that?—A. No.

Q. Did you tell him that you would come round to see the skins in the basement?—A. I do not think so.

To COURT : He asked for cover presumably from the 17th and we gave it. If a fire occurred on the 17th we would have been liable.

CROSS-EXAMINED.

10

No questions.

(t) T. J.
Walsalam.
Examina-
tion.

T. J. WALSALAM. Sworn.

I was Mr. Kennedy's store keeper. I had been working under Mr. Kennedy since 1-11-33. No I mean 31. Before that I was working as a dispenser at the Colonial Medical Store Pettah and before that I was working with Dr. J. A. Iswariah, a qualified practitioner. Though I was working as a dispenser I was seeking for employment in order to qualify myself as a dispenser.

Dr. Iswariah is a Tamil gentleman from Madras. He is a British qualified practitioner.

I am from Malabar, South India. I did not actually give up dispensing for the post of store-keeper, but as I could not secure employment as a dispenser I applied for the post of store keeper. I am still working under Kennedy & Co. I received a salary of Rs. 40/-.

I am working in the store to find out the condition and to keep the stock ready for the departments—to deliver them when they are wanted—in good condition.

To COURT : I did not actually keep a stock book. I do not keep a list of the stock.

When new stocks are received from England I do not take delivery of the packages but the packages are brought into the basement by the coolies and I check the contents of the packages with the invoices received, and I issue them as required.

Q. Are you concerned with the general stock, shoes and outfitting?—A. Yes.

Q. Do you have anything to do with the skin stock?—A. Practically I had nothing to do with the skins-stock.

To COURT : This was no part of my regular duty.

Q. About the time of the fire were there any skins in the basement?—A. Yes.

Q. Loose or in parcels?—A. Many parcels as well as loose skins.

Q. How many parcels, about?—A. To my recollection there were about 50 or 60 which appeared to me as postal parcels.

40

To COURT: I mean that they were ready and neatly wrapped. They were almost ready for despatch by post.

Q. Wrapped I understand in jute hessian?—A. Jute hessian as well as brown paper.

Q. Brown paper over the jute hessian?—A. Jute hessian over the brown paper.

Q. What was the average length of these?—A. I should say approximately about 3' roughly—say 2 or 2½' wide. To my recollection they appeared to be so.

10 Q. How thick? What was their height?—Thick, though I cannot actually say, it was about a foot or so.

Q. Do you go to the extent of saying there were 50 or 60 parcels or were there less?—A. I think there were over 50 or 60 parcels but approximately I gave the figure as 50 or 60.

To COURT: I am not certain about the parcels.

I had no occasion to count the parcels. It is not my duty. There were a few hundreds loose skins reserved for repairing purposes. There were thousands of skins lying loose on the shelves. They were wrapped in parcels all of them were not ready for the post.

20 Q. You told me that there were about 50 or 60 parcels of skins? Postal parcels as you called them? I ask you apart from these parcels how many skins were there unparcelled and loose? A few hundreds, that is right?—A. Yes.

Q. Those were the only skins in the basement were they?—A. I said there were 50 or 60 parcels which were ready for the post, and a few hundreds reserved for repairing purposes. There were many parcels which were ready for the post and a few hundreds loose for repairing purposes, but I have no definite idea of the skins.

30 Q. To come to the date of the fire, this was the period in which you were moving into new premises?—A. Yes.

Q. Had you done anything by way of removal?—A. I was doing the work for a few days before the shifting. We had been arranging the stocks according to the pattern, quality and style. The basement is the bottom of the building; one cannot go lower than the basement.

40 Q. Was the stock stacked on shelves?—A. It was stacked on fixtures and shelves. They were not on the floors. They were on a table like this and we took the stocks which were on the shelves and kept them on the counters for easy shifting. That is what I meant by saying "making ready." To reach the top of the basement I had to place 2 or 3 ladders and each fixture reaches the top of the basement.

One John and a labourer Sangaran works with me in the basement.

Q. What was John's job?—A. John looks after the correspondence as typist and he is in charge of the repairing department.

Q. Are repairs carried on in the basement?—A. No the repairers came and removed the shoes for repairs.

John's desk and typewriter are kept in the basement.

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On the day of the fire I worked in the basement till about 5 or 5.15 p.m. I do not remember whether John and Sangaran were working with me till I left. I worked till 5 p.m. and I was called to the ladies' department which is on the floor. When I left the basement at 5.15 p.m. I cannot remember if there was anybody else working there. To my knowledge I cannot say if there were any lights on or off. I cannot remember whether the lights were on or off. I cannot actually remember what I said in the Police Court.

(Police Court evidence (Page 7 of Record) read out to witness.)

To COURT : Without the lights we cannot do any work even at mid-day. 10

In the Police Court I was asked about the lights. Truly I do not remember the form of the question or what I answered. I think the lights were put out when I left the basement. We use only the lights which are necessary—not all the lights at the same time.

I worked in the ladies department till about 5.30 or 6 p.m. After that I went to the gentlemen's department, on the ground floor. Then I was going to assist the other labourers and one or two salesmen to arrange the stock and I was informed, not I was informed, to go home at 6 p.m. Generally when we get a little late to get home we get information from our superiors, but I cannot remember whether I went of my own accord or with the permission of anybody on this occasion. To COURT : Generally I leave the office a little earlier than the others. I often get colds during chilly nights, and I should think I have taken the privilege of going home earlier than the others. I did not ask Mr. Kennedy's permission to go home early that day. 20

When I left I do not remember whether Mr. Kennedy was there. Before leaving I did not go back to the basement. I went home. That was about 6.30 p.m. To COURT : I went out through the main door of Kennedy & Co.—through the big glass door. That was not closed when I left. 30

When I left the basement that evening, at that time or at any time that day I cannot remember whether I got any unusual smell. I do not remember whether I experienced any peculiar smell on that day.

Q. Can you recall whether there was any peculiar smell in the basement that day, any unusual smell. Do you say there was no smell or whether you cannot remember there was any smell?—A. I cannot remember if there was any peculiar smell on that day.

(Evidence read out to witness (Page 8 of Record).) "I did not notice any smell in the basement when I was there."

There is a difference in the statements I made in the Police Court and the statement I made now, now as I am reminded I do not remember what I said previously. I confirm the statement which I made in the Police Court. The former statement of mine I confirm. That is a correct statement. I did not notice any smell in the basement that day. I have no reason to doubt it. Prior to that day I had experienced a kind of peculiar smell now and then. I first observed that peculiar smell a few weeks or 40

a few months before the fire not only once. It was not always. I reported the matter to Mr. Kennedy twice or thrice and he said the smell came from the other side. I hope it is a workshop on the other side. As Mr. Kennedy did not take much notice of my information I did not worry about it any further. Mr. Kennedy did not take me seriously. He also told me it was from the other side. I do not know whether Mr. Kennedy was definite in his mind about the smell or not. He pacified me by saying that the smell came from the other side. He did not actually come into the basement to inspect it. He used to visit the basement to see me working, and to see the stocks. He did not come to find out what the smell was. I know Mr. Claessen. I do not remember whether Mr. Claessen personally told me that he noticed a peculiar smell. I do not remember any occasion when Mr. Claessen came to the basement and tried to locate the smell. That cannot be. I cannot remember Claessen coming round the basement with Mrs. Kennedy looking for any smell.

I know what the smell of coal gas is like. I have lived in houses with gas in Colombo. This peculiar smell which I observed was some weeks prior to the fire. I cannot say whether it was the smell of coal gas. It was not the smell of dead material. It was a fuming smell. I could not distinguish the smell which I noticed but I can say it was not the smell of dead material. I could not distinguish what the smell was. I know what the smell of coal gas is. I am working in a room where there are hundreds of things surrounding me—different things like shoe polishes, boots, shoes and other things. I cannot identify the smell I observed as the smell of coal gas. To COURT: There were things which may also produce these smells. I got a smell from the skins, a smell which is not pungent.

The parcels were wrapped as if they were airtight. I meant that I could not make out the smell. I know what the smell of coal gas is but I could not distinguish that smell from the smell of coal gas. The basement was practically filled with stocks. If I got a packing case of shoes the empty packing case would be sent to Mr. Kennedy's bungalow.

I did not notice any petrol tins in the basement. We do not use petrol in the basement. To my knowledge petrol was never brought to the basement at any time. The basement is lit with electricity. There was trouble with the lights on several occasions—three or four times. The bulbs got fused. To COURT: Not all the lamps but about one or two lamps at a time. The lamps would not light and others would and we had to use new bulbs.

I meant by saying that the bulbs had fused that the bulbs had got burnt and that the bulbs could never be used again. When I had trouble with the lights I used to inform Mr. Claessen and Mr. Claessen informed the electrician.

The electrician at the Times building came there, as far as I remember, about 3 times or 4 times. If a bulb burns out we could easily put in a new bulb. The electrician came to the basement 3 or 4 times. On one of those occasions when he came, before the fire, he attended to the lights

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when the bulbs got burnt and fell down, and I complained to Mr. Claessen and Mr. Claessen informed the electrician and the lights were repaired. Until then we could not work. To COURT: On that occasion none of the other lights would work.

A gentleman came from the Times and he repaired it. He had come previously also. I know the gentleman but I do not know his name. He attended to the electrical part of the work at the Times. I should think he was come there before that about 2 or 3 times. I think he has come twice or thrice. On those occasions he attended to the lights. I do not leave my job to go and see what he did. I hope he did something to the 10 lights.

Q. Is it correct to state that no inflammable material of any kind is left in the basement?—A. It will be correct to say that there is no inflammable stuff in the basement.

Q. Are your employees allowed to smoke in the basement?—A. We are not allowed to smoke in the basement. Personally I do not smoke. The two fellows who are working with me do not smoke as far as I know.

Q. You have already stated that there were 50 or 60 parcels of skins in the basement. That was the lowest limit, you would place 50 or 60 and some hundreds of skins for repairing purposes? You remember 20 making a statement to Inspector Koelmeyer. Do you remember that?—A. No answer.

To COURT: I do not know Inspector Koelmeyer. I was once called up by the Police a few days after the fire to make a statement and I have already made a statement. That statement was taken down at the time I made it. That statement was read out and explained to me. (Shown the witness's signature on the statement). This is my signature.

Did you tell the Police Officer this on the 30th October. All the parcels in the store were roughly 20 or 30 and all these were from 2' downwards?—A. As long as it is signed by me I should believe that I have 30 said that there were 20 or 30 parcels but now I cannot remember. I made that statement to the Police. I recall making it. I recall telling the Police Officer that there were 20 or 30 parcels in the basement. I should believe that what I said in the Police Court is more correct.

I should say without any consideration or perhaps being puzzled in the affair I made a mistake. I have no intention of harming Mr. Kennedy.

I say I was puzzled and gave that figure to Mr. Koelmeyer. After considering the space the skins were occupying I would boldly say that there were about 50 or 60 parcels. After I made that statement to Mr. Koelmeyer and before I gave evidence in the Police Court I had not seen 40 Mr. Kennedy after the.....During the period of the six months I did not have a discussion with Mr. Kennedy about the parcels of skins. Mr. Kennedy said nothing about the skins. It is my idea that there were 50 or 60 parcels. Mr. Kennedy spoke to me about the loss of skins after the fire. He said there were a lot of skins in the basement and I think he said it was a loss. The statement I made in the Police Court was not

influenced by Mr. Kennedy. I should be more correct in saying that they were roughly about 3'. At that time I might have told the Inspector that it was 2'. After the fire accident I myself assisted the packers to despatch of the skins and I could see for myself the size of the parcels. I cannot explain why I told the Inspector it was 2' and less.

Q. Did you tell the Inspector this "There were also loose skins 150 lizard skins and snake skins and to my knowledge there were about 10 or 15 snake skins"?—A. I referred that to the repairing purposes. Those were the skins I referred to for repairing purposes. I agree with the statement
10 I made in the Police Court.

Q. You told the Inspector that there were 150 lizard skins and about 10 or 15 snake skins?—A. (No answer).

Q. Now when you spoke of skins kept for repairs, what were those skins?—A. They were skins for repairs, Willow Calf and Box Calf. There were different kinds of shoe skins and snake skins.

Q. Excluding the Box and Willow Calf how many lizard and snake skins were there?—A. I cannot remember how many skins there were. I should say the statement in the Police Court is more correct.

Q. These packages that came out from England? How are they
20 packed?—A. They are packed in dealwood boxes. There will be a tin lining and sometimes they use the best quality brown paper wrapper.

Q. Do you know what water proof wrapper is?—A. I know what water proof paper is. (Shown some water proof paper). I do not think is the kind of water proof paper sent inside shoe boxes. In the boxes themselves we do not get this kind of paper. We get another kind of water proof brown paper.

Q. There are some cases with tin lining. In cases where they do not use tin lining do they use water proof paper?—A. Generally the wrappings contained in the wooden cases and even the nails and paper are sent to
30 Mr. Kennedy's bungalow.

Q. You distinguish between water proof paper and this paper? In what way are they different?—A. The paper which I have seen in our packings is not so thin and on the other side of the paper it is slightly oily.

CROSS-EXAMINED.

Q. I notice you have told the Police that the parcels of skins were not counted in your presence. Do you remember telling the Police that?—A. No.

Q. Do you remember telling the Police that the parcels of skins were not counted in your presence?—A. Yes.

Q. There were also loose skins, lizard skins, box calf, willow calf and
40 there were about 150 lizard skins?—A. To my knowledge there were about 10 or 15 snake skins and a roll of box and willow calf. The box and willow calf was for making shoes. Kennedy and Company does not make shoes but there were some local cobblers.

Q. You definitely told the Police that you cannot say even roughly the number of skins?—A. Yes.

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After that the Police were pressing me. I gave my evidence in the Police Court. I told the Police that the number of parcels were under 2', but they were the usual postal size.

Since the fire Mr. Kennedy has been despatching parcels of skins by post. A parcel sent by post is limited to 22 lbs. I know that. I made no particular note of the size of the parcel. I gave my mind to the size of the parcel after the fire and I say they were roughly about 3 x 2½ x 1' high. That is correct. That is according to a rough estimation. There were thousands of skins. I cannot say what was inside the parcels. They were properly packed. 10

There were parcels wrapped up ready for the post. There were other parcels of skins which were not wrapped up for the post. That is what I meant by saying that there were thousands of skins. I am certain there were parcels ready for the post and that there were other skins not ready for despatch. To COURT: The hundreds I referred to were for the repairing purposes. Some ladies may require heels, trimmings and fancy work. Snake skins and lizard skins are kept for repairing purposes.

I know that snake skins and lizard skins are used for sandals.

The fixtures went up to the roof of the lower side of the basement floor. The basement was practically full of goods. There is no fan in the basement. Such ventilation as there is through the opening of the door of the chute and the opening of the top of the spiral staircase which is small and a circle of 3½' diameter. One cannot get out of the basement by walking through the chute as one would slip down. One could stand on the lower portion but the section below the door is quite steep. 20

Before the 29th September I experienced a peculiar smell now and then. The reason why I could not say it was coal gas was because there were various other smells from shoes, skins, shoe polishes, etc. There were other things which I do not remember. Even if there was the smell of coal gas because of these smells I could not say so definitely. I meant by asking that Mr. Kennedy pacified me by stating that the smell came from the other side in order that I might not trouble him any further. When I left that store about 5.15 p.m. I can definitely say there was no inflammable stuff in the basement. I can generally make out, say the smell of petrol. It has got a spirituous smell. 30

On one occasion all the lights went out and they could not be lit till the electrician came in and did something. I cannot say what he did. That was shortly before the fire. A few weeks. On one occasion a bulb went out. On those occasions we had a few bulbs and I used to put on the new bulb and there was no need for an electrician. 40

I have seen the parcels coming to Kennedy & Company but in Kennedy's store I have not seen any paper like that which was shown to me. The paper used for wrapping the parcels is a brown cartridge paper.

Ordinarily I leave the premises fairly early. That is because I have got to work in the basement because there is no fan. Apart from the fact that the basement is hot and ill ventilated I am not healthy. I am liable to catch cough and colds and I am not asked to work as long as the others.

I remember the time when Mr. Kennedy returned after his trip to Europe. I do not remember the date when he returned but I remember once he went to England and came back about 2½ months before the fire. Before his return there were skins in the basement. There were skins loose as well as in parcels. After Mr. Kennedy returned several parcels were brought to the basement at different times and the number of the parcels increased by lots. The stock in the basement was brushed, wrapped and repacked by me. That was done by me. Any shoes out of fashion or likely to be spoilt are marked off for sales. The stock in the basement was in good condition and they were well kept and practically like new shoes.

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I remember Mr. Kennedy's return from England. I know the fact of his return. When he returned I think there was a stock of skins in the basement. A large stock of skins was not brought into the basement after he returned but they were brought in lots from time to time both before and after his return. That is all I can say. To my recollection the number of parcels were increased lot by lot from time to time. It was a gradual increase. There were parcels of skins ready for the post. The number was 50 or 60. There were also loose skins for repairs. There were also thousands in other parcels not ready for the post. Those were not so nicely parcelled but they were wrapped for protection. Wrapped in our own paper—brown paper.

Re-exa-
mination.

Q. Did you tell the Police after referring to the skins and snake skins there were no other skins other than those I mentioned?—A. I said it but I cannot give an explanation why I said so. To COURT: At that time I was living in Bambalapitiya. In Fife Road—no I am sorry I was living at Havelock Town Road.

The smell was so disagreeable that is why I referred the matter to Mr. Kennedy. Besides living at Fife Road and Havelock Road I have lived in the circle of these three years in Bambalapitiya. I have never lived in the Pettah.

13th September, 1934.

H. R. OGLE. Sworn.

13th Sep-
tember,
1934.

I have working under Mr. Kennedy as an assistant. In that firm I have been working for about 10 years. I had no interest actually in the business. I am a salaried assistant. I did not put any money actually in the business, but I left part of my salary in the business, which has totalled to a certain amount. I cannot say what that amount is. The actual amount I have been leaving in the business has been Rs. 100/- a month and sometimes less. I have been doing that for 3 or 4 years. This money is owing to me from the firm. Interest is put down by the auditors year after year. I have not drawn it.

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tion.

My particular job was to look after the ladies' department on the first floor. To COURT: I think that sum of money amounts to about Rs. 5000/- odd altogether including interest and principal.

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tion—con-
tinued.

My business does not take me very often to the basement. Now and again I go down there. The greater part of my time is spent in the ladies department, on the first floor. My assistants are two Malay assistants and two labourers. To COURT: The labourers do the parcelling and cleaning.

I recollect the day on which the fire occurred. About that time I was working in preparation to move into the Colombo Stores. I had prepared the goods in the ladies department I had taken the rubber flooring and stocks, and we had also taken some of the shelves down. We had not actually removed the stocks. The rubber flooring and the cases had gone. On the day of the fire I worked in the old shop till about 9 o'clock and when I went across to the new shop and I was there practically the whole day laying out the rubber flooring I went to the old shop at 8 o'clock and I opened up the stores and I went straight to the ladies department. I worked there till 9 o'clock and when Mr. Kennedy came there I went to the new premises and I laid down the rubber flooring, for the various departments. I came back to the old shop for my lunch. I went back again to the store and remained there for the day. I remained there till 8.15 p.m. and Mr. Kennedy came to me about 8 o'clock and said what about dinner and I said you go first. He came back and I left about 8.45 p.m. and I did not come back after that. I live with Mr. Kennedy. I did not go to the old shop that day after lunch. 10 20

We do not keep any inflammable material in the shop as far as I know. I use a dry-cleaner which is non-inflammable. I remember Mr. Kennedy going to England in January last year. Before he left I checked the general stocks mostly by myself.

I think he may have left for England before we had the stock sheets done. I did not check the stock of skins at all. I had nothing to do with the skin business. I know nothing about it except that I know that Mr. Kennedy had a stock of skins. He had a stock of skins in the bungalow but I never had anything to do with the skin business. At the time of the fire I do not think there were any skins in the house. All the skins had been transferred to the stores. That was done gradually day by day. Sometimes we took parcels in the cars ourselves going in the mornings. I cannot even form a rough estimate of the stuff transferred in that way. They were sewn up in bundles. To COURT: We took the bundles morning after morning. Sometimes 10 and sometimes a lesser number. I think it would have taken us a month or 6 weeks. 30

I believe there were 1-2 parcels of skins transferred from the bungalow to Times buildings. I am upstairs during the whole day and I do not see what comes into the store. To COURT: It was not my work. It was transferred to the store after Mr. Kennedy returned from England. 40

I know that parcels of skins were made up into bundles. They were sewn up in jute hessian. That was done in the house.

I have not seen any petrol tins in the store at any time. After opening the stores I go straight upstairs to the ladies department. I have no car of my own. I was travelling in Mr. Kennedy's car. The little Lagonda car is usually shown in the accounts as the firms car. I went to work and

back in that car, I do not drive. I have not seen petrol tins in the bungalow. To my knowledge I have not seen petrol tins in the car. Mr. Kennedy deals with Walkers Sons & Company, Limited. They used to have petrol installations at Lotus Road and one at Colpetty. I know Mr. Kennedy had an account with them for petrol. Mr. Kennedy if he wanted two tins of petrol could have got them on his order. Walkers issue a book of forms. To COURT: I have seen the forms. I think it is per gallon.

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To my knowledge there has been faults in the electrical lighting, mostly in the basement. I think on 3 or 4 occasions. On one occasion all
10 the lights went out and on one occasion the lamps went out in the basement. I am aware of this myself because it was reported to me by Mr. Claessen. Mr. Claessen himself in downstairs. I could send a message to the Times and ask the mechanic to attend to it. *i.e.*, if Mr. Kennedy was out, otherwise Mr. Kennedy would attend to it. To COURT: I myself reported the matter. Mr. Claessen himself told me that when one of the lights had failed.

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tion—con-
tinued.

I could not say what the fault was due to. I am not an electrician. I usually told Mr. Claessen to send a report to the electrician. I know that the Times electrician is sent up to put it right. I cannot say how long
20 before or after the fire it was this incident occurred. It was probably a month or two, I think it was 2 or 3 weeks, just before the fire, in the period immediately preceding the fire. I think it was when one of the lights fused out and the lamp fell out. I am not quite certain. Practically the whole part of the lamp came out. The lamp bulb is attached to one of the steel girders and the bulb had come off. To COURT: It was not the matter of a bulb failing to light.

Mr. Lornie, I think his name is, came to see me personally once in July to make a slight alteration in the pipes downstairs as there was not a sufficient supply of gas for the Times machinery and he wanted to know
30 whether it could be done on a Sunday and I thought it was not desirable that the matter should be attended to on a Sunday and nothing happened. Either he was waiting for me or I was waiting for him. The pipe runs by the chute right up to the corner and there was a blockage and they wanted to take the pipe out. There was no leakage at all anytime. I know of no trouble the 70' of gas piping gave during that period. I recollect the incident when they wanted to improve the supply to Times people. The pipe runs throughout. We have no supply of gas in our stores, we do not use gas.

Q. You told us that as a rule you open the shop in the mornings?—A.
40 Yes.

Q. There is evidence that it is Mr. Kennedy who closes up at night?—
A. Yes, Mr. Kennedy closes up the shop at night. Sometimes he gets late as he is making up invoices and indents.

Q. Can you tell us whether as a rule when you go in the mornings whether the main switch is off?—A. I do not really look at the switch which is on the backside of the pillar.

The switches upstairs are away from the ordinary switches.

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tinued.

I seldom ever touch the electrical things myself. The boy puts on the fan before we come in. The labourers come in at the same time. They do the sweeping. I worked with Mr. Ross for 14 days or so. I helped to identify the remnants of the stocks.

Q. Did you ask Mr. Ross what chance there was of the insurance company paying up?—A. Mr. Ross gave me to understand that the general stock was all right but he could not account for the skins and he made me to understand that Kennedy if he was insisting on the claim for the stocks and Mr. Ross said to use his own language "It would upset the apple cart" meaning that Mr. Kennedy's whole claim would be jeopardised. He said it would lead to a lot of litigation and I said to him in a little confidential talk we had about my own matters and when he assured me there was nothing detrimental in the report I was satisfied. To COURT: I told Mr. Ross I had a wife and children and also that there was a job offering. I told him I had been offered another job. Mr. Ross told me with his own lips that there was nothing detrimental in his report.

I think Mr. Ross went to see Mr. Kennedy in the hospital. I told him I knew nothing about the skins and I could not give him any help. Whether that was after or before he left the hospital I could not be certain. I do not have access to Mr. Kennedy's private books. I know there was a bank overdraft. To COURT: I did not know about his private financial affairs. I do not have any access to his income. He has his own drawings.

After the firm I remember going round Monsoon Lodge in the company of Mr. Lloyd. On that occasion I found a certain packing case. When the packing case was brought into the store it was opened, but it was not opened when we found it in the bungalow. There were no skins in it, but it contained travelling goods, mostly trunks, boots and shoe cases. I think they were some children's and ladies' shoes. To COURT: Our windows on the first floor are three bay windows and smells are wafted in through them.

I had got a peculiar smell myself. I would not say it was the smell of coal gas, but it was difficult to say what it was. It was a fuming smell. It was from the other side of the wall. They had a smelting furnace there. It was the Public Works Department or the telephone repair yard. The smell was possibly due to that.

Cross-examination.

CROSS-EXAMINED.

Q. You are a paid assistant of the firm?—A. Yes.

Q. Getting a salary of how much?—A. Rs. 500/-.

Q. And a bonus?—A. Yes, at the end of the year.

Q. The expenses of running the business would be Rs. 8000/- a month? 40

—A. I think that is so.

Q. That is for paying rent and meeting the expenses?—A. Yes.

Q. The overhead charges?—A. Yes.

Q. The expenditure had been about that for a number of years?—

A. Yes.

Q. There had been no cut in salaries?—A. Absolutely none.

Q. No reduction of staff?—A. None whatever.

Q. So far as you were aware there was no financial embarrassment?—
A. Not that I am aware of.

Q. You had quite a large stock of shoes?—A. A very large stock of shoes.

Q. About how many pairs at the time of the fire?—A. About Rs. 30000/-.

Q. The average price was Rs. 15/-?—A. Some were higher in price and some lower.

Q. You had in the gentlemen's department shirts, gowns, etc?—A.
10 Men's outfitting.

Q. Besides there were fittings?—A. Yes.

Q. You had a stock book in connection with the stocks?—A. I kept the stock book.

Q. The general stock book was kept by you?—A. Yes.

Q. Did you delete from the stock book articles sold daily?—A. Day by day.

Q. So that at anytime you knew what the stock was?—A. I could say any day what stock we had at any particular time.

Q. The stocks were gone through twice a year?—A. That is so.

Q. Goods that in any showed signs of being soiled by being left in the shop were marked for the December sale?—A. We had red tickets tacked on to the boxes and those goods were marked off.

Q. Clearance sales?—A. Yes.

Q. Those goods were marked down to be sold at reduced prices?—
A. Yes.

Q. All such goods would be valued at reduced prices on the stocks?—

A. On the stock sheets.

Q. In point of fact you did hold a stock of high-class Continental shoes?
—A. Yes.

Q. As a result of the preferential tariff those stocks depreciated in value?
30 —A. Those stocks depreciated by 10 per cent.

The Rs. 30000/- pairs of shoes I referred to was composed of ladies, children's and men's shoes. There were stocktakings each year.

Q. At the stocktaking the assistant attended to the stock in his department and you or Mr. Kennedy or Mrs. Kennedy came and checked them?—
A. We checked the slips and did any alteration in the depreciation of costs at that time if there was any.

Mr. Kennedy attended to the skin business. I used to live at his bungalow before he came to Monsoon Lodge and when he lived at Gelta Bagatelle
40 Road and at Havelock Town. The skins business was being done at his bungalow until we came to Monsoon Lodge. To COURT: We came to "Monsoon Lodge" about 18 months ago in 1933.

The parcels for the post would be made at home and brought to the shop and posted from there. After Mr. Kennedy returned from Europe on the 9th July the stocks were transferred to the basement.

Q. They were frequently taken in the cars?—A. They were taken in the cars when we went to open the stores in the morning.

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Cross-examination—
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Cross-exa-
mination—
continued.

Q. Stocks taken in the cars were not merely postal parcels, but loose skins tied up not for the post?—A. There were loose skins used for sandals, and for repairing purposes not parcels. There was always a stock of skins in the basement; a small stock.

Mr. Kennedy had a stock-book of skins which was kept usually in his desk I think.

To my knowledge petty dealers used to come to see Mr. Kennedy and bring him skins. That was when we was at the Times and since we have been in the new stores too. I have seen Kennedy haggling with petty dealers over the prices.

I have been with Mr. Kennedy for 10 years. During that time we shifted twice before. We shifted from the old Times Building into the New Times Building and then across. I was not with him when he shifted from the old Bristol Buildings. In shifting we adopted the same procedure as when we shifted to Colombo Stores. We got the shoes down from the racks in piles so that the labourers could come and pick them up and get them stored. To COURT: Usually Mr. Kennedy would see the picking up of the goods and somebody would be on the other side to receive them.

On this occasion no stock was transferred to the Colombo Store premises. The show cases and the rubber flooring from the first floor and ground floor and basement were transferred. That was rubber flooring made of pure rubber from Ceylon all the other rubber flooring was imported rubber flooring. All three had been transferred to the Colombo Stores.

The ground floor of the Colombo Stores was as big as the basement and ground floor and the first floor of the Times Building. That was a very great advantage. We could make a better display of the goods. Ladies do not like going up lifts to the first floor.

I know that Mr. Kennedy had got three floors of Colombo Store premises at a favourable rental. I think he had entered into an agreement with Walkers Sons and Company Limited and he had arranged to sub-let some of the floors and if he had agreed in putting through the lease and sub-letting some of the floors his own rental for the ground floor would have been considerably lessened.

I am aware that Mr. Kennedy was originally insisting on his being paid for all his skins and Mr. Ross said that that might result in the claim on the general stock being jeopardized. He plainly told me that the whole claim would be turned down if Mr. Kennedy insisted on whole claim and that would result in litigation. He said the insurance companies would repudiate the claim. Mr. Ross definitely made me understand that as far as the general stock was concerned it was all good stock and that his valuation was in accord with our sheets. He said we had good stocks and what we had in the stock sheets were right. We kept good quality stock. I prided myself on the fact that we keep good quality stock. The shoes from England are specially manufactured for us. I was perturbed over Mr. Kennedy insisting on his whole claim. I am aware that Mr. Kennedy came out of Hospital for a day to arrive at some settlement of the skin stock with Mr. Ross. If I understand it right it was his sister and Mrs. Kennedy who

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pleaded with him to accept Mr. Ross' figure rather than go into litigation. Mr. Kennedy left Hospital on the 6th November. On the 28th October he left the Hospital specially to speak to Mr. Ross.

The stocks were insured but we were not insured against loss of profits. At the time of the fire there were some twelve packing cases of stuff that had been sent direct to Monsoon Lodge. Those were new shipments. They were not brought into the basement. I do not think the number was as much as 12. I am not quite certain of the number. There were a number of packages—not full packages. There were some packages in the bungalow too. There would probably be about 6 to 8 packages. Those were goods transferred to the bungalow from the Customs. They were never taken to the shop. As a matter of fact I think it was on my suggestion that they were taken to the bungalow and not to the shop as we had no room in the basement so that there would not be any risk of damage in removing them. They were wardrobe cases and light aeroplane travelling cases. There were shoes packed inside the cases mostly children's shoes, if I remember right. It would be absolutely fair if it was suggested that this was part of the stock transferred from the shop to Monsoon Lodge. They were absolutely new goods and not from the stock at all. They were unopened cases. Some of them were opened in the house I believe one case was opened as a lady wanted a certain size of shoes. It was a special size we had promised this customer.

When Mr. Lloyd came to the bungalow there was not a skin there.

The trouble with the electrical lights had been reported to me but I am not certain whether I spoke to Paul, but I sent for Claessen and asked him to get the electrician to attend to it.

Mr. Lornie's conversation of the alteration of the gas pipes was when he came personally to see me. He wanted to do the alterations on a Sunday. The reason he gave was that the flow of gas was insufficient for feeding the machines. He said the flow was defective. After the fire the feeder pipes were still hanging there. It was a mass of twisted wires. It was originally attached to the girder, and after the fire it was in the shape of an "U," it sagged down, it might have been practically touching the floor. It was very close to the floor. While everything was left intact on the premises the gas pipes were removed. The gas company lay temporary pipes to feed the supply round the building, outside the building. To COURT: The main entrance is in Main Street.

The Times supply goes through that temporary pipe up to date. The pipe inside the premises was removed. When I was called over for some work in the basement I noticed that the pipe was not there. I cannot remember when that was. I was surprised to find that it was removed. Practically they were clearing the whole of the basement.

There were certain smells, fumes which I attributed to the telephone workshop on the other side. I got the smell right through the window, on the first floor.

Mr. Kennedy got the petrol from the Lotus Pond Road Garage or sometimes from the Colpetty Garage. I think he mainly got his petrol

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mination—
continued.

from Colpetty. The Colpetty installation is about a couple of hundred yards away from Monsoon Lodge. I am aware that Kennedy had bought the petrol tins from the Colpetty Petrol Station. Hossen had bought that Petrol. Hossen is an assistant. Hossen made no secret of the fact that he was buying it for Mr. Kennedy. I understood that Simon Fernando had a secret of that fact, from the newspapers. Kennedy could have got the petrol if he sent a man across. After the fire the stock of shoes were non-existent and we had to write out for new stocks with limited resources. We could not indent the amount of stocks we had before the fire. The stock we indented for after the fire was considerably less in quantity as the over-head charges were still going on Mr. Kennedy was able to put through the skin business with Java. The stocks indented for are coming in gradually. We have not got them yet. I was personally responsible for the general stock. On each box of shoes we have a code word which is entered into the invoice too. The boxes in which shoes are brought are never handed to customers. If the shoes are sold we keep the boxes as memoranda and mark them off on the stock sheets. A box of shoes sold is kept until checked.

Q. Did you meet Mr. Small?—*A.* I met him the next morning after the fire. To COURT: I know he is an architect.

Q. Where did you meet him?—*A.* I met him by the side of our stores. 20 I asked him what was the cause of the fire and he said it was gas. He said it could only be gas. He was emphatic about that. He did not say what gas. I understood it to be coal gas.

Q. Were you aware that Mr. Kennedy consulted an expert who was passing through Colombo?

Mr. Obeyesekere objects to the question being put to the witness.

Q. An expert was consulted. Who was he?—*A.* He was Mr. Campbell. To COURT: Mr. Campbell stayed here for a week. Mr. Campbell came through and stayed here for about a week. That was soon after the fire.

I am not certain about the date. It was about 3 months ago from now 30 I should think. I cannot say the time.

Walkers people were working in the new stores on the fixtures. They were not quite ready with the fixtures and they were working overtime that night. Mr. Steele was in charge of the work. By the fixtures I mean the new racks and shelves which we had in the new stores. He was fitting up the shoe racks. He was fitting up new shoe racks. They were racks that Walkers were making for us. They were entirely new ones. The show room fixtures were all new fixtures—entirely new fixtures. To COURT: The order was placed with Walkers. We paid for them.

The fixtures were being completed. They were not completed but 40 they were approaching completion. There was a little delay and they were working overtime in order to complete the work. None of our racks or fixtures had been transferred across. We were only going to fix the old racks in the basement. The new fixtures were all of uniform pattern. They are there now.

Mr. and Mrs Kennedy had gone home earlier for dinner. I saw them at the Colombo Store premises at 8.30 and after that I left for dinner but

I did not return. At the time I left work was going on in the old and new shops.

RE-EXAMINED.

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Q. You said you had experienced a smell on the first floor. You described them as fumes and you supposed they came from the telephone shop?—A. They came from the telephone repair yard.

Q. Can you identify the smells in any way?—A. They sometimes used to burn different things, sometimes cork, and sometimes rubber. It all depends on what they were smelting. They seemed to have moulds in
10 which they made things.

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mination.

Q. Have you any reason to doubt that you are correct in supposing that the smell came from that place?—A. It might come from there. I always thought it came from there.

Q. In fact you gave a good reason for that. You said when the windows were opened the smells were wafted into the first floor?—A. Yes.

Q. Your visits to the basement were infrequent?—A. Yes.

Q. On these infrequent visits did you get smells in the basement?—A. The basement is 12' below sea level and there are smells coming from there. It is rather difficult to say the kind of smell. It is a fuming smell. There
20 were skins and other things. I know the smell of coal gas. That is a very definite smell. To my knowledge I did not get the smell of coal gas. I was not there often and I would not definitely say that I smelt coal gas. At the time I was there I did not smell coal gas.

The general stock book was usually kept on my desk upstairs. It was taken down 2 days before the fire and it was lost in the fire. We had a new stock book. The old stock book was a book we had kept all along.

Q. Was that general stock book made available to the auditors?—A. No. It was for our personal information.

Q. You also said that Mr. Kennedy kept a stock book of skins?—A. I
30 have never seen that book. I have actually seen that book in the drawers of his desk but I have not looked through it.

Written on the cover of the book were the words "skin stocks." It was kept in a kind of a file. Mr. Kennedy always kept his own skins. I had nothing to do with it. I first saw that book not several years ago. It was in his desk since he came back. He had all his skin files in his attaché case. He had a file for making rough notes.

Q. You told me that you had seen the stock book which you now say was a file in Kennedy's drawers?—A. Yes.

Q. When did you first see that file?—A. Some months ago, after his
40 return from home.

Q. Do you say definitely that you saw it first after his return from England?—A. Yes, I had nothing to do with it.

Q. Was it marked skin stock book?—A. I think it was skin stock book. (Shown P39.)

Q. Was it this file or something like it?—A. It was something like this. I did not take particular notice of it.

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Re-exa-
mination—
continued.

Q. In whose handwriting was it?—A. I believe it was in Mr. Claessan's handwriting, Mr. Claessen has to do with the stocks. I have nothing to do with the stocks.

I could not say in whose handwriting the contents of the file were. That file which I spoke having seen I always saw in the drawers of his desk. I do not see what Mr. Kennedy removes. He sometimes stays late in the shop in the evening while I go home. He carries an attache case. He carried this file and invoices. I could not exactly say what it contained. They go home straight into the safe. I do not know what they were. I cannot say whether they remained there always. All his skin business he used to transact in the bungalow. He does all the invoicing and the parcelling. All that is done at home. Even if he removed the stock to the store he would do the work in the bungalow. I stay with Mr. Kennedy. I do not see what files he has in his bungalow. I do not interfere with Mr. Kennedy when he is doing work. Mr. Kennedy used to make purchases from petty dealers before and after he returned from England. I have seen the petty dealers selling skins to him in the shop. After his return from England, many times. I do not know that these petty dealers always dealt in Thalagoya skins. I do not know that with the prohibition of the exportation of Thalagoya skins the petty dealers disappeared.

As regards the lease of the new premises I do not think it was signed as he was in Hospital. I could not say why it was not signed. I do not know that Walkers are refusing to give Mr. Kennedy the lease. I have never heard of any objection I know the lease had gone through but it has not been signed. I know it has been drawn up but it has not been signed. I could not say whether it was signed later on or not. The floors have not been sub-let up to date.

As the new stocks arrive it is usual for the goods to be brought from the Customs to the basement. Sometimes we send things home when we have no need for them or for sale. Sometimes we get special things for the end of the year for a particular sale and those goods are not brought into the basement.

We have a stocktaking sale every year.

The cases which Mr. Lloyd found at Monsoon Lodge after the fire had arrived about a month or 3 weeks before the fire. I cannot say how long before that previous consignment arrived. Consignments are continually coming in. These 8 cases contained mostly trunks. They are high priced. They have gone into the shop. They formed the nucleus of the business which we started in the new shop.

I do not know anything about insurance. I think goods are covered by insurance for a certain time after arrival.

We had arranged for new fixtures for the new premises. So far as the fixtures in the old shop went we proposed putting them in the basement. We had arranged for new fixtures to the new premises and they were not ready only the ladies section was ready, the gentlemen's section was not. Two or three days later the men's section was ready. The fixtures for the men's department were not ready for a month afterwards.

Part of the damaged stock which the Insurance Company gave us we took over to the new building. That was I think 2 weeks after. Business was suspended for the first 2 or 3 days when the shop was not opened. We had a few things. We had no new things except those which were at Monsoon Lodge. The damaged stock did not come to us till 2 weeks later. Even if the Insurance Company paid Kennedy & Company we still stood to lose because there was no profit. I do not know how the Insurance Companies pay. I suppose they would pay in cash. I suppose the payment made by the Companies would enable Kennedy to meet his liability. The stock that
 10 was burnt was the old stock. The oldest part of the stock was 2 years old. We have to have in stock a large stock. We have to import more than people do at home. Stock is continually coming in and going out. We have to stock a large number of estate shoes. You would not get an old stock in children's shoes. There would be a smaller percentage of the heavier class of ladies' shoes. The men's outfittings were all new stocks. That is a new department of ours. It was opened about a year or 18 months before the fire. That means all new stuff coming in.

Kennedy commenced the transfer of skins to the Times building shortly after he returned from England. He completed that within 8 weeks or a month.
 20 I did not take particular interest to notice how long he took. I could not say whether there were any stocks of skins on the 23rd August or in the latter part of the month at Monsoon Lodge. If there were any at all it would have been very little. I could not say if anything had been kept back for cleaning.

Mr. Small told me that the fire was due to a gas explosion. I understood him to say it was coal gas but he did not specify it. That would refer to any gas. I should not think it would refer to a petrol explosion. TO THE FOREMAN OF THE JURY : The kind of smell I got was a kind of sweetish smell. It was difficult to say what the smell was. I have often put it down as to what kinds of things they were smelting. It was a kind of sweetish smell.

30 The cases were found at Monsoon Lodge about a month before the fire. I do not think any cases were brought into the premises after the cases were sent to Monsoon Lodge and before the fire.

I do not think it was a book. It was a file. I could not give the colour of it now. I was just going looking for things. I cannot say whether it was a brown file. I have nothing to do with the petty dealers. Mr. Kennedy deals with them sometimes. I always referred them to Mr. or Mrs. Kennedy. My conversation with them was always done by interpretation. I do not know the names of any of those petty dealers. I did not see any of the skins they brought. They were wrapped up in bundles.

40 The stocks before the fire was 4½ lakhs and that was mostly in boots and shoes. A small percentage of the stocks was 18 months or 2 years old. The percentage on the heavier stock would depend on the demand. I should not think there was any stock about 4 years old at the time of the fire. There might have been a pair of shoes. There might have been a hundred pairs of boots. There were not a 1000 pairs of boots in the shop of any great age—I mean in the ladies' department. To COURT : I should

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Evidence for
Prosecution.

(u) H. R.
Ogle.
Re-exa-
mination—
continued.

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No. 8.

Evidence for
Prosecution.

(u) H. R.
Ogle.

Re-exa-
mination—
continued.

not think there was any stock 4 years old. I was in charge of the stock. If I had my stock books I could say the age of the stocks.

Q. At the time of the fire I put it to you that 50 per cent. of the value of the stocks was over 3 years old?—A. I am afraid I should not like to accept that.

Q. 25 per cent. of the stock over 3 years old?—A. I should not think so. To COURT: Mr. Ross had all the invoices. I do not know whether Mr. Ross included the things sent from Monsoon Lodge. Mr. Ross knew about them. Whether he included them or not I do not know. The invoices for all those things were sent to Mr. Ross.

I had nothing to do with the valuation of the stocks in the basement. I made it up on the papers—The stock sheets for the balance sheets. A depreciation has been made for it. The depreciation is made when the assistants take stock. The assistant puts slips on the racks and when Mr. or Mrs. Kennedy goes round they note it. The depreciation goes into the stock sheet. The figure of the depreciation is taken for the balances.

Q. (TO MR. PEREIRA): You say your shoes are not particularly old. Is it not the fact that these shoes were specially tanned for the tropics?—A. They were specially tanned to meet tropical conditions. A good shoe will keep well, a cheap leather will not keep good. Good shoes will keep well.

Mr. Walsalam had nothing to do but to see that the stock was in good condition. That was his work.

Q. (TO MR. OBEYESEKERE): Fashions in ladies shoes change rather rapidly?—A. They do change.

Q. More so than with men's shoes?—A. People here are content with anything.

Q. You have no difficulty in selling a shoe that is a year or 2 years old. Would it be correct to say that you carry a larger stock of ladies shoes than men's shoes?—A. Yes.

Q. What would be the proportion?—A. I should say 2/3 ladies and 1/3 gentlemen's. Children's shoes would come in with the ladies. To COURT: Fashions in men's shoes do not change rapidly. We men have to keep to black, and brown and white, but not so the ladies.

(v) James
Classen
(recalled).
Examina-
tion.

JAMES CLASSEN. Sworn. (Recalled)

Q. Mr. Claessen you remember telling us that Mr. Kennedy had an old skin stock book?—A. Yes.

Q. You had seen that, and you had seen him copying out the entries from that book into slips of paper which he gave you?—A. Yes.

Q. That book was kept in his desk?—A. Yes.

It was an ordinary book. It was just a little ledger. It was not leather bound. It was cloth bound. It was something like an exercise book. It was about an inch in thickness. It was a book of about 135 pages. I am certain it was a book.

Q. Is there a general stock book?—A. Yes.

Q. Who kept that?—A. Mr. Ogle.

Q. That I understand was burnt in the fire?—A. Yes. To COURT : There is a general stock book of the business. It is kept by Mr. Ogle. It was written as event occurred as stocks came in and as stocks went out by Mr. Ogle.

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I have seen it. I have seen him write it. The daily sales were marked off by Mr. Ogle. Those were the stocks sheets drawn up for the balance sheets and sent to the auditors, Duncan, Watkins, Ford & Company. Those were drawn up separately at the end of the year. They were checked from
10 the stocks books. They are prepared in lists for each department and the final reckoning was checked from the stock book. That was drawn once in 6 months. They were only sent to the auditors at the end of the year. The stock book was not sent.

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(v) James
Classen
(recalled).
Examina-
tion—con-
tinued.

I remember being examined by Mr. Ferguson. I signed the statement I made on the 5th October 1933.

(The witness' statement is read out to him.)

“ All the books are kept in the safe which is on my right hand side. I put them in the safe. I locked them and gave the key to Mr. Kennedy. I locked it up on Friday last at 5.30 and handed Mr. Kennedy the three keys
20 of the safe. No stock book is kept in the shop. I do not think Mr. Kennedy keeps a stock book as he draws stock sheets at the end of each calendar year. . . ”

At the moment I made that statement to Mr. Ferguson it might be that I had lost sight of the fact that there was a stock book, but there was a stock book kept by Mr. Ogle. Those were lists which were usually drawn up and it was drawn up in one statement which I made for myself. At the time I made the statement to Mr. Ferguson I may have lost sight of the fact that we had a stock book. It was drawn up by lists in each department and Mr. Kennedy with Mr. Ogle checked these when they were transferred
30 to the stocks lists from which they were re-copied. I re-copied them. They could be checked. I say that the sheets are checked with the totals in the stock book.

Q. Is there any additional reason why when you mentioned the sufficiency of the stock sheets you did not recall the fact that the sheets are checked with the stock book totals?—A. At the moment I did not think of it.

Q. Are you truly trying to establish the fact that the stock book existed, because there was no stock book?—A. To my knowledge there was a stock book. It is not true that I was trying to suppress the fact
40 of the stock book.

AFTER LUNCH.

CROSS-EXAMINED.

I appear to have made a statement to the Police not on oath or affirmation to the effect that no stock was kept in the shop. Cross-examination.

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(v) James
Classen.
(recalled).
Cross-exa-
mination—
continued.

(w) L. John.
Examina-
tion.

Q. Then you went on to say something which obviously shows whether you were certain or not? Because you say "I do not think Kennedy keeps a stock book or not, because we draw up a stock sheet every year?"—A. Yes.

It may have escaped my mind at the moment I was making the statement, but there was undoubtedly a stock sheet drawn out at the end of the year which was forwarded to the auditors. (Stock book marked A2) is shown to the witness. The printers mark on that book is 9411-7-29. The other stock books kept were similar to this one.

L. JOHN. Sworn.

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EXAMINED.

To COURT: I gave evidence in the Police Court in English. I did not ask the Magistrate to be allowed to speak in Tamil. I can understand Tamil better than English. I am an Indian Tamil.

I am working under Kennedy as a clerk. I did typist work too. I had been employed under him for 6 years. I am still employed under him. I get Rs. 65/- per mensum. Apart from typing work I also attend to the packing of parcels and I also look after the repairs. To COURT: Yes, I packed them and supervised them.

I did not repair the shoes, but I looked after the repair orders and so on. My desk is kept in the basement at the foot of the spiral staircase on a side. Yes, it is in front of the pillar on which this basement switch board is. On the day of the fire I worked in the basement till about 5 p.m. I was supervising and looking after the repair work. I was doing some work in connection with the impending removal after 5 p.m. Till 5 p.m. I was doing my ordinary work. Two others who work in the basement Walsalam and a cooly called Sangaran were working there. When I left the basement at 5 o'clock those 2 coolies were not there. They had left the basement before me. I was the last to leave the basement that evening, when I left at 5. That is usually so. When I left the basement I put out the lights. I turned off each light. Yes, I had put out all the lights in the basement when I left at 5 p.m. To COURT: When I left I cannot definitely say how many were put out.

There are about 8 or 9 lights in the basement. There are no fans. From the basement I went up to the Ladies' department on the 1st floor and helped in this removal business, taking things down. I was there till about 6 p.m. and at 6 p.m. I left the 1st floor and came to the ground floor. As soon as I came to the ground floor Kennedy handed me some letters to be typed. I typed them on the ground floor in the gentlemen's department. One typewriter is on the basement, the other on the ground floor. I used the one in the ground floor to type these particular letters that day. Yes, I typed those letters till about 6.30 or 6.45. After Kennedy handed me the letters to be typed he went to the Colombo Stores. After having typed the letters I took them to him to be signed. Yes, after Mr. Kennedy signed

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those letters he asked me to post them. So I went to General Post Office and posted them and came back to the ground floor and I was in the gentleman's department till about 8.30 p.m., and left about that time namely 8.30 p.m. Mrs. Kennedy came up to me and told me you can leave and I left the premises. I went home. When I left to go home there was in the shop Hossen, certain coolies, Mrs. Kennedy, and Mr. Kennedy was at that time in the Colombo Stores. I said that I work in the basement for the greater part of the day. I have not observed any unusual smell there. I did not notice any smell at any time in the basement. I know Claessen.

10 He is in the position of a Chief Clerk there. Yes, whenever any necessity arises to consult or to speak to him with regard to the work I do I would do it. He did not at any time tell me that he got a peculiar smell in the basement or in the shop. I know Walsalam who is a sort of bed-fellow with me in the basement. On one occasion he told me that there was some smell. He did not tell me what sort of smell it was. I cannot say definitely as to how long before the fire it was that he told me about the smell. I do not remember—I cannot say. To COURT: Walsalam said there was a smell. I noticed no smell of any sort. What Walsalam told me was that there was some smell coming. I could not distinguish from what he stated

20 whether there was a presence of a smell at the time he told me or whether he referred to some previous smell. Certainly I got no smell at the time. I did not tell him I did not get any smell. No, I have no defect in my sense of smell. I am living at Kollupitiya. There was some trouble with regard to the lights in the basement, on 5 or 6 occasions. All of a sudden there are no lights in the basement. On one occasion all the lights went out. On that occasion some men from the Times came and repaired it. That was Mr. Paul. On the other occasions the bulb fused. It was simply a matter of particular lights going out. No, bulbs were all of superior quality. I say that because there was bright light. To COURT: On some occasions

30 this officer from the Times building comes and attends only to the bulbs and on other occasions he attends to the bulbs as well as the wires.

On occasions the lights went off Mr. Paul had only to supply a bulb. That is all. Yes, if it is a work that can be done we also attend to the bulb and repair it. We did not keep any inflammable substance in the basement. Nothing that would catch fire at once or readily catch fire was kept in basement. Although the sealing of parcels is done in the basement the materials are kept on the ground floor. To COURT: Those were our orders.

No sealing was done on the day of the fire. I did not see any tins of petrol in the basement and there was no necessity for any petrol to be

40 stored there. I never noticed any petrol tins or tins of petrol anywhere in the building. The basement was fairly full, with stock and so on. There were many parcels of skins in the basement, some ready for post and others besides them bundled up together but not prepared for post. There were about 30 or 40 parcels ready for post. In the Police Court also I said about 30. I do not remember what number I gave to the Police or what statement I made to the Police. The sizes of these parcels were of various sizes, $2\frac{1}{2}$, 3, $3\frac{1}{2}$ feet in length. I knew that those post parcels contained skins.

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(w) L. John.
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tinued.

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(w) L. John.
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tion—con-
tinued.

These parcels are not made up in the basement. To COURT: No I was not present when the parcels ready for post were being parcelled. I was not present when they were being made. I say that I am positive that those parcels contained skins because Walsalam the storekeeper told me that the parcels contained skins; an additional reason being that only skins are parcelled for post in the basement.

Boots and shoes are also parcelled. I saw these parcels there. No, I did not see the parcels being made up. They were brought into the basement in the condition of parcels. They were not packed in the basement and to my knowledge whatever was inside it was always in that form, parcel form. Yes, I have seen parcels being brought into the basement, in that form. I made a certain statement in the Police Station but I do not know to whom. Yes, I thought it was a Police Officer. (His signature is shown to witness.) This is my signature. That statement I made to the Police Officer was taken down. It was not read and explained to me. After I made my statement he asked me to sign. (A part of that statement is read.) I did not for a certainty say that there were 20 parcels. I said roughly. I have stated in that parcel there was skin, a little while ago. There were large numbers of parcels wrapped up in brown paper. There were other parcels containing skins. When the skin is wrapped up and left there one side is sometimes open. When it is roughly wrapped up you can see what it contains as it is first wrapped and then tied up and then both sides open. In addition to these post parcels there were certain other parcels wrapped up which I identify as parcels of skins from their ends. Even roughly I am unable to say how many parcels there were. I made a statement to Koelmeyer. I gave evidence in the Police Court. I was questioned with regard to those post parcels, but not with regard to those other parcels, in the Police Court. If I was questioned about the other parcels I would have told. There were some damaged skins which were given for repairs. They were intended for repairs.

Q. When you spoke in the Police Court of 100 loose skins and 20 parcels of skins wrapped in Jute hessian, did you mean that these were all the parcels?—A. I meant thereby post parcels. These 100 skins were given for repairs because they were damaged skins. I remember saying when giving evidence in the Police Court that there were roughly about 100 skins kept for repairs.

Q. You also said that there were about 30 parcels which were in jute hessian. Did you mean thereby that those were the only skins in the basement?—A. There were some more skins besides these.

(The witness is asked to read out that portion of his evidence.) By 100 parcels I meant at the Police Court that 30 parcels. They were ready for the post and had nothing to do with the stock or skins. There were some more skins in the basement, besides these 100 skins and 30 parcels. I worked in the basement that day till 5 o'clock. As I came off by the spiral staircase I came to the ground floor. I know the chute door. It is usual for Sangaran the cooly to close that door everyday, and usually when I leave that basement at 5 o'clock I verify that fact, as I did that day. When

I am leaving I verify whether that door is closed. When I leave the basement it is Sangaran's business to close the door. After I close that door I also examine that door to see whether the door is properly locked. That is the wooden door. I examine both doors, the wooden door as well as the metal door. I check both doors everyday. Sangaran closes the iron door first. Then I test that. He closes the wooden door next and I test that again. To COURT: I remember the letters I typed on the ground floor and took to the basement. They were carbon copied. Only the originals I take to Kennedy. When I take a copy I take only one carbon copy. I took the letter and got his signature and the copy also I handed over to Mr. Kennedy.

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(w) L. John.
Examina-
tion—con-
tinued.

CROSS-EXAMINED.

Cross-exa-
mination.

On the 29th I typed certain letters. The duplicates I handed to Kennedy and the original copies were posted by me. (Portion of letter in file P41 read.) "On the 27th of September you have advised Campbell Brothers Carter that 11 parcels of reptile skins were despatched to London by parcel post." This file has a letter of the 27th September saying, "We attach herewith documents for 11 parcels of reptile skins despatched to London in parcel post" ?—A. Yes.

Owing to the signature I say I probably typed it myself. To COURT: I did not put my initials in any of my letters. (Letter of 27th September is read—another portion of it.) Both letters are addressed to Campbell Brothers Carter and Company. And both said that the money had been drawn through the Chartered bank. It was financed by the Chartered bank. (Letters are marked A3 and A4.) I cannot now recall to whom the letters I typed on the 29th evening were addressed. I cannot remember even one of them because it is a long time. (To COURT: I cannot say whether they were local letters or foreign letters.) I have typed only a few letters. I cannot say definitely how many. By few I mean about 4 or 5.

Q. Walsalam also told you that there were the smells of boot and shoes and of boot polish in this basement?—A. Yes. We did not get a smell like that. Very little ventilation comes into that basement. Ventilation comes only through the chute door, which has an expanded steel door and between the steel bars that the air would come. The basement itself unless it was lit up had very little light. To work you must have artificial lights even during the day otherwise it is too dark to work in the basement. I remember the fact that Kennedy returned from England. I cannot say the date he came, or when it was. I cannot remember how long before the fire it was. I cannot even remember the month. (To COURT: I cannot remember now when he came.) I am not certain when he went to England in 19* whether in the beginning or in the end. I know the date of the fire, the 29th September. After Kennedy's return the skin stocks were brought from his bungalow to the basement, in post parcels and some ordinary parcels covered by brown paper, opened at the two ends. A large number. The post parcels were duly posted from time to time.

* Sic.

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(w) L. John.
Cross-exa-
mination—
continued.

These brown paper rolled up parcels were all stocked in the basement. I cannot say how many skins there were. There were many parcels wrapped up in brown paper. I cannot say the exact number. By many I mean more than 100. The partly opened parcels at both ends were more than a 100. Petrol tins were never brought into that basement. I left the place about 8.30. When I left Mr. Kennedy was in the new shop and Mrs. Kennedy came to the old Times building. Mr. Kennedy was superintending the work—the taking down of these stocks of shoes and arranging them. One day all the lights went out. The same electrician came there to repair them and repaired them. I know that he came and repaired the lights. What he did I did not notice. At the time that one bulb burst and fell on the ground in pieces all the lights went out. The Times man went and attended to the repairs. He came and saw the light which had burst. After that he went to the ground floor side. I did not notice that. I did not see what he was doing. The main switches are on the ground floor. He went to the ground floor. Between 5 and 6 o'clock that day I worked in the ladies' department and was helping to take the stock down and arranging them for the coolies to transfer them to the new premises. The same thing was going on in the down-stairs. I did that till about 6 o'clock and then I wrote those letters. Usually he writes out the letters himself and hands them to me to type. He gave me the typewriter to type. I finished that typing between 6.30 and 7. By 7 o'clock I finished the typing. I took them to the new premises and got Kennedy to sign them and I myself posted them. I came back to the shop and found Mrs. Kennedy there. And it was Mrs. Kennedy who told me to go. I did typing repairing and the packing of shoes. I did not attend to the parcelling of the skins. I have seen the jute hessian used round the parcels that were posted. That jute hessian was not very thick. It is rather a thin stuff. (The witness is shown a length of jute hessian.) This sort of stuff we do not use for parcelling. This appears to be rather thick. This is thicker than the stuff that was used for the parcel post. I said already that the statement I made to the Police was not read and explained to me. (TO COURT: Not even read. I was asked to sign it and I did so.) Q. What do you understand by this statement to the Police. "The parcels were about a foot in size and packed in jute hessian." These post parcels, the ordinary post parcels were about 2 feet 2½ feet or 3 feet and like that in length. The breadth about one foot. The height is about 1 foot. The width is about 2 or 2½'.

Re-exa-
mination.

RE-EXAMINED.

These parcels of skins were brought from Monsoon Lodge parcelled and ready. That is all done in the bungalow. Yes, when the parcels come into the basement you can see what kind of quality the jute hessian is. When the coolies brought the parcels into the store when they passed that way I observed the jute hessian. Very often the parcels are sent from the bungalow. They are brought sometimes in 2 days and sometimes in 3 days. (TO COURT: From the time Mr. Kennedy returned from England the parcels were sent to the shop. It was sent little by little. I could not

say how long it took. I cannot say for certain when the last lot of parcels were sent from the bungalow before the fire. I think Kennedy and Company, buys jute hessian usually from Hunter and Company. I know that it is bought from Hunter and Company.

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14th September, 1934.

At 11 o'clock today the court visits the scene of the fire and Mr. Obeysekera, Acting Deputy Solicitor General, points out to the Jury the various places indicated in the plan.

Proceedings.
14th Sep-
tember,
1934.

10 The arrangement of the premises before the fire is explained to the Jury and they also inspect the damage caused by the fire.

Mr. Lornie, Engineer of the Colombo Gas and Water Co., explains the arrangement and working of the gas meter and how the gas piping was originally paid out before the fire.

The following witnesses are examined at the spot :—

T. S. R. JOHAR. Affirmed.

(y) T. S. R.
Johar.
Examina-
tion.

EXAMINED.

20 I remember the morning of the fire. I have given evidence of the finding of two tins in a suitcase. I was pulling the debris with a preventer, which was about 8 or 9 feet long, and while I was rummaging among the debris I came across the tins. I did not see it before. (Witness shows the spot where he first found the tins.) The tin was somewhere there (pointing out a spot with a stick). It was found among the debris. The ground floor was cracked but had not given way. I was going on digging with my preventer when I came across a suitcase. While I was pulling out a tin came forward, another tin. That second tin came along with the suitcase. The suitcase was on the top of the debris.

(This Witness was recalled, see page 241.)

A. L. AHAMADIN. Affirmed.

(y) A. L.
Ahamadin.
Examina-
tion.

EXAMINED.

30 I am the Foreman of the Fire Brigade. I remember the morning of the fire. I know Mr. Johar. He called me up and showed me the petrol tins. I saw the petrol tins. The petrol tins were here (indicating the spot). I found another tin and a suitcase. When he came and showed me one tin was out of the suitcase and another in the suitcase. One tin was inside the suitcase, and another tin apart from the suitcase, outside. The suitcase was here (pointing out the spot.) I entered by that door (indicating). That other door had given way and the window was blown out. I came straight through. There was a mobile oil tin found somewhere that side (in-
40 dicating place). I called Mr. Weerasinghe while they were still there.

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Prosecution.

(z) B. E.
Weera-
singhe.
Examina-
tion.

B. E. WEERASINGHE. Sworn.

EXAMINED.

I am the Superintendent of the Fire Brigade. I remember the morning of the fire. The last witness Ahamadin drew my attention to 2 petrol tins and a suit case. One petrol tin was, I believe, outside the suitcase. I saw the petrol tin outside the suitcase at this spot (Pointing out). It was within this area. The suitcase was there. One tin was inside the suitcase and the other partly out. I can not be definite whether that tin was just outside the suitcase. But it was within that area of $2\frac{1}{2}$ feet of the doorway. It was more to the right of the doorway. I came from this side, the left. If I came through the vestibule it is on the left. That is very approximately. I did not disturb the position of them but called in Mr. Prins of the Police and he took charge of it. (TO COURT: I called Prins immediately after the finding.) 10

(This Witness was recalled, see page 247.)

(aa) W. J.
Prins.
Examina-
tion.

W. J. PRINS. Sworn.

EXAMINED.

I am Inspector of Police, Depot Police, Maradana. I was on duty here on the morning of the fire in charge of people who were looking after the place. Mr. Weerasinghe drew my attention that morning to two petrol tins and a suitcase. When I came round I found the suitcase and the tins in this position (Pointing out). Somewhere there I found the suitcase and the tins, one tin was inside and the other was half inside and half out. Within a distance of about 2 or $2\frac{1}{2}$ feet of the doorway the tins and suitcase were. 20

(bb) Deen
Mahath.
Examina-
tion.

DEEN MAHATH. Affirmed.

EXAMINED.

I am a watcher employed by the Times. I remember the night of the fire. After the explosion I went along this way to call the other watcher. And when I was returning I saw Mr. Kennedy. (He shows the position in which he first saw Mr. Kennedy.) I found him there outside the door. (TO COURT: He jumped on to the road. He had to pass over the remains of the door and get to the road. The road is lower. He had to pass over the wreck of the doorway. He will have to jump off there only at the doorway.) The doorway was lying inside on the cement. (TO COURT: My idea is the whole thing was on the cement. I saw him after he got on to the road. I saw him stepping on to the road. I did not see him stepping over the wreckage. TO JURY: The whole of the wreck was on the cement. The cement was here (pointing out). The door was lying fallen on the cement. I can not remember whether any portion of it was fallen on the cement. I cannot say whether here or that side. The door was fallen over this. (TO COURT: From here he jumped over.) 30

S. P. OWEN. Sworn. Tailor, Chatham Street.

EXAMINED.

I have my own business in Chatham Street. I remember the day of the fire. When the explosion occurred I was standing near the Colombo Apothecaries' corner. After the explosion I remember I came running up and shouted out for Mr. Kennedy. The first thing I did was to go into the door leading from the vestibule into this. I went into the vestibule and I shouted there first and I came out again through the same door. That is the main Times entrance from the vestibule. I went out again and came
 10 round on to the verandah. I came back because I was choked in there and could not stay in there for long and there were no signs of him. (To COURT : I spoke to Mrs. Kennedy and found out that her husband was inside.) I came out to the verandah. I ran to the front main shop door of Kennedy. As far as I remember—I did not notice particularly—I could not get in there. The door was closed, but I do not think the glass was blown out. I saw Mr. Kennedy coming round this corner. I came after I had been in there to this window and tried to get through but the heat was too strong and I came back from the window and came here and along here and there were no signs of anybody. I went as far as that wall. I came out falling and
 20 stumbling over where I could not tell you, and got as far as that. There were no signs of Mr. Kennedy but it was pitch dark and then I came here thinking that he was finished. Then I came back again to the window. As I got back to that window I heard something behind me moving and I turned round and Kennedy was just about here (pointing out). And I was about there. He was just staggering round here. He was standing here. He was just coming round this corner towards that wall. I could not say from where he came. It was not possible to say from where he came because it was so dark that you could not see your two hands in front of your face. It was pitch dark, and there were masses of wreathing curling smoke. The flames
 30 were there but there was wreathing smoke. There was no fire here. I went round this verandah by feeling the wall. I stumbled over the debris. The fire was here raging in the shop and above the lift—the actual flames. When I actually went in there the flames were going in. There was thick smoke here.

ADJOURNED.

(*This Witness was recalled, see page 226.*)

17th September 1934.

Accused present.

Counsel as before.

SANGARAN. Affirmed.

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I am employed as a packer by Kennedy & Co. I was so employed at the date of the fire. I am still employed there. I have been in Kennedy & Co. for 14 years altogether. I work in the basement. My particular job in the

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(cc) S. P.
Owen.

Examina-
tion.

17th Sep-
tember,
1934.

(*dd*) San-
garan.
Examina-
tion.

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basement was to pack parcels and deliver them—parcels of shoes. I take the shoes for delivery after 5 p.m. I also helped Mr. Walsalam to keep the shoes in good condition.

I remember the date of the fire. On that day I worked in the basement till 5 p.m. From the basement I went to the ladies' department on the first floor. When I left the basement at 5 p.m. there was nobody else there. I was the last to leave the basement.

(To COURT : That is so far as I know.)

I do not know that the others John and Walsalam who were working there had left, but when I was called I left. I do not remember if there were 10 others when I left. I was the last to leave the place. There was nobody else besides myself when I left.

I came up when I was called. There is a spiral staircase and I went up through that. When I left the basement there were no lights on. I know the electrical lights in the basement. It is not possible to work in the basement without lights but at 5 p.m. there were no lights on.

(To COURT : I could not say whether there were lights at the time I left or before or after. When I left at 5 p.m. I said there were no lights. The man who left before me may have put the lights out but I cannot say about that.)

When I left the basement I am unable to say if there was any unusual smell. I did not notice at that time whether there was any smell. I worked in the ladies department till 6 or 6.30 p.m. From there I came to the ground floor—the gentlemen's department. There I worked till about 10 p.m. Suppramaniam, Velu and Kesavan were still working there. After 10 p.m. I left the place. Before leaving the shop at 10 p.m. I went back to the basement to take my coat and umbrella. When I went to the basement I put a light on.

To COURT : I put on one light.

I put the light to find my things. The light burnt all right. When I 30 switched the light I received no shock.

(To COURT : I turned on the switch of an individual lamp.)

I found my things and went upstairs. Before I left the place I switched the light off. On the occasion of the second visit to the basement I do not remember whether I got any smell.

To COURT : I did not take notice of any smell.

I came back to the ground floor and left the shop. The other coolies left with me; our work being finished for that day. Besides myself the four others left the shop at the same time.

I left the shop after 10.30 p.m. although I stopped work at 10 p.m. 40 I left the shop through the door which I usually go through. I know the door facing Main Street. It was by that door I went. There is another door half glass facing the vestibule by the Times building. I left through that door.

After finishing work I said that I went to the basement to get my coat and umbrella. I got my things and came to the ground floor. The four other coolies were in the gentlemen's and ladies' departments. Ramen was in the Gentlemen's department. When I came to the stores I got my coat and umbrella. From the store I came to the Gentlemen's department and left the shop from the gentlemen's department. Before leaving the shop all of us were in the gentlemen's department. We had a little work in the Gentlemen's department and we finished our work and then went away. I did not work after that.

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10 (To COURT: We did not delay but we went away. There was no clock in the shop by which to see the time.)

I went to the store to fetch my coat and umbrella. On that occasion Ramen accompanied me. From there we both left the basement together. At 10.30 p.m. when we left the shop Mr. Kennedy and a clerk was there. The clerk Hossen was in the shop in the Gentlemen's department. Before I left I did not see what Hossen was doing. Hossen was supervising the work of the coolies in the gentlemen's department and when we left Hossen was still there. After leaving the shop we went towards the Pettah.

20 I know the entrance through which parcels are sent. We call that the "enni" ladder. There are two doors to this entrance a metal expanding door and a wooden door. I always close that door, usually. On the day of the fire I locked the metal door about 5 p.m. and the wooden door at the same time. I did not see John test the door. I handed the key to Mr. Kennedy.

(To COURT: There was only one key. There are two keys—one for the metal door and one for the wooden door. I closed those doors at 5 p.m.)

30 There were skins in the basement on the day of the fire. The parcels had been brought before the fire to this place. I had nothing to do with the parcels. The parcels began arriving at the shop after Mr. Kennedy's return from England. So far as I know there were a large number of parcels. I can not say definitely how many there were. These parcels were wrapped in jute hessian and there were some parcels unwrapped. These were wrapped up parcels—in jute hessian. There were a number of parcels wrapped up in jute hessian. I did not count their number. There were over 50 or 60 parcels. I do not remember what I said in evidence in the Police Court.

Q. Do you remember making a statement to Inspector Koelmeyer?—

A. I cannot remember it clearly.

Q. Were you taken to the C.I.D. Office?—A. Yes.

Q. That was a month after the fire?—A. Yes, 30th October.

40 Q. Do you remember making a statement to a gentleman there?—

A. I made a statement but I can not remember it.

Q. Do you remember the fact that you made a statement?—A. Yes.

Q. Can you read a little English?—A. No.

Q. Do you sign in English?—A. I could.

Q. (Shown the signature.) Is this your signature?—A. Yes.

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Q. Did you make this statement to that gentleman?—*A.* There were about 30 parcels kept in the basement kept on racks containing skins? I did not definitely state the number of parcels.

Q. You said the “30 parcels were brought to the store about 2 months before the fire”? I am not certain. I cannot say for certain whether I definitely told the gentleman that there were 30 parcels.

There were a large number of other skins in the basement. There were skins tied together and skins which were loose.

To COURT: I said there were parcels loose and parcels ready for the post. There were parcels apart from those ready for the post but I cannot give their number. They were folded and tied with twine.

I told the gentleman that there were a number of crocodile skins. It was so long ago that I do not remember.

I had not seen any petrol tins in the store or anywhere in the shop. Petrol was never brought to the shop for any purpose so far as I know nor is anything else inflammable brought to the shop. I make the parcels in the basement and seal them. The sealing materials are kept with Mr. Claessen on the ground floor. On the day of the fire I did not seal any parcels.

Cross-exa-
mination.

CROSS-EXAMINED.

20

I have been over 14 years with Kennedy & Co. I worked with Mr. Kennedy when he was at Bristol Buildings. We shifted from there to the old Times building. The shifting was done at night. For the purpose of shifting the goods were taken down and placed in heaps to enable the coolies to carry them. Also when the shop was shifted from the old Times building to the new Times building when the parcels were carried by night and daytime. The things were taken from the racks and left on the floor before being taken across. On that occasion also we were preparing to shift across to Colombo Stores and everything was taken down from the racks. None of the stocks had been removed. I do not know what the delay was due to. In the Police Court I said the shelves at the Colombo Stores were not ready. That was the reason for the delay.

I remember the fact of Mr. Kennedy's return from England. I cannot say if that was about 2½ months before the fire. I know the fact of his return but I do not know when.

The parcels of skins were brought to the store before the fire. I may have told the Police that they were brought to the store from the bungalow about 2 months prior to the date of the fire but I cannot remember it now.

Skins were brought to the store from the bungalow in a car. The car used to do about 8 or 10 trips per day. Those parcels were taken into the store through the metal door—where the chute is. That chute is used for taking in the stocks that arrive from England as well. I generally open that steel door. That steel door is opened whenever required otherwise it is kept closed.

(*To COURT:* The wooden door was left open to allow ventilation. The iron door was shut.)

On this day the door which I shut at 5 p.m. was the wooden door. The steel door is always closed but whenever required it is opened.

The plank door over the metal door is kept open the whole day. In the Police Court I said that the expanding door was not opened on that day.

That evening before I left the store I shut the plank door over the metal door and thereafter I closed the door near the spiral staircase. Those were the doors I closed that evening and I handed the keys to Mr. Kennedy.

(To COURT : I am not allowed to keep the key of the iron door. I do not know that this key is kept by Mr. Claessen the chief clerk.)

10 I used to hand the key to Mr. Claessen as well as to Mr. Kennedy. Generally when I wanted to open the metal door I got that key from Mr. Claessen. I worked in the ladies' department till about 7 and then came to the Gentlemen's department and worked there till about 10.30.

Mrs. Kennedy was supervising my work till I left. The five of us left together. Before I left the shop Mr. Kennedy came across from the Colombo Stores and when I left Hossen and Mr. Kennedy were inside the shop and the car was by the vestibule door.

20 There were loose skins, skins in parcels ready for the post, and parcels with their ends open. The parcels that were sent to England were wrapped in newspapers and then in jute hessian. First of all they are wrapped in brown paper and then in jute hessian. I have done that work before. Now the work is being done at the bungalow. I have been doing the parcelling at Mr. Kennedy's before and I know how parcels are wrapped. Through the jute hessian it is not possible to see that the parcels are wrapped in brown paper.

30 In the Police Court I was asked whether I knew the smell of gas or petrol and I said I did not know. I have been travelling by bus but when doing so I sit at the back. In the Police Court I said I smelt no unusual smell but now I cannot remember what I said. I may have stated so but I cannot remember that now. I am unable to say if there was any smell. In the Police Court I was asked whether I had seen petrol tins in the basement.

(To COURT : I know what petrol tins are. I have seen a tin.)

40 There are a number of them in garages. There are no tins in the store of the shop. I worked in the gentlemen's department till I left to go and get my coat and umbrella. When I went there all the things had been removed from the racks and placed on the ground. Before the parcels of skins are posted the parcels are sealed and I do that. I use the sealing wax. I get the sealing wax matches etc. from Mr. Claessen and after I have finished them I return them to Mr. Claessen. On the day of the fire no parcels were sealed. After Mr. Kennedy's return a large number of parcels were sent by post and there were still a large number left to be posted apart from those ready for the post.

RE-EXAMINED.

Skins used to be brought in a car to the store about 8 or 10 times a day. The car did special trips to bring the skins. The car did such trips for a week

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or two. Skins were not brought in carts. They were always brought in a motor car.

Q. You told the Magistrate "I left about 10 p.m. there was no peculiar smell then. Notice nothing unusual then. I was the last to leave." That is a correct statement?—A. That is.

Q. When you left the premises for good at 10.30 that night did you see Mrs. Kennedy?—A. I saw her in the gentlemen's department. She was looking at some letters. I know Mr. Kennedy's car. When I left, his car was outside the building. It was halted near the Times gate. The car was stopped parallel to the building. I cannot say in which direction it was facing. 10

To COURT: No questions.

SUPPRAMANIAM. Affirmed.

I work as a labourer at Kennedy & Co. I was so employed at the date of the fire. I am still employed there. I have been working there for about 2 years. I am a delivery cooly. When I am not delivering parcels I work in the gentlemen's department. My work does not take me to the basement.

I remember the date of the fire. On that day I was working in the Gentlemen's department on the ground floor with four other coolies. I was getting boxes of shoes ready for the shifting and Mr. Hossen was supervising me. I worked that day till about 10.30 p.m. I finished my work that day. We got the shoes down from the racks. When I finished my work we were asked to go. We all left together. 20

To COURT: The five of us.

Including the last witness Sangaran. Our work was over and Mr. Kennedy asked us to go. We left through the main door—the door facing the let—the main door.

To COURT: That is the door by which ladies and gentlemen enter the shop.

When one left by that door one gets on to the street. When I left that was the only door left open. I know the lift. The door by that was closed. I think it was closed. 30

I know what a petrol tin is. It is red in colour. I have seen no petrol tins in the shop on the floor where I work. The racks from which I was getting the shoes down was further away from the door. There are fans in that section of the shop. I cannot remember if there were any fans working that night.

Cross-exa-
mination.

CROSS-EXAMINED.

There is a door leading to the Times on the right hand side. On both sides the door there are racks right against the wall. Before the 5 of us left that night all the things on the racks were taken down and left on the floor. 40

(To COURT: Nothing was left on the racks. All were taken down.)

At the bottom of the door near the vestibule there is a notice in English saying "ladies' shoes first floor."

RE-EXAMINED.

No questions.

RAMEN. Affirmed.

I am a labourer at Kennedy & Co. I have been so employed for over 10 years and I am still working there. I do the cleaning and sweeping, dusting etc. I work in the Gentlemen's department. I remember the day of the fire. It was the 29th September. I know there was a fire. That day I was working with other coolies taking down the shoes from the racks. Sangaran who worked in the basement was helping me. I remember Hossen supervising my work. I worked there till about 10.30 p.m. We may have finished our work about 10 p.m.

10 To COURT: We did nothing for about half an hour. We did not leave till Mr. Kennedy asked us to leave. Mr Kennedy came over from the new shop and then asked us to leave. Before leaving the shop I went down to the basement. Sangaran accompanied me to the basement. When I went to the basement I put on a light and found my coat and things and Sangaran's things.

I know the smell of petrol. I know the smell of coal gas. I have seen gas in bungalows. When I went to the basement to fetch my things I did not get a smell of gas or petrol. I came up from the basement to put on the light after I came up. The five of us, left the shop together. I went in the
20 direction of main street. I know the Khan Clock Tower. I happened to observe the time in the clock and it was about 10.30 p.m. We left by the door close to the lift.

CROSS-EXAMINED.

No questions.

KESAVAN. Affirmed.

I am a labourer employed at Kennedy & Co. I have been working there for about 3 years. I am still working there. I work in the ladies' department on the first floor.

30 I remember the date of the fire. On that day I worked in the first floor till about 6.30 or 7 p.m. and then I came to the ground floor and worked there with four other coolies till about 10.30 p.m. After the doors were closed we were asked to go—the doors of the Colombo Stores. After the Colombo Stores doors were locked we were asked to go. When we were leaving Mrs. Kennedy, Mr. Kennedy and Hossen remained behind in the shop.

Hossen had been supervising my work. When I left I cannot say what he was doing. When we were working he was there. After we finished our work I cannot say if he had anything else to do.

40 To COURT: After we finished our work and remained a while we were asked to go.

We left by the small door—the door by the Times lift—and we went in the direction of the Main Street. As I went I can not remember whether I observed the time. It was about 10.30 p.m. My work takes me to the basement but on this day I did not go to the basement.

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(To COURT : I do not wear a coat or use an umbrella.)
I have seen no petrol tins in the shop.

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(gg) Kesa-
van.
Cross-exa-
mination.

Velu and myself went to the Colombo Stores' premises after we had finished our work in the gentlemen's department. That was with the object of closing the metal expanding door there. The Colombo Stores had been kept closed and the door was stiff for sometime. We had to paint the thing. There is a gap in this door for a person to go through. At the time I brought the shutters close together Mr. Kennedy was still in the Colombo Stores with Walker's Engineer and he came across to the old shop. I closed the metal expanding door and locked it. Thereafter the five of us left when we finished our work in the gentlemen's department. We had taken all the boxes from the racks on to the floor. 10

RE-EXAMINED.

No questions.

(hh) Velu.
Examina-
tion.

VELU. Affirmed.

I am a labourer working at Kennedy & Co. I have been working there for 4 years and I am still employed there. I work in the ladies' department on the first floor. I remember the date of the fire. On that day I worked in the ladies' department till about 6.30 p.m. I then came to the ground floor of the Gentlemen's department, and I worked there with other coolies arranging boxes on the floor. Hossen supervised my work. I finished the work about 10.30 p.m. and then the gentleman came and called us to go to the Colombo Stores and I followed him in the company of Kesavan. We did not go into the shop but we were out and then came back to the old shop and left the place. Mr. Kennedy asked us to leave and the five of us went together. That evening I was working on the ground floor arranging shoes. There were racks on the further end of the ground floor against the wall. 20

There were fans in that section. When I was working that evening I cannot remember if any fans were working. On the ground floor I cannot remember putting off any fans or lights after finishing my work. On that day I did not go to the basement. I did not see any tins of petrol in the shop at anytime. 30

Cross-exa-
mination.

CROSS-EXAMINED.

I finished work about 10.30 p.m.

RE-EXAMINED.

No questions.

(ii) R.
Hossen.
Examina-
tion.

R. HOSSEN. Affirmed.

I work as a salesman at Kennedy & Co. and I have been working there for 15 years—nearly 20 years. I am a Malay. I worked with Mr. Kennedy from the day when he was an assistant at Smith Campbell's. 40

(To COURT: I have been working for 5 years when Mr. Kennedy was with Smith Campbell's.)

When Mr. Kennedy left and came to work on his own about 2 or 3 months after he started I knew of his opening a shop and I thought I would like to work there and I came to work with him. I get a salary of Rs. 125/-. First, he gave me Rs. 35/- as a start and gradually it came to Rs. 125/-. At Smith Campbell's I was drawing Rs. 45/-. I only work as a salesman in the boot and shoe department of the gentlemen's department on the ground floor. There is one Jayakoddy and myself working there. I work
10 under the immediate supervision of Mr. Kennedy.

One day I went to the bungalow to get leave. I could not remember whether that was the 23rd August. I went there to get leave. I wanted leave as I had fever and a wound in my leg. I went to the bungalow from my house.

(To COURT: That was about 12.30 in the noon.)

I did not go to the shop that day. The shop opens for work at 8 a.m. and I would go normally to work at 8 a.m. If I am unwell I would send a letter of excuse sometimes. Mr. Kennedy comes to the shop usually about 1.30 p.m. Sometimes he comes in the morning and sometimes not.
20 Ordinarily he comes to the shop after lunch. He never comes before lunch. I did not notice about that. Generally he used to come about 8 or 8.30 a.m. and sometimes 9 a.m. Generally he would be there between 8 and 9 a.m. On this day as I was unwell I did not go to the shop but I went direct to the bungalow.

(To COURT: I live at Wekande, Slave Island.)

I went to Monsoon Lodge. I did not know Mr. Kennedy would be in the shop that morning. I cannot remember whether the day was a Wednesday.

On any previous occasion I had not gone to his house to get leave.
30 I saw Mr. Kennedy at the bungalow. He was there. I did not know that he was expecting me. He did not expect me that morning. I went there all of a sudden. Prior to this I had been several times to the assistant to get leave and he did not allow me but he felt my pulse and asked me to wait for a while that the fever would leave me and I thought that on this occasion I might go to my own boss. He is a sympathetic man. In the shop Mr. Ogle is there and I had been to see him several times to obtain leave. At 1.30 or 1 p.m. Mr. Kennedy used to leave the shop and come to the bungalow. I went to the house about 12 o'clock.

(To COURT: Mr. Kennedy used to come from the bungalow at 1.30 p.m.)
40 Mr. Kennedy did not come to the shop that day after 12 o'clock. He used to come about 8.30 or 9 and stay there till 10.30 or 11, and to go back after lunch. I was in no particular hurry at this time on this occasion and I took my own time and so I went to the bungalow. At the bungalow I told Mr. Kennedy that I was ill and I wanted leave. I did not tell him how many days leave I wanted. He did not hold my pulse. He did not send me away. He said "You can go, do not wait, try to come back as

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soon as possible," and when I was turning to go back, he said "I want some petrol, go and get me the book from the driver." He wanted the petrol order book. I went to the garage and the driver was not there and I went and informed Mr. Kennedy and Mr. Kennedy said "Here is cash, go and get me two tins of petrol."

(TO COURT: I do not know where the petrol order book is kept. I know the driver used to keep it in the car or with him. I could not get it as the driver was out.) Then Mr. Kennedy gave me Rs. 15/- I think. I can not remember now what amount of cash he gave me. He asked me to go and fetch two tins of petrol from Walkers and he told me if they asked for whom the petrol was I was to say it was for Mr. Kennedy. The person who gave me the petrol asked me for whom the petrol was. I do not know that it mattered to the store keeper for whom the petrol was because I was paying cash. I did not think it strange when Mr. Kennedy told me to say that the petrol was for him. Mr. Kennedy did not ask me to get a special brand of petrol. I wanted to oblige Mr. Kennedy and do the work and go away. I have not purchased petrol for Mr. Kennedy on any previous occasion. Mr. Kennedy did not tell me why he wanted the petrol. I went to Walker's petrol station at Colpetty. I cannot remember whether I asked for 2 tins of petrol containing 4 gallons of petrol.

(TO COURT: I wanted two tins of petrol. I cannot remember how many gallons it contained.)

I wanted two tins containing petrol and when I went to the petrol station a fat gentleman served me. I do not know what his name is. He asked me what my name was. I went there and gave the fat gentleman the money and I said I wanted two tins of petrol and he asked me to come about 2 o'clock. He told me to come about 2 p.m. I had gone there about 1 p.m. I think it was about 1 p.m. I was not asked to make a deposit for the tins. I went walking to the petrol shed. It was a few minutes walk. Simon Fernando asked me my name. He asked me my name when I was given the petrol. When I was asked to come back at 2 p.m. I came out and went to a tea shop and had some coffee and went back at 2 p.m. He asked me for my name after I went there and when I gave him the money and he gave me the tins of petrol. I paid for them. I cannot remember how much. When I was ready to get out he asked me for my name and I said Hossen and he said "If I come to your shop will you give me shoes cheap." He knew I was from Kennedy & Co.

I said I was Hossen and I worked at Kennedy & Co. When he comes to the shop I will fix my price and give him the pair of shoes. He wanted a pair of shoes a little cheaper—at a special discount—but I could not allow a special discount without the permission of my boss. I will not give him a pair of shoes cheap, although he asked me for it. I would not give it without the information of my boss.

I am allowed a special discount on shoes by the company or for a friend of mine, or for a member of my family. I knew what price I was to fix

when Simon Fernando came. The shoes would be Rs. 15/- and I would give it to him for Rs. 15/- and I would say that it was cheap.

I put the tins in the rickshaw. The rickshawman carried the tins and put them into the rickshaw. I took the tins and went to the bungalow and told Mr. Kennedy that I had brought the two tins of petrol. That was before 2 p.m. I said I went there before 1.50 p.m. I think it took me 2 or 3 minutes from the petrol station to "Monsoon Lodge" as the man was running. I got into the rickshaw. Mr. Kennedy was waiting for me. He was in the room. Mr. Kennedy asked me to leave the tins by the parcel
10 room. I gave him the balance. I said today that Mr. Kennedy asked me to go and fetch his petrol order book. I went to the garage but the driver was out and so I went and told Mr. Kennedy that the driver was out and he gave me cash.

I made a statement to Mr. Ferguson but I cannot remember the date.

Q. Did you tell Mr. Ferguson that Mr. Kennedy had in the first instance asked you to fetch his order book and that you found the driver out?—A. I cannot remember that.

Q. Did you tell the police magistrate that when you gave evidence on the 11th April?—A. I cannot remember that.

20 (Evidence on page 12 (Record) read out to the witness.)

"About 2 or 3 months before the fire I went to Mr. Kennedy's bungalow to obtain leave. I had fever. I saw Mr. Kennedy there. Mr. Kennedy said, do not stay too long. Just as I was leaving he called me and asked me to go and get two tins of petrol. He gave me cash."

I cannot remember whether I told the Magistrate that I was asked by Mr. Kennedy to fetch the petrol order book.

(Statement put to him "I went to Walkers'. They had no tins and they asked me to come at 2 p.m. and I went at 2 p.m.)

It was 1.50 p.m. when I reached "Monsoon Lodge."

30

(ADJOURNED FOR LUNCH.)

AFTER LUNCH.

Q. I understood you to say that Mr. Kennedy gave you the money to purchase these tins of petrol when you left the house?—A. Yes.

Q. And the storekeeper of Walker's did not ask you for a deposit?—A. Yes. I am sure. (To COURT: I was given a balance of about Rs. 2/- or Rs. 3/-.)

Q. Mr. Kennedy gave you Rs. 15/- and told you to go and get the petrol?—A. Yes. After they gave the petrol I returned to Mr. Kennedy's. I did not go back to Mr. Kennedy before I took the petrol. I left with the
40 money and I did not see Mr. Kennedy till I got the petrol tins and came to Mr. Kennedy. (To COURT: The man did not ask me for a deposit. He simply asked me to come at 2 o'clock and I went before 2.) (Witness' statement to the Police on this point is read to him.)

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Q. After you went there did you go and see Mr. Kennedy?—*A.* I was there in the tea shop close by. (His statement to the Police on the same point is again read to him by Crown Counsel.) I cannot remember that.

Q. Did you tell Mr. Ferguson that?—*A.* No answer.

Q. Is it a fact that after you were given the money you went back to Mr. Kennedy and told him that they wanted a deposit?—*A.* I am speaking the fact, but I cannot remember. That is what I remember, namely, that he asked me to come at 2 o'clock. I do not remember that I went and asked Mr. Kennedy about a deposit which the man wanted. It is not true that I went back to Mr. Kennedy and told him that I was asked a deposit and that I went with the deposit given by Mr. Kennedy. 10

Q. Are you quite certain that it was at 12.30 or thereabouts that you went to Walker's petrol station. About nearly 1 o'clock?—*A.* I could not say whether it was earlier. It could not be about 9.30 in the morning. (Document P81 a way-bill which shows the time at which the lorry which brought these tins to Walkers left Kolannawa stores is shown to his Lordship.)

Q. The Crown has got a document which shows that when you asked for the tins they had not the tins and they 'phoned up the Kolannawa installation and the tins came down from that place, the time at which it left being 9.50?—*A.* Yes. I do not know. This is the time that I went. I could not remember. I cannot remember it. 20

Q. If that left at 9.50 you must have gone at about 9.30?—*A.* I could not have made a mistake about that. My time is 12.30 because that time Mr. Kennedy must be in his house and not at the shop.

Q. If the time shown on that document is correct you must have waited for this petrol at least 4 hours?—*A.* No answer.

Q. I believe you told me that Mr. Kennedy did not tell you why he wanted the petrol?—*A.* Yes. I have not seen petrol tins in the shop at any time. I remember the day of the fire. I work on the ground floor. 30

Q. That day I think you were taking down these boxes of shoes from the racks and arranging them to be shifted across to the new premises?—*A.* Yes, and I supervised that work.

Q. The evidence is that there were in all five coolies on that job from about 5.30 in the evening?—*A.* Yes. That day I worked on till about 10.35. I finished taking down those boxes about 10.15. I had then taken all the boxes from the rack except the bottom shelf.

Q. In fact would you take them from the bottom shelf? You would probably take them straight across?—No answer.

Q. These shelves from which you were taking down shoes are in the back-bay of the ground floor? The Times side of the ground floor?—*A.* No, all are inside the shop. I know the ground floor faces main street, to the Times building office. There is a half on the Times side which is not above our basement. (To COURT: The wall towards the Times machine room.) The racks go right to the top. I was taking down boxes of shoes from those racks. I had no fan on when I was doing that work. The fans were going on, on the ladies side and gentleman's side, and not on my side. On 40

the ground floor the section to which I refer there were only 2 fans there. I used to go through the ladder were the other fans working. About 10.15 all the fans in my side were all stopped as it usually is when my work is over. I did not stop the fans. The coolies stopped it.

Q. Mr. Kennedy I understand was in the new shop at this time?—A. Yes. He came across from the new shop to the old about 10.35 or 10.40. That is my estimate of the time. After Mr. Kennedy came the coolies were all doing nothing. They had finished their work and were sitting down, and some of them talking, at that time; and when it was about 10.30 Mr. Kennedy came from the Colombo Stores and said he wanted two labourers. I heard him say that he wanted the labourers, but I do not know to whom he was speaking. When Mr. Kennedy came all these workmen had finished their work. They were waiting, till they got Mr. Kennedy's permission to go away. Mr. Kennedy came and said, "I want two labourers to close the door of the Colombo Stores." Then all five coolies went along and Mr. Kennedy also went. The coolies went before and then Mr. Kennedy followed them. All five went with Mr. Kennedy. Then myself and lady were there. Those 5 coolies did not come back again. From the new shop they went away. Mr. Kennedy after closing the door he came back about 10.50 or 10.48. Mrs. Kennedy was reading a book in the old shop. As far as I could see Mr. Kennedy rejoined me and Mrs. Kennedy. When he came back from the new shop he came back about 10.50. There is a clock in the Times Office. Sometimes I could not see the clock when they close the door. We take our time from the Times clock. Besides Mr. & Mrs. Kennedy I was the only person in the shop at the time. I had finished my work but I was waiting until I got orders to go home. I had not had my dinner. I was working from 8 o'clock up to that time. I was tired and hungry too as well. (To COURT: Everyone was working hard that day.) All the doors except the vestibule door was closed at the time. To the Times side only one door was open. When Kennedy came back about 10.50 he came from the vestibule as all the other doors were closed. Mr. Kennedy asked me if I had finished and I said, "yes," and then he went to his chair which was next to the lady and sat down there and took something. He sat down near the lady in the gentlemen's department. He sat down and took a book, I thought he was writing. He did not take about 1½ minutes and then he came to me with the lady and Mr. Kennedy asked me to get a bottle of soda. He gave me the money, I think. I do not think he gave me the money. I can not remember. I went to a boutique Abubuker's boutique and got a bottle of soda and also brought a glass from that boutique. I can not remember whether I paid for the soda. They know me very well. I did not give the bottle to Mr. Kennedy. Mr. and Mrs. Kennedy were near the doorway ready to come out, when I poured the soda into the glass and gave it to Mr. Kennedy. I was on the ground floor at this time. I had gone through the doorway. Then Mr. Kennedy drank the soda and turned to the right side and offered it to lady who said "No thank you." I left the glass and bottle of soda near the sill there. We had taken the empty boxes too. I kept this glass and bottle on the ground floor building. I kept it on one of the racks on the

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right side of that Times door as you go out. I could have given the bottle and glass at any time in the morning I am not in a hurry just to return it. (To COURT : This boutique is near the Bristol building.) Then Mr. Kennedy said, "Oh do not delay tomorrow morning. You got to stock up all the things." Besides some customers would come and he said "good night." I left the shop. The time was I think about 10.54 or 10.55. I went towards the Pettah. There is a bus stand. I went up to Lotus road. I went to take the bus at Lotus road but there was no bus there. I went up to Lotus road. I did not go down Lotus road. I was still in main street just at the junction. (To COURT : There were no buses at all on the road.) I saw a rickshaw man coming about 5 or 6 yards away. I know he is coming. He was coming in front of me. Then I thought I can ask for a hire and I called him and he came and I asked him to take me to Slave Island. Then I just asked the man to put down the handle of the rickshaw and I only stepped on to the road when I heard a sound "Dom." I can not say whether it was a loud "Dom." So I put my right hand on the rickshaw and I just had a peep like that. Then I saw one or two chaps running, and I got into my rickshaw and went away. (To COURT : I did not see smoke and flames.)

Q. You did not even stop to find out in what direction these men were running?—A. I saw the people running from where Walkers now is. I can not say distinctly because of my eyesight. 20

Q. In fact they were running towards the Times building?—A. I cannot say that because of the pitch dark. They were going towards the Fort end of Main street. I did not ask anyone of them what it was. There was nobody to ask at that time. I was very tired and hungry. There was only one sound. I did not know what it was. (To COURT : I can hear the gun firing. It was like the explosion of a gun. I am certain it was one explosion. I heard only one.)

Q. Did you connect it at all with the Times building?—A. No. I just got into the rickshaw and asked the man to go. I cared only much for my stomach. I did not care from where the noise came. (To COURT : I got into this rickshaw and went in the direction of Slave Island. I went down Lotus road to the place where buses are kept.) 30

Q. If there is evidence that within $\frac{1}{4}$ of a minute of the explosion the building was aflame does it not strike you as strange that you did not observe it? When you were going down Lotus road at the time if you turned you would have seen flames?—A. I did not see flames. I went straight ahead.

Q. Did all the street lamps go out?—A. No. (To COURT : I can not remember it turning dark in Lotus road.) I was in Main street where Lotus street meets Main street near that post office. I know the office of the Registrar of Motor cars, at the junction. (To COURT : I did not see the lights at Main street going out when I heard the sound of the explosion. The lights did not go out at Lotus road so far as I know.) I do not know that the whole section of the Fort was thrown into darkness. I did not take any notice. I closed my eyes and went straight forward. I could see. I was just getting the blowing. The sea breeze was coming from the sea and I was very hot and tired and so I went off. I went straight ahead home and I learnt about 40

the fire on the next morning from people. After washing I was just dressing. I heard about it next morning; when I was dressing to come out I heard that there had been a fire. When I left the shop at about 10.55 I did not observe where Mr. Kennedy's car was. I did not notice at all.

Q. Did you see his driver anywhere about?—A. No.

Q. When you left were the lights on the ground floor still on?—A. Yes.

Q. All the lights were there?—A. I did not count how many lights.

Q. About 6 lights were burning?—A. I did not count. I do know that the building was lit and there were several lights.

10 Q. It has been said that Mr. Kennedy is usually the last person to leave the place?—A. I am the last person. I do not know whether Mr. Kennedy is the last person to leave. I used to go at 5 o'clock to the shop and the shop is then open and there is Mr. Kennedy and some members of the staff there. (To COURT: Mr. Kennedy is usually the last to leave the shop. He has only got one door to shut up when he leaves.)

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I am about 56 to 57 years old.

20 Q. Obviously your memory is not what it was because you must have gone to buy this petrol certainly before 10.34? I find the lorry has actually left the depot at 10.34? It has left the installation at 9.50? Your recollection with regard to the time is clearly wrong? It is well before the time you speak of? You say it is about 12.30 or 1 you went there?—A. That is my recollection. I have no watch, nothing at all.

Q. Quite obviously your memory is faulty and you cannot remember?—A. Yes. I can not remember what time I got there.

Q. You can not say what time you saw Mr. Kennedy?—A. Yes. It may be after 9 at any time. I can not remember exactly what time I went to see Mr. Kennedy.

30 Q. It might have been about 9.30 or 10 o'clock?—A. It may be about 9.30 or 10 o'clock.

Q. You say you went to Kennedy's bungalow because otherwise you would have had to apply for leave to Mr. Ogle who was fairly strict in the matter of giving leave?—A. Yes.

Q. Mr. Ogle will feel one's pulse and then he will see your temperature and ask you to wait?—A. Yes, he will ask to sit down on a seat and that I will be all right, and in the meantime whenever a customer comes I will have to go and attend to him and then all my sickness and leave is no where, so I went to the bungalow to get leave.

40 Q. You thought you had gone at the lunch interval?—You thought originally when my learned friend was examining or cross-examining you that you had gone there during the lunch interval?—A. Yes.

Q. The lunch interval Mr. Kennedy takes ordinarily is between 12 and 1? He leaves the shop at 12 goes home and comes after lunch ordinarily?—A. Yes.

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(To COURT: Q. Does Mr. Kennedy leave at 11.30 for lunch? What time does Mr. Kennedy ordinarily leave for lunch?—A. He comes in the morning early.

Q. What time does he leave for lunch ordinarily?—A. Before 12.

Q. About what time? About 11.30 or 12?—A. He ordinarily goes for his lunch about 11 or 12.

Q. You apparently clearly do not remember when it was you had been to Mr. Kennedy's house?—A. No.

Q. Because giving evidence in the Police Court you have definitely said it was 2 or 3 minutes before the fire?—A. Yes. 10

Q. You are obviously wrong by at least 2 months?—A. No answer.

Q. Although you said it was 2 or 3 months before the fire in the Police Court they have the date as the 23rd August?—A. I could not remember.

Q. Just as you could not remember how long before the fire you went to Walkers' depot you cannot now remember even the time?—No answer.

Q. You made a blunder about the time as well?—A. Yes.

Q. The fact however remains that you did go there?—A. Yes.

Q. What is more it is proved by Walker's own man that what you say about this discussion about Mr. Kennedy was a conversation which occurred between you and Walker's man?—A. Yes. 20

Q. The fat man is Simon Fernando?—A. Yes.

Q. With regard to this conversation you said not one word about it in the Police Court?—A. Because I was not asked about it.

Q. But you say that such a conversation did occur?—A. Yes.

Q. Apparently you did not want to make a deposit of Rs. 5 at Walkers garage when you were asked for a deposit?—A. I was not asked for a deposit. I do not remember. He said to come at 2 o'clock.

Q. The trouble is that you do not listen to what is being asked by his Lordship? You have told the Police on the 5th of October within a week of the fire, that when you went to buy this petrol cans from Walkers, the man wanted a deposit and that you went back and asked Mr. Kennedy whether you were to make the deposit?—A. Yes, I did pay Rs. 5. 30

Q. The point is that when his Lordship put the question to you, you said you made no deposit? And you never went and told Mr. Kennedy about the demand for the deposit? The fact being that you did not remember it at all?—A. Yes.

Q. You have forgotten all about the deposit?—A. I might have deposited but I forgot it I think. I think it must be true because I just now remember that I paid Rs. 5.

Q. What you told the Police earlier that you went there about 9.50 must be correct?—A. I think so. 40

Q. The fact remains you went there. He asked for a deposit. You went back to Mr. Kennedy and asked him to make a deposit and Mr. Kennedy told you "Why it's Walkers go and make the deposit? That is how it runs?—No answer.

Q. Mr. Kennedy said there was no harm in giving a deposit as it was Walker's—A. Yes, he did so.

Q. I find that even to the Police on the 5th October your recollection had failed even at that time because you said it was about 12.30 when you went and asked for the tins?—No answer.

Q. You stated in answer to my learned friend that you did mention the fact that you wanted the petrol for Mr. Kennedy?—A. I mentioned that to the man in charge of the depot. I said I wanted the petrol for Mr. Kennedy and that I was working at Mr. Kennedy's.

Q. When they wanted the deposit you would have said this is for Mr. Kennedy? The man said that anyhow you must get a deposit and that he wanted a deposit? That must be what happened?—A. I think so. That must have been what happened, though I do not remember it now.

Q. Mr. Kennedy said "Make a deposit." It is no matter. It is Walker's" and you went and made the deposit?—A. Yes.

(TO COURT: Q. You remember all this?—A. Now, I remember. Now, this is an year's old case and I have forgotten altogether. I have got a bad memory.)

Q. You definitely told the Police that? You think you went back and gave Rs. 5 deposit?—A. Yes.

Q. As a matter of fact you were charged Rs. 2.50 for each can?—A. Yes. That is the value of the empty tin. He gave a receipt too. I paid in addition for 4 gallons of petrol, which would amount to Rs. 10/80. The balance was deducted from rickshaw fare. I got into a rickshaw and took the tins to Mr. Kennedy. I paid the rickshaw cooly something and gave the balance to Mr. Kennedy.

Q. You never made any secret about it? Whether you were employed at Kennedy and Co., or not you made it clear to Simon Fernando that it was for Mr. Kennedy that you wanted the petrol and he wanted to know whether you would give him shoes cheap?—A. Yes.

Q. If the price of the shoes was Rs. 15 you would give him the shoes for less?—A. That was not my idea. If the shoes were worth in the shop Rs. 15 I would tell him well it is worth Rs. 16 or 18 but I would give it to him for a special price of Rs. 15/00.

Q. Anyhow you had to pay full value for the tins of petrol and you saw no reason why you should reduce the price of shoes?—A. I did not at all.

Q. That conversation took place and you made it quite clear that you were from Mr. Kennedy's and that this was bought for Kennedy & Co.?—A. He asked me to whom I am buying I told to Mr. Kennedy.

Q. And when the Police questioned you on the 5th October you told them promptly all about it? That you had bought this petrol from Walker's garage and all about it?—A. Yes, I did.

Q. But for your telling the Police that you had bought this petrol from Walker's garage the Police could not have got the information through anybody else? So far as you are aware they could not?—A. No.

Q. So far as you are aware you are the first man to tell about the buying of these tins of petrol to the Police?—A. No answer.

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Q. Nobody tried to conceal this purchase of petrol from Walker's garage?—A. No.

Q. As soon as you were asked by the Police you told them?—A. Yes.

Q. With regard to what happened on the 29th itself, what time did you go to work that morning—the ordinary time?—About 8.05 or 8.10. That is the usual time. It was Mr. Ogle who takes the attendance in the morning. He is the first to come on the scene and he opens the shop in the morning and arranges the things for the customers, when they come. Mr. Ogle is the one who opens the shop just as Mr. Kennedy is the one who closes the shop. I too have to report my attendance to him. I worked 10 on that day. I had a break in the noon for my midday meal. About 12.30 I go for breakfast and I return at 1.30. From 8 to 12.30 I would work without a break. Then I have my breakfast at Fort. I live in Slave Island at Wekande.

Q. From where you live to get to Mr. Kennedy's bungalow or to get to the Fort is about the same distance?—A. I think so.

Q. You are about half way between Mr. Kennedy's house and the Fort Establishment?—A. Yes.

Q. From 1.30 after your midday meal did you have a break in the evening?—A. I broke work for tea about 3.30, and came back at 4 o'clock. 20 (To COURT: That is what I do everyday.)

Q. From 4 o'clock till 5 minutes to 11 you were working without a break?—A. About 7 o'clock I had a break of half an hour, not even half an hour, about 10 or 15 minutes, for tea. I went to a tea shop near the Bristol building and I went there and had some tea again about 7 or 7.30. I had nothing solid to eat because I thought I can go home.

Q. About 5 minutes to 11 you must have been feeling very hungry and tired?—A. Yes.

Q. Exclusive of the breaks you had been working for 15 hours?—A. Yes. 30

Q. Breaks totalling about 1½ or 2 hours the most?—No answer.

Q. You had about 13 hours work that day?—A. Yes.

Q. You were supervising the stock being taken down from all the shelves by those 5 coolies who gave evidence today?—A. Yes.

Q. Mrs. Kennedy came in there about after 9 about 9.15 or 9.30?—A. Yes.

Q. You know Mr. and Mrs. Kennedy went home for dinner about 8 o'clock and returned about 9 o'clock and Mr. Kennedy came back again to relieve Mr. Ogle who was working in the Colombo Stores?—A. Yes.

* *Sic.*

Q. Mr. Ogle* went into the Colombo Stores and relieved Ogle* and Mrs. Kennedy came into the old shop and supervised the work there?—A. Yes. 40

Q. She was seated on a chair seeing what was being done?—A. Yes.

Q. Two of the coolies went across from the Colombo Stores to help them again about 10.30?—A. Yes.

Q. Shortly before they left finally 2 of the coolies went across and helped to close the Colombo Stores gate and after the gate was closed Mr. Kennedy came to the Times building?—A. Yes.

Q. And it was thereafter that all these 5 labourers went away?—A. No.

Q. After Mr. Kennedy came to the Times building about 10.30 that the labourers went away?—A. They were sent away from there.

Q. That left you Mrs. Kennedy and Mr. Kennedy only in the shop?—A. Yes. The only people left in the shop were I and Mr. Kennedy.

Q. You do not know that man Zain Mahat?—A. No, Yes.

I know Ahamath the watcher. I was told that he was in the Police force before. He was at one time orderly to Mr. Ferguson. I do not know that he was Mr. Ferguson's watcher.

10 Q. As a matter of fact after these labourers left did Mr. Kennedy not tell you "Look here, everything is taken down and customers may come in the morning and there will be no place for them to put on the shoes" and you were asked to clear a space and arrange a chair and keep the footstool so that when customers come in the morning there might be a place for them to put on the shoes?—A. Yes. All those were there very close by. (To COURT: I remember being asked to arrange the place for customers coming in the morning.)

20 Q. You arranged the chair and the carpet and a passage for any customers who might come in the morning before you actually started shifting?—A. Yes.

It was after doing that that I was asked to fetch a bottle of soda.

Q. You went across the Bristol building?—A. Yes. I brought a bottle of iced soda, and a tumbler.

Q. At the time you were going out to fetch this soda did you see the Times watcher Ahamath?—A. No. I did not see him. I do not remember having seen him. Then I brought the soda. When I brought the soda Mr. and Mrs. Kennedy were near the doorway.

Q. When you brought the soda were Mr. and Mrs. Kennedy near the doorway?—A. They were in the doorway.

30 Q. Do you remember, I am again quoting Amath, who says that when you brought the soda Mr. Kennedy told Mrs. Kennedy that as soon as I have drunk that soda we will go? You remember that statement of Mr. Kennedy?—A. No, I do not know.

Q. Amath the watcher says that when you came back with the soda Mr. and Mrs. Kennedy came out and Mr. Kennedy spoke to Mrs. Kennedy and . . .

At this stage Mr. Obeyesekera objects to the question and says that Mr. Pereira cannot read out Zain Ahamath's evidence, but that he could ask the question "Did you hear Mrs. Kennedy say so and so."

40 Mr. Pereira replies that he is entitled to put the question and asks for a ruling from his Lordship.

Mr. Pereira says the question is this: "If Ahamath says that on your bringing the bottle of soda Mr. Kennedy said to Mrs. Kennedy, "As soon as I have drunk that we will go" is that something which is correct? which you heard yourself?"

His Lordship allows the question.

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Q. If Amath says that is that right or wrong?—A. I did not hear.

Q. What is the matter with your hearing? Are you deaf? I am slightly not much clear. (Pointing to his ear.)

Q. Is there any reason why Ahamath should give false evidence on that point?—A. I do not know of any.

Q. You offered the soda and Mr. Kennedy drank it?—A. He offered the lady. He offered some to Mrs. Kennedy who said "No thank you."

Q. How did you get out of the shop? You went by the same door that you went to fetch the soda?—A. Yes.

Q. Did you see Mr. Kennedy and Zain Ahamath talking to each other in that vestibule?—A. I cannot remember that. 10

Q. Would you contradict Ahamath if he says that he was talking to Mr. Kennedy in that passage? No answer.

Q. If Ahamath says that you brought the soda and went into the shop and he and Mrs. Kennedy were talking outside you went right into the vestibule you must have seen him yourself? You did not notice Mrs. Kennedy or Ahamath talking there?—A. No.

(To COURT: Ahamath talks English.)

Q. Curiously enough Ahamath himself says he did not see you going up? You know that?—A. Yes. 20

Q. Is it a fact that Mr. Ferguson examined your head, felt your hand, and other parts carefully for burns?—A. Yes.

Q. He saw some eczema that you had on your arm?—A. Still I got it.

Q. And asked you whether it was not a burn?—A. Yes, And I told him it was eczema. He also smelt my head from behind. He come round from behind and felt my head, to find out whether there was any singeing of my hair.

Q. You stated in the Police Court you were on the Lotus road when you got into that rickshaw?—A. Yes, I was waiting for a rickshaw in Lotus road. 30

Q. In the stand near the workshop of Lotus road your view of the place is cut off by corrugated iron sheets? On either side of the Walker's garage and the petrol depot? There is a petrol depot and a garage on either side? And there is a building with a high corrugated iron railing?—A. Yes.

Q. And behind that there are some fairly big trees that shut out the view?—A. Yes.

Q. As a matter of fact as you were getting into the rickshaw you heard a sound Dom and that really had no impression on your mind? No answer. I sat in the rickshaw and went straight. I went home. I heard of this fire that morning. I came to work the following morning, 40 in the normal way.

Q. That was the first time you heard that there was the fire?—A. I was only putting on the coat when I heard of the fire. After I came there I saw all burnt and the Policeman did not want me to wait. I heard some people speak about the fire. I first heard about the fire before I came to the office in the morning. I first heard of the fire about 3 or 4 yards away

from my house; on my way to the office. I heard someone say "Oh Times building is burnt last night." Before I got into the bus I heard about it. I came by bus. I doubled up and came. Ordinarily from Wekande one has to get to the Church Street junction to get the bus. While I was walking along somebody said. The neighbours know that I am working at the Times building and they told me that the Times building had been burnt, that night. Then I began to run to the bus. I doubled up to the bus and got into it to go and see what had happened.

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10 *Q.* You know that door which is at the top of the spiral staircase? You remember there is a section of a wall and a door there?—*A.* Yes.

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Q. That shuts out the entrance to the chute?—*A.* Yes.

Q. Who closes that door ordinarily?—*A.* Sangaram. He is the only labourer who works downstairs. Sangaram ordinarily closes that door. Those 3 people who work in the basement generally leave about 4.30 or 5 because they are working under the worst conditions, in the shop. It is very warm there, and it is badly ventilated.

20 *Q.* As you were getting out on the night of the fire did you see Mr. Kennedy's car?—*A.* No I did not even notice the car, because I am so hungry myself directly I got the order I went off. What I saw created no impression on my mind because I was so hungry.

Q. You did not even observe the car?—*A.* No.

Q. Ordinarily where is that car kept?—*A.* Sometimes it is in the front of the doorway, otherwise if the place is full of cars he used to take it to the road, to Walker's side. It will either be near the vestibule gate or if there is no room it will be on the opposite side of the road near Walker's We can see it.

Q. Was Mr. Kennedy in the habit of getting soda from that shop occasionally even before?—*A.* No.

30 *Q.* Mr. Kennedy was in the habit of getting soda water from that place during the day time before?—*A.* Yes. The only occasions on which he stayed late in the shop was on this day as well as on the day when the previous shifting took place.

Q. When you shifted from the Bristol building to Times Mr. Kennedy went late? And when you shifted from the Times the arrangement had to be carried on, the shifting was done in the night?—*A.* Yes. Other days in the night he does send for sodas.

RE-EXAMINED.

Re-exa-
mination.

40 *Q.* You told me in examination in chief that it was not earlier than 12.30 when you went to Mr. Kennedy's house?—*A.* I cannot remember. Yes. I did tell that, but I did not know what the time is. Whatever I thought I told but the time may be 9.30 or about 9.45. (To COURT: When I was examining you you said you stuck to your position that it was 12.30 that you went to Mr. Kennedy's?—*A.* Yes.)

Q. Do you still say that you got the petrol tins at 1.30 or thereabouts?—*A.* Yes. I now say that I came with the petrol tins about 1.58, about

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1.50. I am certain of that. (To COURT: It was very near 2 that I came with the petrol.)

Q. So that you must have been waiting for the petrol from 9.30 to 2? Not necessarily at the depot but without going home?—A. Yes.

Q. You also told me that Mr. Kennedy ordinarily arrives at the shop between 8 and 9 other days?—A. Yes.

Q. Now on this day why did you go to the bungalow at 9 or 9.30 when he would be at the shop?—A. I just thought of waiting until he comes and directly he comes I will get leave. If I go to his shop he would not help me. He would say go to the assistant.

Q. The assistant is on the first floor?—A. No every floor he is. He is general manager. If I went to the shop I would have been referred to Mr. Ogle.

Q. It was just an accident that he happened to be there? According to the usual arrangement I would not have found him?—A. Yes. No I just walked slowly. I thought of taking my own time and going there and if he was not there to wait and to get my leave. I said that I told Simon Fernando that I was employed at Mr. Kennedy's.

Q. Did you tell him that when you went 1st and asked for petrol or when you went the 2nd time to get delivery of the petrol?—A. No, after the delivery. When I gave the balance and all he asked me from where I came. I am quite certain, about that. It was after he gave delivery of petrol to me. He asked me for cheap shoes that time. He asked me "Where do you come from?" He spoke to me in English. I said from Mr. Kennedy. That was when I went and gave him the deposit. Yes, after the delivery he asked for cheap shoes.

Q. Then when you went the 1st occasion he did not know where you were from?—A. That is first when I told him.

Q. When you went there and gave the order for the petrol at that stage you did not tell him?—A. Yes, he asked me. (To COURT: When I gave him the deposit he asked me who I am.)

Q. Who told you that Zain Ahamath was Ferguson's orderly?—A. I do not know.

Q. Nobody told you that Amith was an orderly of Ferguson?—A. Might have told me but I forgot it. I did not hear it before it was put to me today. I heard so. After I heard the sound it was not much necessary for me to wait much longer. (A part of his statement to the Police is read.)

Q. You made a statement at the Fort Police station the day after the fire?—A. I think so. (The passage is put to him.) I did not say so. I just had one right leg in the rickshaw. Directly I heard the "Dom" I just looked to see some people running in the far distance. It was so dark that I could not see well. I deny having made that statement that I stood for a few minutes wondering what it could be and that I saw people rushing about by the Times building, after I heard the explosion. I deny having stopped there for a moment thinking what it could be.

ADJOURNED.

18th September, 1934.

Accused present.

Same Counsel as on previous day.

ZAIN MAHAT. Affirmed.

EXAMINED.

I am a watcher employed in the Times of Ceylon. It is my business to watch the entire Times building. I watch from 4 o'clock up to 12. At 12 Deen Miskin relieves me. Once in 15 days we change our turn of duty. I remember the day of the fire. That day I was on duty at 4 o'clock in the evening. I did make a night round that day shortly before the fire. I commenced that night round about 10.40. I carry a tell-tale clock and a hurricane lamp. (To COURT: The tell-tale clock registered our time when we reach particular places.)

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Q. The cards are kept in particular places and you got to punch those cards at particular points of time?—A. No, the cards are placed in that clock at various places. I started at 10.40 and returned at 5 minutes to 11. I started that round from the Times section of the basement. I know that room where they have the gas and electric meters. It is correct to say that the door leading from that room to the Times basement is an expanding metal door. (To COURT: It is known as the current room. There is an expanding metal door leading from the current room to the Times basement.)

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Q. Where did you commence your round with reference to that door?—A. Near the basement; near the machine where the key is left. About 15 or 20 yards away.

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Q. From that door in the basement?—A. The place where the key is left. From there I went to the inquiry office, of the Times, on the ground floor. We did not go out. (To COURT: From the ground floor I came to the Times inquiry office. From there I went to the 1st floor as far as the last floor. I went by the staircase, I went to the 1st floor, then 2nd floor, and went up as far as the 6th floor, the top. There are 6 floors. Including the ground floor and basement 7.) I went to the top and I came down. I came back to the despatch department of the Times building on the ground floor. When I reached this despatch department it had not struck 11. I reached the despatch department about 10.55 or 10.56. I left my hurricane lantern and this tell-tale clock there and went to Mr. Kennedy's part of the building via the inquiry office. That is really the vestibule near that lift. I know the door leading to Mr. Kennedy's shop near that lift. The lights were on in Mr. Kennedy's shop. (To COURT: Lights on the ground floor.) I know Mr. Kennedy's main door leading to Main Street. I did not see at that time whether that door was opened. The door was closed.

40

Q. The main front door leading into the street was open?—A. I did not observe that.

Q. You told us that the door by the lift was open?—A. Are you questioning about the Times office. When they are inside they keep that door closed, when they go out they open it and go out. I know the door leading to Mr. Kennedy's shop near that lift. When I went there that door

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was closed. If anybody wants to go out then they open and go out. When I went it was closed. The lamps were lighting in Mr. Kennedy's shop. I did not see anybody inside the shop. I only saw Mr. and Mrs. Kennedy going out. I saw Mr. and Mrs. Kennedy coming out from that door near the left. (To COURT: There is no glass in that door. It was a door like that (pointing out a wooden door) with no glass.) Mr. and Mrs. Kennedy came out through that door and came to the entrance. I was standing there. They came as far as the main Times lift. That is the main entrance to the whole building. I saw Hossen. While I was coming he was coming. He came along that door and went out. (To COURT: That was before Mr. Kennedy and Mrs. Kennedy came out.) I saw him going out. I questioned him, "Where are you going." He said "I am going to bring a bottle of soda for the gentleman." I saw Hossen come back with the soda with a glass too. He took the glass and bottle and went inside the shop, entered the shop by that same door near the left. (To COURT: The door was then closed and he opened it and went in.) At that time the gentleman entered the shop the lady was talking to me at the entrance, the main entrance to the Times building. After that I heard the sound of a fire. I heard a big sound. I saw Hossen go inside the shop with a bottle of soda. I did not see him coming out. I could not see that. Mr. Kennedy said "I will go and have a drink and within a few minutes I will go." He said to me "Watcher I will go inside. I will take that soda and then within a few minutes I will go away." Yes, I was talking to Mrs. Kennedy at the entrance. (To COURT: She was standing near the doorway, I was standing out.) I was standing close to the door. I said that I heard the loud noise after that.

Q. You heard the noise how long after Mr. Kennedy left you after making that remark?—A. I heard that loud noise about 2 or 3 minutes after he went away. For that noise all the lights went off. Until the noise the lights were on. I am an Ex-policeman. The noise was that of the firing of a machine gun. I heard only one noise, one explosion. (To COURT: When I was in the Police force I did down the line firing. I know that. What I meant was the sound of a big machine gun, a cannon. This was one like a cannon gun.) It was the report of one shot as it were. Almost simultaneously the lights went off. The whole place became dark. I went up to the main road and from there to the despatch department. (To COURT: Both Mrs. Kennedy and myself got into the main road. I left Mrs. Kennedy there and ran away towards the despatch department. I know Main street and Duke street. The door of the despatch department was closed. At that point of time it was dark and I called out for Deen Miskin the other watcher. He was sleeping at that time in the despatch department on a table. I opened the door of the despatch department and I told Deen Miskin to telephone to the Fire Brigade and to the Police, and I went back to main street. I came back the same way. On my way back Mr. Kennedy through that small door, he jumped over that. I saw that. That is the chute door.

Q. He jumped on to the road?—A. He jumped over and got into Duke street. The metal door was fallen on the ground.

Q. With the wooden door too?—A. I cannot say that. I did not observe.

Q. The door had fallen on to the street or was it still on the edge of the building?—A. I cannot say for certainty.

Q. Did you observe Mr. Kennedy's condition at the time?—A. At that time I found small wound here and he was bleeding. I found a wound (pointing out place) near the eye brow. I spoke to him. I asked him, "What happened master?" and he said "Watcher, I don't know." Mr. Kennedy turned, I went off to the main road. He turned towards Gaffoor's building, which is on the other side of main street. I came ahead. I went to the centre of the road. I had a police whistle, and I blew it. In the meantime there was a blazing fire in Mr. Kennedy's shop. As soon as I heard the sound I turned and looked and saw the fire setting in, I looked at Kennedy's shop while I was going towards the road and saw fire at Mr. Kennedy's shop. I know the main Times lift. I know the well of the lift. At the time fire was going out of that lift I was not there. After I came back and blew that whistle I tried to go there again. I could not go; but I took the other turn by the back door of the Times but by that time the fire brigade and the Police arrived.

Q. You remember saying that you started your round at 10.40 on the same side of the basement where some key is kept?—A. Yes.

Q. When you went there did you get any unusual smell?—A. No. I was carrying a hurricane lamp, which was lighting at the time. I know the smell of coal gas. I did not get the smell of coal gas, at that time. (To COURT: I know this kind of petrol. There was no unusual smell. There was some machinery there. There was no petrol smell.)

CROSS-EXAMINED.

I was in the Police force. At the time of retirement I was serving the Police force as a Sergeant. I was condemned by the medical board on ground of ill-health therefore I retired. About 20 or 25 years ago when Mr. Ferguson was in Kandy I was serving him as his orderly. He was the Assistant Superintendent of Police there I was a Police constable. In any case more than 20 years ago I served under him. It may be less than 20 years ago. I cannot be positive about it. I retired on pension. Then I joined on as a watcher at the Times building.

Q. How long were you working under Mr. Ferguson?—A. I cannot be very definite about it. I was not in fact serving under Ferguson. Mr. Ferguson must have been there either for 6 months or 1 year there in Kandy. During that time I was a constable. I retired in 1931 about 2 or 3 years before the fire. At the time of the fire I was 2 years in service at the Times. My fellow watcher was Deen Miskin. Besides him there was a 3rd watcher. Miskin was not in the Police force. I am the only one of the watchers who was in the Police force.

Q. You began from near the switch room?—A. Somebody else is in charge.

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Q. You began your rounds that day from near the current room? From the basement?—A. I got to the basement from the despatch department. I had to come down to the basement.

Q. The despatch department is on the further end from the main street?—A. The back portion of the premises from the main street. It is the extreme end of the building. The room adjoining this room is the tramway office.

Q. In between the tramway office and the further end there is a long room? This despatch room is it a long room?—A. It is fairly broad and long. It immediately adjoins the tramway office, and extends almost to the end of the building. The extreme end ends with a wall. At the corner of the extreme end there is a lavatory on the ground floor. Between the lavatory and the tramway office is the despatch room. 10

Q. That despatch room has got only one door opening on to Duke Street?—A. There is only one door which I make use of. There are 3 other doors which are usually shut. There are 4 doors altogether. One I use. The other 3 are not opened during the day. The door at the extreme end is open at times only when the scavenging coolies want to take away the refuse.

Q. This night what room door did you open? After the explosion you went and opened the door you told us?—A. I opened the 2nd door which is close to the tramway office. From the despatch room I went down to the basement. I walked round the basement. 20

Q. There were a number of men sleeping on the paper rolls?—A. I did not see anybody. It is not possible for anybody to sleep there. I say that nobody was sleeping there. (To COURT: After 5 o'clock no workman is allowed to remain there. As a rule all the workmen are despatched at 5 o'clock. There are some workmen working till about 5 or 6 o'clock.) Q. To get to the current room you will have to go between 2 reels of paper?—A. Yes. 30

Q. How far down that group between on the 2 reels of paper did you go?—A. About 2 or 3 yards. These reels of paper were about 8 feet high.

Q. You only went down a few yards down that passage? You must have stopped a good way off the current room door? The current room door must have been as far as that constable from you? (Pointing out distance.)

Q. I was standing say at that end of the table. The current room door must have been somewhere near the table. A. I went as close as that.

Q. Then you must have gone more than 2 or 3 yards down that grove between the reels of paper?—A. I cannot be very definite about it. Then I turned back and went to the ground floor. Then I went to the 1st floor went round there. I then went to the 2nd floor and looked round there and the 3rd floor and I looked round there and then to the top and I looked round again. I did 5 flights of stairs and examined them all and then I came down, went back to the despatch department and left my lamp and clock both there on the table. 40

Q. You started off at 10.40. You must have taken 15 to 20 minutes?
 —*A.* About 15. I do not know what my fellow watcher has stated in the Police Court. I know the fact that when I returned to the despatch department the clock had not struck 11. It was about 10.55 or 10.56.

Q. After your return from your rounds do you ordinarily go towards the Times inquiry office and get out that way?—*A.* If the main door is not opened I was not in the habit of returning to the inquiry office.

Q. On this night you went because there was work going on and there were lights burning at Mr. Kennedy's?—*A.* No, not for that reason. It is through our entrance one has to gain admittance into Mr. Kennedy's stairs. I know a little English. It is only A. Class sergeants, who have a good knowledge of English who make entries in the information book. I am a B. class sergeant. I have not made entries in an information book—not even in a note book. We used to make entries in our note book for our guidance in Tamil. Never in English. I am speaking the truth. I am quite certain.

Q. Ordinarily do you after you finish your night round go towards the inquiry office?—*A.* When I get out for my rounds I used to go by the inquiry office, not after I finish my rounds.

Q. What made you go on this night?—*A.* I went near the door because the key of the door was with us—the key of the main door. I went merely to find out whether all the people working inside had gone out so that I might lock the door. We had nothing to do with Mr. Kennedy's shop. I keep that key. I personally keep the key usually. On this night the locking of this door was delayed on account of the work going on. Ordinarily I get that key by say 6 o'clock.

Q. On this night you came there with a special purpose of seeing whether the work was over?—*A.* To find out whether the workman in Mr. Kennedy's shop had gone out.

Q. Did you find Mr. and Mrs. Kennedy inside the shop?—*A.* I saw that they were inside the shop only when they came out.

Q. Prior to their coming out Hossen went out and when you questioned him he said he was going to bring in a soda?—*A.* Yes.

Q. Where is that tell-tale clock that you took back to your despatch department?—*A.* I left that clock on the table in the despatch department. I remember I gave evidence in the Police court on 2 occasions. On the 11th of April on the 1st occasion I gave my evidence practically fully. Then in July I gave evidence and produced this lantern, as being the lantern with which I did my rounds. I was not asked to produce my clock, and I did not do so.

Q. Nor was the card which would indicate the time when you came back to the despatch room produced at any time?—*A.* No. (To COURT: That has never been produced.)

Q. That card would indicate undoubtedly the time when you came back to the despatch room and kept the clock there?—*A.* Yes.

Q. Mr. and Mrs. Kennedy came out shortly after Hossen?—*A.* Yes, and they were in the vestibule all that time.

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Q. In between the door and the lift?—*A.* Yes.

Q. When Hossen returned with the soda Mr. Kennedy told Mrs. Kennedy "As soon as I have drunk that soda we will go"?—*A.* I did not notice him telling so to Mrs. Kennedy, but Mr. Kennedy told me that he would go away after he takes the soda. All that I remember is what Mr. Kennedy told me but I did not notice him telling anything to Mrs. Kennedy in English. I said the message was for me because he called me "Watcher" and addressed me and therefore I understood that what he said was meant for me. (To COURT: I was just standing opposite to him, and I understood that the words were addressed to me.) The door was open at the time when they came outside. (To COURT: The door of the ground floor was then open.) I got no smell then either. I did not notice any smell at all. I did not see Hossen pouring out the soda for Mr. Kennedy. I saw Hossen taking the soda bottle inside. I did not see him pouring the soda out.

Q. But in 2 or 3 minutes you say there was an explosion?—*A.* Must have been. My recollection is that within 2 or 3 minutes after Hossen went inside there was the explosion. I cannot be very definite about it. Simultaneously with the explosion the lights went out. At the time of the explosion I was talking to Mrs. Kennedy. Not 4 feet away from the door. It cannot be 4 feet. (The witness points out a distance of about 2 feet as the distance from the door where he was talking to Mrs. Kennedy.) I know the door by which Mr. Kennedy went in.

Q. Mr. and Mrs. Kennedy were in between that door and the lift?—*A.* When they came out they stopped in between the door and the lift.

Q. And that is where Mr. Kennedy said in 2 or 3 minutes after I have drunk that soda we will be going?—*A.* Not from the place where they stood. They went inside.

Q. When Mr. Kennedy said as soon as I drink the soda we will be going he was in between the door and the lift?—*A.* Yes.

Q. Then Hossen and Kennedy went into the room?—*A.* Mr. Kennedy was there. Only Hossen took the soda inside. When Hossen took the soda Kennedy did not go inside. Mr. Kennedy's went in first. Hossen followed him into the room.

Q. You and Mrs. Kennedy were talking at that time somewhere in between the door and the lift?—*A.* Near the main entrance. (To COURT: When the soda bottle was taken you and Mrs. Kennedy were between the door and the lift?—*A.* Near our entrance.

Q. It cannot be correct because before Hossen came with the soda Mrs. Kennedy had gone inside?—*A.* It was when you were about 2 feet from the main street entrance that you heard the explosion? I was standing at one end of the entrance when I heard the explosion; not that I was 2 feet away. I and Mrs. Kennedy were at the entrance.

Q. When that explosion occurred Mrs. Kennedy turned round and went towards the door leading into the ground floor?—*A.* I do not know about it. Immediately after the explosion I told Mrs. Kennedy "Come lady we shall go out and I jumped and ran away." I do not know anything about the whereabouts of Mrs. Kennedy after that.

Q. Did you not tell her "it is dangerous to go there" when she was going towards the door leading to the room?—A. I do not remember saying that. I only told her come away. It is quite possible that I told her not to go in. It is not possible that I pulled her in. I did not touch her. I got out to main street and ran out to the despatch department. I did not hear any small sound at first. I say it was only one big explosion I heard. When I was running in the direction of Duke Street round I saw the flames. When I moved a little distance away from the door I saw the flames inside Mr. Kennedy's shop.

10 Q. That is as you were going along Main Street to get to the turn off of Duke Street. The whole of the ground floor appeared to be on fire. There were big flames. The glass windows were blown out.

Q. Towards Duke Street side there were big volumes of smoke coming out?—A. Not at the time I went there. I did not notice any volumes of smoke in the direction of Duke Street but after I went there may have been smoke there. After I went to the despatch department and was returning I saw volumes of smoke. I cannot be positive whether the smoke was thick or not. The smoke and fire was inside. I cannot gauge the smoke and fire. When I was there I did not notice any huge volumes of smoke. Hearing
20 the explosion the man in the despatch department had already got up. I did not go and wake him up. At the time I opened the door I saw this man in the despatch department already awake. I had not to awaken him. (His statement to the Magistrate on this point is read to him.) I referred to Deen Miskin who had already come here and was sleeping. I was standing outside and shouted out to the man inside. I did not go inside and put him up. When I went he was up. I am definite. I called him Deen Miskin and he also answered. (His statement on this point to the Magistrate is again read.) I stated so in the Police Court. Then you say "I ran and opened that gate and shouted to Deen Miskin, another watcher, who was asleep?"
30 While approaching the gate I shouted out for Deen Miskin but after I opened the gate I saw Deen Miskin awake.

Q. Did you tell the Magistrate this: "I ran and opened the gate and shouted to Deen Miskin another watcher who was asleep?"—A. I might have stated in the Police Court that I shouted out for Deen who had already come there early during the day for sleeping. I told him to 'phone the Fire Brigade. (To COURT: There is a telephone in the despatch department of the Times.) I have given evidence in my career as a Police officer a number of time. Whatever I know I can say. That was the 1st time I went along Duke Street. (To COURT: That was the 1st time I went
40 down after the explosion.)

Q. At that time when you went down that way first was there smoke issuing from Mr. Kennedy's part of the shop?—A. Smoke might have issued from Mr. Kennedy's shop. I cannot be positive whether I noticed any smoke issuing from Mr. Kennedy's place when I was going along Duke Street.

Q. After you gave Miskin this message unlocked that door and told him to go and 'phone up and you were returning was there a volume of

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smoke issuing towards Duke Street?—*A.* While I was coming back after telling Miskin to summon the fire brigade I saw a large volume of smoke. I did not notice whether the streets lights were blown out by this time.

Q. While you were on main street running towards the despatch department did you not see that the lights in main street or abutting it had gone out?—*A.* I did not notice. It was all quite dark when I returned, and there were volumes of smoke and fire. (To COURT: I did not notice the street lights off. But I know it was dark.) There was light all over that locality owing to this fire. When I was questioned about the street lights what I said was that there was entire darkness. The street lights must have gone out. 10

Q. It is a fact that towards Duke Street there were volumes of smoke? On your return journey you saw volumes of smoke?—*A.* Yes.

Q. How far away from Kennedy's were you when you say you saw him jumping out through a door? From the witness box up to that book on your table. (Points out 14 feet.) (A passage in Page 6 of the Police Court evidence (Page 4 of Record) is put to the witness by defending Counsel:—"I saw Mr. Kennedy stepping out of the chute quickly?"—*A.* I know what the chute is. I said that in the Police Court because I saw him stepping out of the chute. The chute is quite close to the place from where he stepped. From where he came I did not know. I saw him jumping out. That is how I saw. (Another statement of his in examination-in-chief on page 4 of the record is put to witness: "On the way I saw Mr. Kennedy jumping out of a small door from a door?") 20

Q. Did you say that to the Magistrate?—*A.* I stated a door. I used the word small. That chute door is about 5 feet wide. I called it a small door because the other doors are broader than 5 feet.

Q. As a matter of fact the door from your passage the vestibule into Kennedy's shop is only about 3½ feet wide?—*A.* Yes, It may be so.

Q. Your own door that leads into the main street is narrower than that chute door?—*A.* Because the doors of the despatch department are wider than this door I referred to this as a small door. (To COURT: I do not think I have stated to the Magistrate that I saw the accused jumping first through another door and then that door. I do not think that when I stated that I referred to two doors. In Tamil I gave my evidence there and there I referred to this Mr. Kennedy coming out in the direction of the small door. Because that door is attached to the foot of the chute therefore I referred to it as a small door. It is a fact that I referred to it as a small door. 30

Q. In the spiral staircase there is a small door? Do you know that door?—*A.* I did not see any small door there. I am not aware of the existence of a small door there. I frequent only the Times building. I do not go to all the nooks and corners of Kennedy's shop. I have never been there. 40

Q. As a matter of fact you know that lots of loiterers workmen of the Times building and others used to patronise a tea boutique opposite to Kennedy's in Duke Street?—*A.* Yes.

Q. And having had the tea they used to come and sit on the step opposite that chute and keep smoking?—A. Yes.

Q. And Kennedy's used to pour water on that step to prevent them coming and sitting there?—A. I did not see.

Q. We suggest to you that this small door near the spiral staircase could be seen through the expanding metal door on the road? By the expanded metal door on the door you can see this door near the staircase?—A. But I never noticed that. (To COURT: I have never seen this small door. I never went inside.)

10 Q. Are you aware that Mr. Kennedy had complained to the Times people that their workmen used to come and sit on that ledge opposite the chute door and keep smoking and throwing their cigarettes into the basement through the expanded metal door?—A. I am not aware of any such complaint made by Mr. Kennedy.

Q. And that your watchers had been warned by the Times manager to keep the people away from that area?—A. No, I was never informed. I do not recall Mr. Kennedy putting water there to prevent their sitting down there. During the day time we do not watch there. Half the month I work during the day and half the month during the night. Even if we work
20 according to turn we only look to matters outside. 30 days during the night and 15 days during the day. There are 3 watchers there. When I said I was not a day watcher I meant that I was not a day watcher during those days.

I never made it a point to go inside and to find out all these things.

(At this stage his Lordship says: "I place at the disposal of the defence 2 statements made by this witness one on the 29th September at 12.35 to the Police when he said, 'After calling the other watcher I came to the main street, blew my whistle I then saw Mr. Kennedy coming from the direction of his shop towards main street.' Also a later statement in the
30 examination of the same witness by the Police on the 5th October where he says this:—'I told him (Miskin) to phone the fire brigade and Police. I saw him ringing up. I then went back to the main road. When I got about 2 yards from Kennedy's side iron gate he jumped down from the doorway. I cannot say from what part of the inside of the building he came. I did not notice the iron expanding gates. The other doorway was open. It was just as he jumped on to the road that I spoke to him.')

Q. On the first occasion you said nothing about seeing Mr. Kennedy jump from anywhere or step from anywhere?—A. It may be so. I was asked in what direction Mr. Kennedy was going so I said he was walking
40 from the direction of the shop to main street. All of my own accord I was making a statement. Nobody asked me any questions. If I was asked I would have answered questions. At the time these various details were fresh in my mind then I must have certainly spoken the truth. My recollection is that I have stated to the Police that I saw Mr. Kennedy jumping out. I am quite certain that I must have stated to the Police because I saw Mr. Kennedy and talked to him while he was jumping out. I know the value of the statements I am making. The last time I saw Mr. Kennedy

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mination—
continued.

before the explosion was when I saw him going into that building to drink that soda. Then a sudden explosion occurred when he was inside. I am quite positive that I must have stated to the 1st Police officer that I saw him jumping out of the building.

Q. From the expanding metal door at the entrance of the chute?—A. I must have referred to the door. I cannot remember the name of the person to whom I made that statement. Some European Sergeant of the Fort station is the one to whom I made that statement.

Q. That statement jumped does not appear in your first statement?—
No answer. 10

AFTER LUNCH.

ZAIN MAHAT.

CROSS-EXAMINATION—(continued).

Q. Did you see Mr. Owen that night?—A. No. (To COURT: I know the gentleman now. I did not see him there that night.)

Q. He gave evidence in the Police Court after Deen Misikin and yourself?—A. Yes.

Q. You did not see him at all that night?—A. There was a crowd of people, but I could not make him out.

Q. Did you see him walk out with Mr. Kennedy towards the car?—
A. No. 20

Q. Did you see any gentleman following or going along with Mr. Kennedy as he was going towards Main Street?—A. No.

Q. At the spot you had indicated that the expanding metal gate was near the entrance to the doorway. You did not state definitely whether it was partially on the ledge or partially on the ground, but you said it was lying there?—A. I could not definitely say.

Q. You said that you saw an injury in the region of his left temple?—
A. I saw blood emanating from that portion.

Q. Blood flowing down his face?—A. Yes. 30

Q. That is the only injury you observed?—A. Yes.

Q. You did not notice that the skin was hanging from his hands?—
A. I did not notice that.

Re-exa-
mination.

RE-EXAMINED.

Q. It is correct that you made your first statement to the Police officer at 12.25 on the 30th September?—A. That would be about one hour or an hour and a half after the fire, or less? Yes.

Q. You said that statement was taken down by an European police Sergeant?—A. Yes.

Q. Were you put any specific questions by that Police officer?—A. No. 40

Q. Did you in your own mind attach any importance to your meeting with Mr. Kennedy after the fire? At that point of time?—A. At that point of time it did not strike me that my meeting Mr. Kennedy was an important thing.

Q. At the time you made the statement had you reason to suppose that the fire was not due to an accident?—A. At that time I did not know how the fire had originated.

Q. Do you say you had no definite ideas about the fire?—A. At that time I had no definite ideas as to the origin of the fire.

Q. As a matter of fact you were the first witness to make a statement to the Police?—A. Yes.

Q. You made your second statement to Mr. Ferguson on the 5th October?—A. Yes.

10 Q. Did Mr. Ferguson question you on that date in detail?—A. Yes.

Q. Did he ask you to specify the position in which you first saw Mr. Kennedy?—A. Yes.

Q. When you made your statement to the Reserve Sergeant did you make it in Tamil?—A. I made my first statement to an European Police Sergeant. There was a Reserve Sergeant Carolis who interpreted my statement to the European Police Sergeant. I made my statement in Tamil.

Q. Is it the fact that that very night before the fire you had asked Mr. Kennedy to give you a job in the new shop. (No answer.)

20 To COURT: I had not been asking Mr. Kennedy for a job. I had no intention of giving up my working career at Times.

The door of the despatch room which I closed after the fire is usually locked, after the workmen had gone out. That is left open till about 9 p.m. I expect telegrams or some parcels.

Q. Do workmen sleep at times in the basement at nights?—A. Only on Saturdays during the night because there would be work for the whole night otherwise they would not be allowed to sleep there. During the other nights there would be no workmen sleeping there. I would not allow any workmen to sleep in the basement. On the night of the fire when I went
30 my rounds I did not see any workmen sleeping in the basement.

(To COURT: It is not possible for anybody to sleep on the piles. It is not a flat surface but in rolls.)

Q. That night shortly before the fire is it correct that you were waiting to shut the Times Main Door?—A. Yes.

Q. You could not do that until Mr. Kennedy and those in his shop left?—A. Yes.

Q. Did Mr. Kennedy know you were waiting to do that?—A. He must have known.

40 Q. You have stated that Mr. Kennedy told you "I shall have this soda and shall be going, or words to that effect?—A. Yes.

Q. You say that he addressed that to you presumably because you were waiting to close that door?—A. Yes.

Q. You remember Mr. Kennedy going into his shop before the soda came?—A. Yes.

Q. In your evidence so far as you can recall was that Mr. Hossen followed with the soda bottle and glass?—A. Yes.

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No. 8.

Evidence for
Prosecution.

(jj) Zain
Mahat.

Re-exa-
mination—
continued.

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No. 8.
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(jj) Zain
Mahat.
Re-exa-
mination—
continued.

Q. How long after Mr. Kennedy went inside the shop was it that you heard the explosion?—*A.* All that I can say now is that the explosion must have taken place about 4 or 5 minutes after Mr. Kennedy went into the shop.

Q. I understood your evidence to be that when you were returning after giving a message to Deen Miskin and to the Police that Duke Street was enveloped in smoke?—*A.* The front portion of the street was enveloped in smoke—only Mr. Kennedy's side.

Q. You remember the chute door to which you referred. I understood you to say that that was fallen down?—*A.* Yes. 10

Q. Were you able to look through that doorway?—*A.* I cannot say now whether at that moment whether I could look through that door or not but I did not look.

Q. Does your business take you inside Mr. Kennedy's shop?—*A.* No.

Q. That metal door do you know is always kept locked except when packages are received?—*A.* Yes.

(TO MR. PEREIRA WITH PERMISSION.)

Q. You saw Mr. Kennedy jump out of the door near the chute?—*A.* Yes.

Q. You spoke to him?—*A.* Yes. 20

Q. You saw the blood coming from his head?—*A.* Yes.

Q. You walked along with him?—*A.* I did not walk with him.

Q. You did not stand there?—*A.* I stopped and asked him what happened and he said he did not know. He turned in the direction of Gaffoor's building.

TO COURT: He was facing Kennedy & Co. I spoke to him and he turned in the direction of Gaffoor's building and I ran away from the place. I do not know whether he was walking.

Q. In the Police Court you said this, is it correct, "I asked him what happened. He went towards Gaffoor's building. That is how it is recorded?—*A.* I have stated so. 30

Q. He went towards Gaffoor's building?—*A.* I referred to the turn he took.

I was asked specifically to state in what direction he was going. I did not notice him go across the tram-line. I was going to the back portion. I went to the road Main Street and Mr. Kennedy must have gone in that direction. I parted from Mr. Kennedy at the spot where we talked, *i.e.*, at York Street—Duke Street. I was going in that direction but I do not know if he was going towards Gaffoor's building. After going together and walking a foot or two we must have parted. At the spot where he jumped I left Mr. Kennedy. Mr. Kennedy did not tell me anything about the fire. I did not notice any serious injury on Mr. Kennedy and did not think of waiting on him. I did not see him stagger. 40

DEEN MISKIN. Affirmed.

47 years of age. I am a watcher employed at the Times of Ceylon Co. Ltd.

I remember the date of the fire. I came on duty that night from 12 mid-night and I was to be on duty till 8 a.m. the next morning. I would be taking over from last witness at 12 mid-night. At the time the fire occurred I was lying on the table in the despatch department waiting to go on duty. I was awake at the time. Before the fire took place I met last witness in the despatch department. He came there to open the door.
 10 This was before the fire. He came to open the big iron gate at the side—there is a big door leading to the despatch department.

(To COURT: I know Duke Street. That door leads to the side of the building.)

I know Zain Mahat. I remember hearing the explosion that night. After Zain Mahat came and opened the door I met him.

(To COURT: That was before the explosion.)

Q. What is the door he opened?—A. At the left hand side there is a door leading to the garage. That gate leads to the road which leads to the garage. That is not Duke Street.

20 (To COURT: I have heard the name Main Street. There is no name for the road that leads to the garage.)

Zain Mahat came to where I was sleeping about $\frac{1}{2}$ an hour before the fire. I told him "Brother" and he came out and we spoke and he went out. That was about 10.30 p.m. I arrived at the building at 10.30 p.m., and found the door locked. I called out "Brother" and Zain Mahat came and opened the door and I then went inside the despatch department and lay down. After I went to the despatch department Zain Mahat locked that door. I was lying on the table and Zain Mahat came to that room for a second
 30 time. His time for winding up the tell tale clock had arrived and so he arrived with his hurricane lantern. They were left on the table and I took both of them and got up. He went down to the basement and passed the same spot from where he started and proceeded upwards and came back. That was about 10 minutes before the fire.

Q. Can you give the time?—A. It was close upon 11 p.m.

Q. What did he do with the tell tale clock and the hurricane lantern?
 —A. He brought them back and placed them on the table.

Q. Where did he go?—A. He went out through the main entrance.

Q. He went towards the main entrance?—A. There is a main entrance for people to enable to come to the lift and he went through that entrance.
 40 That is the door facing Main Street—not 10 minutes afterwards I heard the explosion. It was one loud explosion. With the explosion all the lights in the despatch department went out simultaneously. I did not know what to do and I got up from the table and I was standing there when I was met by Zain Mahat. When I heard Zain Mahat's voice at the big gate calling me, I did not come up to the big gate but I was standing close to the table.

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—
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(*kk*) Deen
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(kk) Deen
Miskin.
Cross-exa-
mination.

Zain Mahat shouted out to me asking me to telephone to the fire Brigade without loss of time. All the doors were shut. I used the telephone in the despatch department. There was a lantern on the table. The room was not in darkness. After I telephoned the Fire Brigade and the Police I came out. When Zain Mahat asked me to telephone I asked Zain Mahat to open the door and after he did so I went to the telephone. On my return I found the door open. I came out of the building and found the place ablaze.

CROSS-EXAMINED.

Again Mahat returned to the despatch department after his rounds at 11 p.m. I saw the time from the tell tale clock. I said in the Police Court that Zain Mahat returned at 11 p.m. I said in the Police Court that he left the clock and the lantern and went to the front of the building via the passage. Within 5 or 10 minutes after he left the explosion took place. I do not remember having stated in the Police Court that 5 minutes after he left the explosion took place. 10

RE-EXAMINED.

No questions.

(ll) S. P.
Owen (re-
called).
Examina-
tion.

S. P. OWEN. Sworn.

RECALLED.

53 years of age. I do a tailoring business of my own at Chatham Street. I have been doing that business for about a year and 9 months. I was with Broughams between 4 and 5 years. Prior to that I was with Miller's from 1911/19. I have known Mr. Kennedy casually since I expect 1912 or 1913 when he came out first I met him in business about that time. Since I have never met him except in business. I remember the night of the fire 29th September last. Just before the fire occurred I was standing at the Apothecaries corner at the end of Prince Street with York Street. I had been in the popular care and I was returning. This was about 10.55 p.m. I was standing at the corner talking to a friend. There was a very heavy explosion. It was about 2 or 3 minutes after we had been talking or about a minute to 11 p.m. 20

To COURT: From what happened I worked back and I fixed the time at just over 11 p.m.)

I do not think it was as late as 6 minutes past 11 p.m. What made me think it was about that time was about the time we reached the Hospital and when we counted the minutes it could not be after 11 p.m. It is an estimate merely on my part I cannot recall the hour 11 strike. I do not remember looking at the time immediately or immediately after. It was hardly one explosion I heard. I personally remarked when it happened "there goes the Times machinery from floor to floor." It was not a bang it was a crash as if things were falling. It was a noise. It was evidently an explosion but it was a rumble. It would have been only for a minute or two but it was a bang as if those things were falling, crashing. It might have 40

been more than one explosion. It was not one clear explosion. It was a rumble as if things were falling. It occurred within the space of a second. I had passed that remark to my friend and he said "I do not think it so," and he said it was Bousteads, and then I saw a flame from where I was standing at the lift shaft—at least in the small window which leads to the lift shaft. I saw a flame and went down there. I saw the flame from where I was. I ran across to the Times building. I went to the vestibule first. When I arrived there the first thing I saw there was a fire and also at the same time I saw a motor car and a lady seated inside the car and a driver and a man by the car. The lady was at the side of the car, not inside the car. She was standing on the pavement side of the car. The driver I should say was standing near the bonnet of the car. There was another man. I do not know him at all. He was a young man. I cannot remember much of the man and I told him immediately to go off to telephone to the Police Station. I told him he would find a little red box by Apothecaries corner and I asked him to telephone to the Fire Brigade. I knew there was a fire alarm there. I did not know that the lady was Mrs. Kennedy. I asked the lady what the trouble was and I said "is Mr. Kennedy here" and she told me what she had to say and I advised her to go in the car and go with the driver to the fire station in order to get her out of the way. Mrs. Kennedy had told me that her husband was in the building and that she thought he was dead. The car turned round and went towards the fire Station and I went towards the building. I entered the building by the lift end—by the Times entrance. I went until I was just opposite the side door coming from Kennedy's. That was Kennedy's shop door. I was not able to get as far though because there were flames coming through. I could not see what had happened to the fabric. There were no lights in the place. Then I went in as far as I could and called out for Kennedy as loud as possible as Mrs. Kennedy had told me that he had gone to put out the switch and I thought the switch would be there. I thought so because the lifts were there and I called out for Kennedy and looked for him and I had to retire because I was choked with the fumes. I came back and got my handkerchief and tried to go back again but I found it impossible and I tried to go in by the main entrance. I know Kennedy's front door—the glass door. I could not swear to anything that happened. I went straight to the front window. I was still on the front window. The window was blown out and some of the goods were blown out from the windows into the verandah into the street. I could see into the ground floor. The flames were there. I tried to get in to the room—the glass was falling all round but I tried to get over the window sill into the room. I got one leg in and got out—it was too hot. All the time I was calling for Kennedy. Then I made up my mind that it was impossible for Kennedy to be there unconscious and so I went further along the verandah and it was perfectly dark. There was smoke, curling smoke but there was no fire, but it was perfectly dark. I stumbled once or twice because of holes in the floor and debris and I went to the end of the building. On the right hand side there are buttresses between the window and I went along till I came to the end of the verandah

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(11) S. P.
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tinued.

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(II) S. P.
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called).
Examina-
tion—con-
tinued.

and kept shouting calling for Kennedy. The windows had been blown out as well as the front windows because the air and smoke was coming from that direction and I continued to call for Kennedy in the hope that he might hear me and I walked back again. In the meanwhile I was walking back I heard a sound and I turned and saw Kennedy standing about 2 or 3 yards behind me. His left hand was on the wall. He was standing nearer the wall. The next step would have brought him to the verandah. How he got there I do not know. Shortly before I saw him there I had gone along that line and I found no trace of him.

(To COURT : I am afraid I do not know what they call Duke Street.) 10

(Shown the plan P24.) What is marked " E " is the main door. " G " is the front window. I tried to enter through the window and I found it impossible. That is the window " G." Then I came along the verandah holding on my right with the wall on my right. I went round the verandah following the right hand wall until I came to the end of the verandah up to " G." I only found a wall in the dark. Then not finding any trace of him I retraced my steps holding the wall by my left hand and I came round the bend " G " until I was standing in front of the first window " G." When I heard the noise me and I saw Mr. Kennedy at the bend " G."

Q. When on the first occasion you went to the end of the verandah you found no trace of Kennedy?—A. No. I called for Kennedy through the windows in case he was in this room. When I got to the end I shouted for him and all the way through and I went immediately towards Mr. Kennedy. He was in a dazed condition. I thought he would fall and I went up to him. He seemed to be in a state of utter collapse. He was hardly capable of standing and I went to him and caught him by the hand at least by his arm and I found that the flesh of his arm was raw and I caught him by the sleeve and I tried to lead him out from where he was standing. As there was heavy smoke I got him towards Main Street opposite to where the fire was. He looked round in a dazed way and looked at the fire and said What is the matter and I said Now it is alright. I said " You want to get away and I said " Let us get to the door, your hands are burnt." I asked Kennedy to come away and I asked him " You do not know anything " and he said " No," No and then the Fire Brigade arrived and I said " Let us find your car and wife " and going towards the door he looked towards the road and found his car facing the Fire Station apparently opposite Walker's show rooms, on the left side of the road. I took him across the road and got him into the car. The driver was there, and I asked him where the lady was and he said the lady was amongst the crowd and I went amongst the crowd and I found Mrs. Kennedy and she was very upset. She could hardly believe Mr. Kennedy was safe and I brought her back to the car put her in and drove round towards the Grand Oriental Hotel because Dr. Denny was dining at the next table to me that night and I thought he might still be there and not finding him there and as the cafe was empty I drove off to the Hospital. The first thing I found was that the flesh on his arms were raw. I gave Mr. Kennedy over to the Doctor. I also assisted in the hospital 20 30 40

to put Mr. Kennedy into bed. Apart from his hands being burnt his face was also burnt. I did not find anything on his face but when I helped him into bed I found his ankles burnt. I also found his socks burnt. On the way to the Hospital I spoke to him. He sort of recovered a little bit and Mrs. Kennedy spoke to him and he said that he did not remember anything, now and he said he put his hand up to put off the switch, and he put off the switch, and then there was a flash and he knew nothing more. He did not say whether it was a tumbler switch or not. When I took Mr. Kennedy to the Hospital the Doctor took charge of him and I had a conversation
 10 with the Doctor. As far as I remember I first saw the Sister and I said "Sister, this is very urgent. This gentleman has had a shock and I do not know whether it is a burnt or an electrical shock and I said he was twitching and I asked her to call the Doctor quickly and the Doctor came in and I told him I wanted him to excuse me as I had not entered the book but I had just brought him in. He asked me what had happened and I told him I did not know whether it was a burnt or a shock and I wanted Kennedy examined I said his flesh was twitching.

The building caught fire within a minute of the explosion. In the
 20 Police Court I forget that I had a two second's conversation with my friend and it might have been a minute or a minute and a half from the time I heard the first rumble till I reached the scene. All I heard the explosion all the light in the Fort went out at the same time. The street lights went out and a darkness seemed to come over. The lights went out and at the same time I saw a flame. I think all the lights in the Grand Oriental Hotel went out. I cannot swear to that, but that is what I think. That very night at 2.5 a.m. I made a statement at the Fort Police Station.

CROSS-EXAMINED.

Q. I think I heard you say you were not certain that you knew Mr. Kennedy casually in the course of business before the fire?—A. I suppose
 30 in 20 years I must have spoken to him no more than 20 minutes in the 20 years. I did not even know he was married. When I spoke to the lady I thought it was his sister or his wife. I was on the Apothecaries pavement about 150 yards from Kennedy's shop. I heard what I should describe as a continuous rumble, a crash. I heard some thing like 3 explosions. It sounded like machinery falling from floor to floor. It sounded like an explosion or like machinery the first floor to the next floor about 1, 2 or 3 floors. I was talking to a friend at the time. I did not realise what the explosion was like until I saw the flame from the small window going up the small lift shaft. It was through there I could see the flame. It would
 40 be about 20 or 30' from the ground floor I could see it. In the side wall there was evidently some opening. Then I doubled towards the Times Building. I must have got to the scene about 1¼ minutes after the explosion. When I got there I found the car near the entrance of the Times Building and a lady whom I now know to be Mrs. Kennedy and a driver and another man. I do not know who this other man was. He was a

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(ll) S. P.
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continued.

youngish man. He was a trousered man. First I spoke to the lady and she told me her husband was in the shop and she thought he must be dead. I said "What is he doing in there" and her reply was that he went to put off the lights and to lock up. She said Mr. Kennedy went to put off the lights and to lock the door. I thought the switch must be somewhere near the door—not from what she said—but because all the lifts were there and I thought the switch would be there. I went as far as the corner of the lift which is used by the Times people. As to going through the vestibule I remember well the lift of the Times is on the left side and the gate is inwards and I came to the door which led to Kennedy's shop and I could not get in as the flames were coming in, through the door. The doorway was opened. I could not examine the corner. There was no doorway. There was fire with the flames coming in so that evidently there was a doorway. Since the fire I have not been inside the premises. I was not aware that the wall which held the door frame which held the door was knocked aside. I went as far as the Times building. I mean the front of the Times—the lift—nearest the front of the lift facing the Young Men's Christian Association. I mean the actual entrance of the lift. I have been up that before. I went towards the front of the lift. That lift is next exactly to Kennedy's door and flames were coming through and so I could go no further. I took a handkerchief and held it to my face and continued to call for Mr. Kennedy and I looked through the rest of the vestibule. I had been on the floor and I found nobody there. I then came into the street and went to the front verandah. I did not try the door but I put my foot on the sill of the window the plate glass had been blown off. I was only able to put one foot into the shop and then come back quickly. That was due to intense heat I told the Police that I went to the lift which was dark and full of smoke. I was standing facing the blown out window and the smoke on my left and I turned and felt along the wall by my hand. I pressed it with my hand and felt the floor uneven as there was debris. I stumbled over stuff but I do not think I stated I fell down. I said the fumes were very bad. In the Police Court I do not think I was asked the question whether I went up towards the end of the verandah. I came back feeling my way with my left hand and when I came to the front where the window was I heard a noise and I saw Kennedy. I know the smell of coal gas. The fumes I smelt I could not say definitely were coal gas. There was a smell of burning leather but the effect of the gas I got was the feeling in my throat which made my head swell and that smell left a taste in my hand which did not leave me for hours afterwards. There was the smell of leather predominating but I think there was a smell similar to the smell of burning coal gas because I know the geysers which we use every day very often used to give out a very strong smell and that is burning coal gas, and that leaves a smell in my throat which I got that night. It affected my throat in the same. The odour gets into the throat and remains there which other odours do not. When I found Mr. Kennedy I went up to him I went up and took his wrist and withdrew it as his wrist was burnt and I got him by his arm and shoulder and elbow and got him on to the street.

(Shown the Plan P24.) I saw Kennedy just at the second bend. I went across the verandah and then on to the street because the rest was dark. It was the shortest way to the scene and the place where the light was. I took him to his car. I found Mrs. Kennedy in the crowd opposite the Times Building. I got her back to the car as well and suggested going to Doctor Denny and Mrs. Kennedy suggested going to the Hospital. I spoke to Mr. Kennedy when I was leading him out and as far as I remember I went and said "Kennedy are you alright" or words to that effect and he said "What is happened, what is happened, What is all this." Then I told him
 10 that it was a fire but I told him he must not worry about it. That is as far as I could get from him. Then in the car he told me that he put his hand to the switch to switch off the light and there was a flash and he did not know anything else. In the Police Court I said it was a big flash. I just thought it was about 6 minutes. I had no way of timing it. I just estimated it was about 6 minutes. In the Hospital I was assisting in placing him on the stretcher and then from the stretcher I helped to lift him into bed and I started to lift him by his shoes. What actually happened was that I put my hands to lift his ankles to lift him into bed and I found his ankles and socks burnt and I removed my hands from his ankles and lifted him by his
 20 shoes and I wanted to unlace his shoes and I had no spectacles on. I had my reading spectacles and they were not suitable and I put them on my fore-head and when I tried to remove his socks the Doctor said "I am afraid we will have to chloroform him and take these things off him. After he was chloroformed. He was chloroformed. I use a separate pair of glasses for reading. I am short sighted. I have got my reading glasses and in order to save time I did not use these glasses and I stooped over and I was able to see without the glasses. At the time I did not get a smell of petrol or kerosine on his shoes. If petrol was spattered over his shoes I would have got the smell and received in on my hands. I had a cup of tea about 10
 30 minutes later and if there was a smell I would have had it. Mrs. Kennedy had a cup of tea in the hospital and I shared it with her. In the meantime I had been to Kennedy's bungalow.

I have had a shop of my own for 12 months since last December. Before that from 1911-19 at Miller's and from 1920-27 until I opened up for myself at Brougham's.

Customers usually come and deposit suit cases at my shop. They are left in shops sometimes by accident and sometimes by design. More often than not they take these things away. What happens is that a lorry driver would come from some outstation and the driver would bring a parcel and
 40 say "Master is coming tomorrow or master is coming next week and sometimes master comes in next week and sometimes master comes 6 months later. I have some stuff lying in my shop up 6 or 7 months now. They are things left by customers. I have a good idea what they are.

In the Police Court I said the skins of both Mr. Kennedy's hands were burnt and they were hanging in festoons. Some pieces were hanging 3 or 4" from his hand. It was not a pleasant sight. His face was not like his hands but they were burnt. His hands were more burnt. His ankles were also

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burnt. I could not even say that the hands were burnt. All I knew is that the skins of his hands were hanging and I saw the clean flesh and I could not say how the skin came out whether it was owing to an electrical shock or whether because of a burn I told the sister that I did not know whether it was a burn or caused by an electrical shock.

RE-EXAMINED.

Customers come and leave things with me sometimes forgetfully and sometimes at their express request. Things left forgetfully are cleared within an average time. Sometimes they are not claimed for months. Sometimes they are big articles and sometimes small. There is dress suit hanging in my show case for 1 year and 6 months. I do not know what happened to the gentleman. We get people ordering stuff and forgetting to pay for them and forgetting to take them away. In many cases that happens among the highest people in Ceylon. One suit case was left 3 months ago but I think it was claimed 6 weeks ago. I cannot say whether it contained petrol tins. It was a locked suit case. If a lorry driver came and left a parcel with me saying master would come within a specified time I would keep it for him. The parcels contain stuffs. That has occurred during the 19 months I have done business. Sometimes people ask me to collect parcels from other shops.

10

20

Q. The third man you say was a trousered man as far as you remember ?
—A. I cannot recognise him if I saw him. He was a man. I told him there was a fire alarm round Apothecaries corner.

(TO THE FOREMAN OF THE JURY) : The burns on Mr. Kennedy's hands seemed to be both the same. There did not seem to be any difference. His right wrist and palm showed red flesh.

19th Sep-
tember,
1934.

19th September 1934.

S. SIRIMAN FERNANDO. Affirmed.

(mm) S.
Siriman
Fernando.
Examina-
tion.

I am the cashier employed at Walker's Garage Turret Road Corner, I mean the Shell Petrol installation. I am in charge. Since this case I got to know a man by the name of Hossen. I remember a man by the name of Hossen coming to the installation somewhere last year. I do not remember the date of the month. To my recollection it was about 9 or 9.30 in the morning. He came up to me and he wanted to buy 4 gallons of petrol in 2 tins. We keep 3 tins normally in stock. On this day we had no tins in stock. When we have no tins in stock and when a purchaser orders for tins we take a deposit or if he is a customer we get an order from him.

30

(TO COURT : We have to get the tins from Kolonnawa depot.) That is where our stores are kept. We do take a deposit. If he is a person who has got an account with us we take a written order from him, if not we take a cash deposit from him—a deposit of Rs. 2/50 per tin.

40

(TO COURT : We take a deposit because of instructions received from our manager.)

We do not order the tins unless we are given a deposit. It is before placing an order with the Kolonnawa depot that we ask for a deposit. I asked Hossen for a deposit. At that time I did not know who he was nor did I ask him. I charged him Rs. 5/- for the 2 tins. He had the money with him then. He did not deposit the money then, but he went away without telling me anything. Before going he did not let me know who he was nor did I ask him.

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(To COURT : I did not know who he was or for whom the petrol was.)

We did not take any notice at first. Hossen returned I think about 10 or 15 minutes afterwards about 9.45 or 10 a.m. He was willing to pay me a deposit against his order. He gave me Rs. 5/- and I ordered the tins from Kolonnawa by telephone. After depositing Rs. 5/- Hossen went away with the receipt I gave him.

(mm) S.
Siriman
Fernando.
Examina-
tion—con-
tinued.

(To COURT : I told him to come after some time. I asked him to come after breakfast.)

I take my breakfast at 12 and I wanted him to come after that. When orders are usually put through the tins are sent in one of the petrol lorries. The petrol lorry came with the tins. I cannot recollect what the time was. When the driver came with anything I had ordered he brought a receipt and a way bill.

(To COURT : Both have to be signed by me. That is usual.)

I signed the receipt. I do initial the way bill also. (Shown P15.) This is the receipt for the tins. It says 2 cans and it is signed S. S. Fernando, dated the 23rd August 1933. (Shown the way bill marked P81.) This is the way bill brought by the driver on that occasion. The way bill shows that on the 23rd August this driver arrived at my depot at 10.10 a.m. but it does not say what articles he brought. That shows the lorry as having left the Kolonnawa installation at 9.50. It also shows that two new tins were brought to the installation that day. The lorry left my depot at 10.30 and has arrived back at the installation at 11.10. I have initialled the document.

(To COURT : The two new cans were empties and we filled them with petrol at the station.)

We call them new tins. When they come direct from the Kolonnawa depot we call them new tins. I do not know the distinction between the new pattern and old pattern tins. Hossen returned at about 1.30 to take away the tins. He came alone. He paid for the petrol—4 gallons—in cash.

(To COURT : He paid me Rs. 5/80 for the 4 gallons. He paid me Rs. 10/80 altogether.)

Rs. 5/- was retained as payment for the tins and Rs. 5/80 for the petrol. I had a conversation with him on that occasion. He told me he was working at Kennedy and Company. He volunteered that information.

(To COURT : He told me only he was working at Kennedy and Company.)

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tion—*con-
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Then I said "It is good I came to know you, because if I came to Kennedy and Company you will not forget to give me a sort of discount, if I want to buy anything there." I had not done him any particular favour. It was merely a matter of my getting to know him Hossen gladly said "Yes" and he said he was working at the gentlemen's department. He said "Alright you come and see me."

(TO COURT: I did not say this with the object of buying anything. I have not been to Kennedy and Company.)

That was all. Then he took the petrol tins and went away. I do not know whether he went by rickshaw. I have no recollection of how he looked. I cannot remember if he was looking unwell. I had not seen the man before. I cannot remember asking him why he wanted the petrol or whether he told me what it was for. He did not tell me the petrol was for Mr. Kennedy. I know Mr. Kennedy. 10

(TO COURT: Mr. Kennedy comes there regularly. I know him as a customer.)

He comes and purchases petrol from our depot in his car and the petrol is put direct into the car.

(TO COURT: He takes the petrol on account.) He is supplied with an order book. He fills in one of the order forms and hands it in. 20

(TO COURT: These forms have no reference to the number of tins or cans.)

There was nothing to prevent Mr. Kennedy buying the 2 cans of petrol on an order form. We have "Motor" spirit entered in one line of the form and lubricating oil in another line. I could have supplied the tins to his servant. For motor accessories we supply another book. I was taken by Inspector Stewart, to whom I made my first statement, to the Crime Office, where my statement was recorded, and from there he took me to Kennedy's new shop and where I identified Hossen. I do not remember when I did that. I cannot remember if it was on the 7th October. It was a short while after the fire. 30

Cross-exa-
mination.

CROSS-EXAMINED.

Since the 23rd August I cannot say how many tins of petrol I have sold. I cannot remember even roughly. It is usually more than one. It is about 2 or 3 tins for a month. I cannot say who bought a tin of petrol after Hossen's purchase or when the next man came after that. It is hard to say to whom I last sold a tin of petrol. The last can was ordered yesterday by the office not by the installation. I cannot remember the time I sold the last petrol tins. I remember when Hossen came. After the accident occurred I was questioned about it. I was questioned about the 5th October. I was given the details regarding the dates by the Police. In the Police Court I was not asked about the time when Hossen came to the installation. 40

Q. In the Police Court you said this "Hossen finally came for the petrol cans about noon." You said so?—A. It was about noon.

Q. Now you say that Hossen came originally at 9.30 and then about 1.30?—A. I said he came about 1.30 p.m. It is correct when Hossen says he removed the cans about 1.30 p.m. I did not refresh my memory from the way bill Ordinarily we keep 3 cans in stock. When somebody comes in and applies for 2 cans I would not order for 5 cans because probably they would be taken away by customers to be returned. Customers are in the habit of borrowing cans to be returned. We take an order from customers—credit—I take a chit, and it is a cash customer. We take Rs. 2/50. That is when a purchaser goes on a long run into the country. It generally happens that the people take cans for going on long trips. I can remember that the lorry which came with the cans. There are two columns in the waybill stating when the lorry arrived at the depot, when it began emptying the petrol, and when it finished emptying the petrol.

The waybill gives the time of arrival of the lorry as 10.10. Those two columns are left blank Petrol was brought by that particular lorry. It is the work of the lorry driver to enter up those columns. I supervise the petrol that goes into the tank. My initials appear in the same line on the waybill over the initials of depot clerk.

I say that Hossen came there about 9.30. We issue a book to customers buying petrol on credit. They have nothing to sign at the depot. We make our entries in the books. Entries are made in the books by customers. That is a check on the quantity bought. We do not initial that. We keep a day sheet there. Either the owner or his chauffeur comes for the petrol. In this case Hossen was unknown to me, and he wanted two cans. I wanted a deposit if I was to order them. That was the safeguard myself. He did not tell me he was from Kennedy and Company. I do not remember his saying so. He did not refuse to make a deposit. He did not make the deposit. He did not tell me whether he was going to make a deposit or not, but he went away. He had the money with him. He came back and said “Here is the deposit,” and when he came to remove the petrol I had my conversation with him about buying shoes cheap. There was no question of his trying to conceal his identity. He told me he was a salesman at Kennedy and Company.

(To COURT: 500 gallons of petrol were dropped that day by lorry. No other cans were sold that day.)

RE-EXAMINED.

I told my manager Mr. T. B. Johnson. The fact is that I ordered shoes from Lennards' and the parcel had arrived and I got the invoice and I was hesitating whether to accept the parcel or go to Kennedy's and see Hossen. I made no deposit on the order with Lennards. It came per V.P.P. Then it struck me about the sale of the tins and I told Mr. Johnson that a clerk working at Kennedy and Company had taken petrol tins from me.

(To COURT: Previously I had been questioned by the Crime Police. That was 2 days before I made my statement. Mr. Johnson is in charge of the Colpetty branch.)

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Fernando.
Re-exa-
mination—
continued.

Mr. Johnson communicated with the Police. I took the date of purchase from the day sheet. Every sale is entered in the sheet. No name is entered there. I cannot remember which lorry driver brought the tins.

(To COURT: I am not interested in Hossen. I do not think he is an interesting sort of person.)

(To THE FOREMAN OF THE JURY.)

Q. Were you able to pick this sale out as the particular delivery of these two tins?—A. That was the only instance I sold 2 tins. In October I was asked whether 2 petrol tins were purchased. I went on referring to the month's file and then I was looking through the sales and I came across the two tins. I remember this was the only instance where I sold 2 tins to one person. 10

Q. There was no possibility of your being mistaken over that?—A. No.

Q. It could not have been months earlier?—A. No.

Q. You are absolutely sure it was not in July?—A. No.

Q. This is the only case of a cash purchase round about that time for the 3 months?—A. This is the only instance where tins were sold for cash within 3 months. I am quite sure.

Q. Your records will show that?—A. No. 20

Q. There are no other records?—A. No.

Q. If I get hold of the day sheet that will show that this was an entry of a sale of 2 tins?—A. Yes.

To COURT: Customers buy only one tin at a time. People use petrol for cleaning clothes. Two dye works used to buy petrol from us. We do not sell petrol lamps.

(nn) J. R.
Steuart.
Examina-
tion.

J. R. STEUART. Sworn.

I am an Inspector of Police, Crimes. I secured the statement of the last witness Mr. Fernando. I went there and questioned him as regards certain information received from him in October. On the 6th October, I took him to my office and questioned him there. When he made that statement he was able to fix the date on which the tins were purchased—the two tins purchased by Hossen. He gave the date as the 23rd August. He said Hossen came to him between 9 a.m. and 10 a.m. He also said the actual taking away of the tins was later—in the evening. I recorded his statement and took him to Kennedy's and I waited outside and he went inside and he said the man who bought the petrol tins was a salesman there and I went with him and he pointed out to a man called Hossen. 30

I also recorded S. A. Perera's statement. I went to his house about the 7th or 8th October. I made inquiries about petrol tins in his house. 40

(To COURT: I went with the object of finding out whether he was given the two petrol tins by Kennedy.)

I produce the two tins which I found in his house marked P21-22.

(To COURT : One tin was in his car. When I went to his garage it was closed and when I was returning he told me where the tins were and I found them.)

One tin was in his car and the other was in the garage. Those two tins which he pointed out to me were new pattern tins. I know the distinction between new pattern and old pattern tins. There were some other old tins. I could not say whether they were old or new patterned. There were some old tins. In the Police Court I said there were two. That is correct. They were serviceable as far as I could see.

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(nn) J. R.
Steuart.
Examina-
tion—con-
tinued.

10

CROSS-EXAMINED.

Cross-exa-
mination.

This is my record (Shown the Crime file). Fernando began by saying that Hossen had come there between 9 and 10 a.m. He said when he was asked for an advance the man went away and returned in about $\frac{1}{2}$ an hour. He returned and paid an advance of Rs. 5/-. On the deposit being given to him he rang up Mr. Thompson. The message must have been received before 9.50. Hossen must have originally come there nearer than 10 a.m. He stated that the tins of petrol were brought to his installation about 1 p.m. He said the man came back in the evening to Walkers and removed the tins.

20 There was no time given. I looked up the sale register of the cans in this depot. I could not say how many sales there were of over 2 cans at a time. I initialled the entries. This was the only sale on that day. I did not look through the books for June and July. I only looked at this entry up to the 23rd August. There must have been sales of 2 cans in June and July. I cannot say that definitely. I get orders from the D.I.G.C.I.D. I did not visit S. A. Perera on receipt of information from Mr. Kennedy. I do not know that Mr. Kennedy told the Police that he had given the cans to Perera. It was after the statement was taken by Mr. Ferguson that I was sent to verify it. He gave me orders to look for two petrol cans.

(To COURT : I went to Perera.)

30 On the 6th October I went to Simon Fernando. Subsequent to that I went to S. A. Perera. It was after my visit to Simon Fernando that I went to S. A. Perera. I went there with the object of finding out whether he had new pattern petrol tins. The new pattern petrol tin has a flat top and the old pattern tin has a rectangular edge standing up. I met Perera on my return journey on the road. I found one can in the garage and on the return journey I found a can in the car. I do not know that it contained petrol. There was a new pattern can there. Once I knew it was a new pattern tin I did not worry whether it was empty or not. It was inside the car. It was just below the steering wheel, in front of the car.

40 (To COURT : He was coming back from Colombo. I could not say whether the Police made inquiries to find out whether S. A. Perera had purchased the cans. After that I ceased to work on the case. The C.I.D. carried on further inquiry. I reported the matter to Mr. Ferguson and the matter ended as far as I was concerned. Perera told me he got the cans from Kennedy. I did not try to find out whether his story was true.

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(To COURT: I did not check Perera's statement). There were two other old patterned cans at Perera's. I could not say whether old patterned tins were not issued from petrol installations from 1922. They are serviceable. I examined those cans. I looked at them. I did not take the trouble to find out whether the can in the car was full or empty. I did not unscrew the cap of the old can I saw. They were empty and I looked and put them down.

(nn) J. R.
Steuart.
Cross-exa-
mination—
continued.

(To COURT: I left them there. They were taken away by the C.I.D. All I did was to report what I saw to Mr. Ferguson and there my work ended.)

10

RE-EXAMINED.

No questions.

(oo) Joseph
Manuel.
Examina-
tion.

JOSEPH MANUEL. Sworn.

I am the gate keeper at the Kolonnawa Installation of the Petrol Company. On the 15th August last year I gave document P15 to one of the lorry drivers D. R. Perera. This is the receipt for two petrol empty cans which had to be brought by the driver after the delivery of the cans. The purpose of that document is to prove delivery by the lorry driver of the articles sent by him. That receipt has been signed by a representative of Walkers' Mr. Fernando. I also keep a waybill of the various movements of the lorries of the petrol company. I produce P 81 showing the movements of lorry C.7840. This shows the movements of the lorry on the 23rd August last year. That lorry left the installation at 9.50.

20

(To COURT: I enter up the document P81). It also shows the time at which the lorry returned, and the time at which the lorry went to Walker's garage. After his lorry returned to the installation I noted the time. The time of arrival and departure are entered by me. The time at which the lorry arrived at the installation is entered at the installation. My only entries are the times when the lorry leaves the gate and returns.

(To COURT: I got a clock at my table and I am particular about entering the time.)

30

The entries are 2 new cans and it is entered by me. The gate pass comes to me and on seeing that I write up the entries. Those cans would be handed to the lorry driver at the gate by a cleaner to whom the cans were handed to be handed to the driver. Second hand cans will also be sold and new cans will also be sold. The gate pass says new cans and I enter new cans. The new tin is a tin not used at the installation. I also prepare P16 a copy of the document is filed in the office.

CROSS-EXAMINED.

No questions.

40

S. S. PIERIS. Sworn.

I am a clerk at the Petrol Company's Main Office in the Galle Face Flate. I remember a man coming to me sometime last year and asking for 2 tins of petrol. It was about the 4th or 7th October.

(To COURT : He asked me for 2 petrol tins—2 empty tins.)

He came in the morning. He was the first I had for the day.

(Shown P17.) He wanted two new tins. By "new" I understood it to be fresh tins.

(To COURT : He said " petrol tin dekak.")

10 I asked the man whether he wanted new tins because we have un-serviceable cans as well. We make a sale of the un-serviceable cans I said " alut tin dhe paranawa dhe." He said he wanted new tins. He paid for the tins. I have no tins with me.

(To COURT : He paid Rs. 2/25 for each tin.)

He paid me Rs. 5/- and I gave him the balance in two -/50 cent pieces. I gave him an order to get them from the stores.

20 I produce the order P52A. That order is made out in favour of one Peelis Appu for 2 new 2 gallon cans dated the 4th October. I also produce the counterfoil of that receipt marked P17. I asked the man for what he wanted the tins and he said it was for a bus service running between Anuradhapura and Colombo via Kurunegala or from Kandy to Colombo. I am sure he gave the name of Peelis Appu. I made no mistake about that. I wrote the name. He told me it was Peelis.

(Shown P52A.) This has been signed by the man who took delivery of the tins as " Pieris."

We only give petrol tins not for cash but only for credit to service stations. It was usual for customers to ask for old tins. What happens is that we receive letters asking us to send tins to be sent to various installations. People do not come to the office and ask for a petrol tin.

30 (To COURT : Q. Is it usual for people to place orders for a large number of tins, or is it unusual for people to come and ask for two tins ?—A. It is unusual for a sale of two tins.

Retail purchasers are rare.

I produce my book of counterfoils for orders of petrol tins marked P89. I also produce an abstract which I have made marked P89A. This shows the sale of new pattern tins from 1927 up to February 1934 from our office. Apart from sales to members of the staff or to service stations there has been only three sales from 1927 to three private persons.

40 (To COURT : Mr. Cooke is a customer. Mr. Gray is also a customer, The only sale of a small amount is to Peelis Appu on the 4th October. We sell un-serviceable tins for flower pots.

CROSS-EXAMINED.

According to the statement in P52 the Victoria Petrol Service station has bought 10 cans for petrol on the 7th October 1933. Those are the ordinary

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Pieris.
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tion.

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(pp) S. S.
Pieris.

Cross-exa-
mination—
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cans—not unserviceable. I have no idea that old pattern cans are no longer used. By a new pattern can is meant a brand new can. I cannot say what cans are issued at Kolonnawa. If I say a can it means a new can. It costs Rs. 2/25 a serviceable can.

The Victoria Petrol Station is just beyond the Victoria Bridge. The Ford Motor works is one of our Service stations. This book P89A only contains sales in the depot. The transit companies buy cans for the purpose of sending petrol to their buses. The motor transit company buys cans from us in numbers. There are a very large number of depots round Colombo. I do not think there are 50. There are about 25. I cannot say how many cans they sold during the 1st October. Peelis Appu stated he wanted the cans for the purpose of some bus service between Anuradhapura and Colombo. The document only contains entries of serviceable cans. We sell unserviceable cans at Rs. 2/- per 100. We sell them in large numbers. Unserviceable cans are bought to be used as flower pots. The man came and wanted 2 cans. I asked him whether old or new cans. He may have asked me for a can and I gave him the price. I told him old or new unserviceable cans are Rs. 2/25. He said he wanted new cans and I gave him a chit to be taken to the installation and to get the new cans.

RE-EXAMINED.

10

No questions.

(qq) E. C.
Young.
Examina-
tion.

E. C. YOUNG. Sworn.

I am the store keeper at the Shell Company installation at Kolonnawa. On the 4th October last year a man came to me—not with receipt P15. This is an official order. This is taken to the office. I only get the gate pass and an order (Shown P52). This is what I received. This is a receipt obtained by the customer. The man who brings the receipt has to put a signature to it.

(To COURT: This was issued to my office from the stores. This was delivered to me and I gave two new tins as ordered in the receipt. This man had deposited money at my main office in Colpetty and he had obtained P52 and he had gone to the office at Kolonnawa and brought me the receipt and I got his signature after handing him the tins. New tins are Singapore tins. We received cans from Singapore the tops on them are rather oval than the local ones. We manufacture cans in Ceylon. That was sometime back but we do not manufacture them now—for the last 7 years back.

(Shown an old tin.) This is manufactured in Ceylon. The Singapore tin has got a plain top. They are called new tins. We do not use this for transporting petrol to outstation agents. These are used for keeping petrol. When we received orders for petrol we issued them. We use the local as well as the Singapore tins for transport. We have got a select lot for transport. We do not sell them. They are classed as second class cans. If anyone comes and says give me a petrol tin I will give him an old one. That is if the gate pass says "empty one." Then I give him a new pattern tin. If a man asked for a can I would give him a tin of the old type which was

serviceable. The new tins are received from Singapore. We always call Singapore cans new cans.

(To COURT : If a man asked for a new can we would give him a Singapore can.)

All the local made cans have been used and are old ones. We keep them now for transport purposes. We have got now the old cans. They are for our own purposes for transporting petrol. We do not sell them. We send them to outstation depots and they come back. I could not say what a person would get in an outstation depot whether an old or new can.

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(gg) E. C.
Young.
Examina-
tion—con-
tinued.

10

CROSS-EXAMINED.

We do not sell old patterned cans unless someone asks for an old patterned one. I would give him a new pattern can. Ordinarily we sell the Singapore type of can. If a man asked for a can and did not state whether it was an old or new pattern he wanted we would give him a new can not the old type. Unless a man specified new can we would give him of the type that has not been specified. I could not say whether old pattern or the new patterned tins cost the same. All cash sales are done at the head office. If both prices are the same a person would ask for a new can. P52 is signed by Peries Appu in my presence I cannot read Sinhalese. The name at the top is Peelis but the man has signed as Pieris.

Cross-exa-
mination.

RE-EXAMINED.

No questions.

T. S. R. JOHAR (Recalled). Affirmed.

I am a Malay. I am a fireman employed in the Colombo Fire Brigade I recall the night of the fire—the morning after. It was the 30th September. I was on duty that morning. About 6 a.m. that morning I was extinguishing the fire, I know the second officer Ahmadeen I had been told off by him to do a particular job. There was a heap of debris on a side and he asked me to dig it up. It was on the right hand side of the ground floor. I had been asked to do this on the right hand side. I know Main Street. I know the portion of Kennedy's shop which faces Main Street. The windows and doors were blown out. That morning I was not able to enter the building through the front because of the holes. I was asked to heap up the debris on the right hand side of the ground floor. To heap up the debris I used a preventer 9' in length.

(To COURT : There were all kinds of things and there was smoke at the time. I did not notice any bricks.)

There were small portions of debris still smoking and I tried to put the fire out. There were tins but I cannot say what they were. I was trying to collect and heap up the debris with the help of the preventer. I was digging the debris and as I was digging the preventer came in contact with petrol tins and I dug further. I came across 2 tins of petrol and I gave information to the second officer my superior. In a bag wrapped in gunny there was a

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Johar
(recalled).
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tion.

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petrol tin. The tins came together almost simultaneously. One came out of the bag and the other remained in the bag.

(To COURT : The first came out of the bag while the other remained inside the bag.)

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It was a suitcase. The petrol tin was wrapped in gunny.

(To COURT : The petrol tin which was inside the bag was covered with gunny.)

(rr) T. S. R.
Johar
(recalled).
Examina-
tion—con-
tinued.

When I saw that I went up and informed the second Officer Ahamadeen. He came up and saw where I found them and immediately informed the chief officer. Before Ahamadeen came there I did not disturb the bag or the tins in any way. I left them exactly as they were and immediately called Ahamadeen. At the inspection I located the spot where I found the tins. Subsequently Mr. Ahamadeen informed the chief officer Mr. Weerasinghe and he saw them and subsequently they were taken charge by the Police. Before the Police took charge of them I did not open the tins. The tins were taken in charge in the condition I found them.

(Shown P9.) The bag I found was like this. At the time I found it I cannot say whether it was damaged as it is now. I did not look into it carefully. One tin came out. The first tin came out of the bag 2 or 2¼'. The second tin was about 18 or 20" from the suit case. When I saw the suit case the other tin was in it.

(Shown the jute hessian.) When I referred to the gunny it was this kind of material. I can show how that gunny was inside the suit case. I did not observe any oil paper in the bag at the time. The petrol tins were like P10 and P11. There was also a mobiloil tin. I saw a tin like this (Shown the tin marked P14) P14 was about 4' away from the bag (the witness shows the distance of the mobiloil tin from the bag—the distance is over 6'). As I was digging I observed the tins. When I was putting out the fire I saw the tins there.

ADJOURNED FOR LUNCH.

30

AFTER LUNCH.

CROSS-EXAMINED.

Cross-exa-
mination.

I was asked by Ahamadin to use the preventer on those places where the fire was smouldering. On the ground floor there was a great deal of debris. And I was poking among the debris with my preventer. Shortly before I found the cans I was standing on the section of floor closest to the entrance to the Times. I have not brought a preventer.

Q. I understand it is a 9 foot straight rod with a single piece of iron projecting from it? A. Yes it is like the letter "L." It has no hook. I was actually pulling at a heap of debris that was about three feet high. I found these tins towards where there was the remains of a burnt rack.

Q. Actually what was left of the rack was leaning against the wall? A. No.

Q. Behind the rack was a wall? A. There is a wall.

Q. The racks in question are the racks which were standing up against the further portion of the ground floor that recess? A. Yes. (P42 showing

the racks is shown to witness.) (The witness marks in pencil on the photograph the place where he was digging. I did not observe the box in which the Times cross-word puzzles are dropped in.

Q. As a matter of fact in the Police Court you said this " I found these tins in a corner where there was a rack ? " (Mr. Pereira reads a passage from page 57 of the Police Court evidence. (Page 16 of Record.))—A. I deny that. I did not say that. I said there was a rack close by. I did not say that they were on the rack.

Q. What you said is this, " I found these tins in a corner where there
10 was a rack " ?—A. Well, it is a corner. I describe it as a corner.

Q. There was nothing on the racks themselves? Everything from the racks were on the ground?—A. Yes, scattered here and there. The wall separating the Times section from Kennedy's ground floor was also blown down. (To COURT: That wall had been blown out into the Times buildings.) And as I was pulling with my preventer one of these tins came out, along with pieces of burnt shirt and other rags. I can not now say which of these tins it was. (To COURT: I cannot say whether it was the green or red tin.) One of the tins shown greater signs of its being burnt than the other one.
20 On his directions I dug further and that suitcase was found with the petrol tin inside.

Q. In point of fact this suitcase, the whole of one side was burnt away?
—A. Yes. It was really up side down. (To COURT: I am unable to say whether it was up side down or on the proper side when I found it.) (The witness inspects the suitcase.) I see those studs that indicate the bottom of the suitcase. I did not observe those studs on the upper side.

Q. Did any portion of the leather come away when you were digging with your prevention?—A. No.

Q. Because you see on the other side there is almost a whole piece of
30 leather; this side is partially burnt?—A. No, at this time I am unable to say.

Q. Now you are unable to say whether these are tins even?—A. No.

Q. Or whether that is the suitcase?—A. No.

Q. All you can say is something like this?—A. Yes. I remember the top of one of these petrol tins being unscrewed and shown to me. It contained some fluid. The contents was of rust and I put my finger inside and said it smelt like rust. That mobil oil tin was found like this.

Q. Mr. Ahamadin says the spot you pointed out to him from the box is about 3 yards?—A. I cannot speak to that. The debris was about this
40 height (indicating) over the suitcase. A. Yes, the entire heap was that height.

Q. The box itself being at the bottom?—A. I cannot say. The box was not on the top of the heap.

Q. The box appeared to be lying on the floor?—A. No, as I was digging it was not on the floor. It was above.

To COURT: What height of debris had you to clear away to see the box.—A. Immediately I put the preventer on one side I noticed the suitcase.

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No. 8.
Evidence for
Prosecution.

(rr) T. S. R.
Johar
(recalled).
Cross-examination—
continued.

*In the
Supreme
Court of
Ceylon.*

Q. Then you must be able to say how much of debris was above the box?—A. Not much.

There were pieces of cloth and sweaters on the floor.

No. 8.

RE-EXAMINED.

Evidence for
Prosecution.

(rr) T. S. R.
Johar
(recalled).
Re-exa-
mination.

(P42 the photograph is shown to the witness.) I referred to the remains of certain racks. I can see the remains of those racks in this picture. (He points out the racks he was referring to.) I did not notice those racks going straight up to the wall. Those racks I just pointed out are the ones I referred to. (Shown racks on wall R.) Q. Those are open shelves when you call them racks?—A. Open shelves. I see in that picture that side wall extending up to that point. 10

Q. We have it that the rest of the wall up to the door here had fallen down being blown across into the Times section?—A. Yes.

Q. Is it correct to say that the racks to which you refer stopped here at that edge of that wall R.?—A. I cannot say whether the racks near the fallen wall were there or not. I saw no racks near the fallen wall. The racks ended at the edge of the wall.

Q. And the spot where you saw the petrol tins which you pointed out at the scene is just in front of that doorway?—A. Yes.

(His Lordship directs the witness to go and bring the preventer which he used that day.) 20

(ss) A. N.
Ahamadin.
Examina-
tion.

A. N. AHAMADIN—Affirmed. Foreman, Fire Brigade.

EXAMINED.

I remember the night of the fire at the Times building on the 29th September. I was on duty early the next morning. (To COURT: I was on duty the previous night also.) I know the last witness Johar. I instructed him to do some work on the morning of the 30th. I cannot remember the time when I told him. It was between 5 and 6. I saw some smoke in the 1st floor and asked the man Johar to take the preventer or ceiling hook and dig the debris to prevent the smoke. I asked him to do that because I found a certain amount of smoke coming out in 2 or 3 places. In some places the debris was in heaps of about one foot and about half foot high, and in some places there was level. The greatest height is about 3 feet. 30

Q. What portion of the ground floor was it that you asked him to do this? Suppose you enter from the main street side Kennedy's main entrance?—A. It would be on my right hand side as you enter. There was debris on the right hand side as well as on the left hand side. After I gave him the work I went to supervise some other work, and some time back Johar came and told me that he found a petrol tin in a suitcase. He told 2 petrol tins. While taking out one came out. 40

Q. Did he tell you that he left what he found in the position in which it was found?—A. No, he did not disturb it. He told me that. He said he left it like that. After he came and told me I went immediately and saw one tin in the suitcase and the other out. I found them in the position

in which I pointed out at the inspection the other day. (The witness is shown the petrol tins.) When I went up I found one petrol tin actually inside the suitcase. The top of the suitcase had come out. It was thrown out on the floor. The top had come out for the preventer. One petrol tin was still inside the suitcase. I saw this water-proof packing inside the suitcase, and there was some jute hessian. One tin was outside the suitcase. (Witness demonstrates the way in which he found the tins and the suitcase.) This water-proof paper was like that. (Showing) in such a way as to leave room between the 2 tins. I do not know where the jute hessian was. (To COURT: The jute hessian was over the tin and one tin had come out. The cover had come out with the preventer.) I cannot say on what side the suitcase was lying. I saw those studs. The side which contains the studs must be the bottom.

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(ss) A. N.
Ahamadin.
Examina-
tion—con-
tinued.

Q. Can you say whether you saw those studs on the side which was on the top?—A. I cannot remember.

Q. Can you say whether you saw the handle of the suitcase?—A. No, I did not see. I cannot remember. (His statement in the Police Court on this point is read.) “The petrol tins of the suitcase were wrapped in jute hessian.” It was over the tin. I cannot say whether it was wrapped or not. The jute hessian was over the tin.

Q. There was a lot of debris near about that was found?—A. By the time I went it was a little debris, not so high. Immediately surrounding that suitcase the debris was about 2 feet high.

Q. Did you see any remains of racks near the suitcase?—A. I cannot remember. The suitcase which was found was a suitcase like this (P9). The two petrol tins are like those tins here.

Q. Did you also observe a Mobil Oil tin at that time?—A. Yes, it was about three feet away from the suitcase more inside the shop. Q. One like that (shown P14)?—A. That is the one. As soon as Johar informed me I informed my superior Weerasinghe. I went and looked and then told Weerasinghe. In a fire when petrol tins are found it is dangerous and I informed the chief officer. I did not touch the suitcase. (P14) was about three feet away.

CROSS-EXAMINED.

Cross-exa-
mination.

Q. How long after you gave instructions to Johar to see that the fire did not spread again and use his preventer that he reported the discovery of these petrol cans?—A. I cannot exactly say: about $\frac{1}{2}$ or $\frac{3}{4}$ of an hour. Johar is the only one I asked to do that. No others. A few of us had been sent back by 5 o'clock to our Fire Brigade headquarters to have some tea and wash up and have a little rest. Otherwise there was a squad in attendance right through. The ground floor was full of debris. Some places were two feet high others six inches and varying from six inches to about two feet. When I came up to the spot I found one can outside. I cannot say whether that is the can which is the more burnt of the two.

Q. You see that can with the handle come out at one end is more burnt than this one?—A. Yes. This one is darkened on one side. That tin marked (P10) is the more burnt one.

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(ss) A. N.
Ahamadin.
Cross-exa-
mination—
continued.

Q. Can you remember whether it was that tin that was outside or this tin?—*A.* No, I cannot remember. I cannot say which of the two tins were out. There are holes in the jute hessian. This paper does not appear to be burnt. It appears to be perished here and there.

Q. You actually found the mobil oil tin you stated in the Police Court three yards away from the suitcase?—*A.* I cannot remember whether I said three yards or three feet. From me to the peon is about three yards (pointing out). The mobil oil tin was about that distance. I cannot say whether this jute hessian was the same I found there. I found this jute hessian on the top of the tin. I cannot say how it was not burnt.

Q. You noticed that the tin had been subject to considerable heat?—*A.* Yes.

Q. If that tin was inside that box subject to that heat how is it that the jute hessian was not completely burnt?—*A.* I cannot say that. I have been in the fire brigade 27 years.

Q. The solder of one tin near the neck of it and the other elsewhere, the lump of solder had apparently run out round the neck of that. The solder appears to be melted? That can must have been subject to considerable heat there?—*A.* I cannot say whether that has been subject to considerable heat. I cannot say how it is that some little of the jute hessian was not burnt.

Q. You did not tell a word in the Police Court about your finding any oil paper?—*A.* I was not asked. I cannot remember whether Ferguson questioned me in the Police Court. I know Mr. Ferguson. I now remember that it was he who questioned me in the Police Court. I cannot remember whether any question was put to me by Ferguson with regard to my finding paper in that box. (TO COURT: When I got to the spot there was some debris a little debris on the top of the suitcase. Very little.

Q. Will you tell me whether the box was actually lying on the ground floor or whether the box itself was on the debris?—*A.* That I cannot say. I did not observe whether it was lying on the ground or on something. As soon as I saw that I went and told the Police. When Inspector Prins and others came there I was near the doorway. I saw the tin and suitcase removed by the Police. I was near the doorway.

Q. As a matter of fact there were several other suit cases that were burnt?—*A.* Not suit cases. I saw the frames of suit cases. The leather was burnt off leaving only the frames behind. I did not count the number of suit cases burnt. About six suit cases were burnt. I remember being asked to unscrew one of these petrol cans in the Police Court. I was asked to unscrew (P10) and inside that there was some fluid like water, very rusty. The tin is now empty. In the cover there is a lot of rust.

Q. But there was about one inch of fluid in the bottom of that can in the Police Court?—*A.* Yes, when I put my hand some of the water poured out. (Plan P42 is shown.)

Q. You remember seeing a box there. The Times had a box there where cross word puzzles were put?—*A.* I cannot remember.

Q. Johar marked this spot in blue as being approximately the spot where he found the suit case? He told us also in the Police Court and he agreed that it was in the corner near the rack near a rack standing with a wall behind it?—*A.* Yes, that was near by the rack where the suit case was found.

Q. There is so far as this photograph goes apparently pieces of this rack had fallen on this? They appear to be pieces of plank?—*A.* Some appear to be pieces of wood. (The preventer is shown to the witness.) This is a preventer. (The witness demonstrates how the preventer is ordinarily held and used.)

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(ss) A. N.
Ahamadin.
Cross-examination—
continued.

RE-EXAMINED.

(The witness is shown the tins.) That side is not burnt at all.

Q. Then you also find that if the paper was inside like that those two sides would prevent the paper from being burnt?—*A.* Yes, these other sides of the tins are burnt. If it was in that position (placing it in position).

Q. The inside of that is practically not burnt at all?—*A.* Yes. The jute hessian is burnt.

To JURY: *Q.* When the tins were found were the screw caps of the tins screwed on?—*A.* I did not notice them. The tops were there. (To COURT: Once I found these tins I informed the chief officer Weerasinghe.

Re-examination.

FURTHER CROSS-EXAMINED.

With permission. Weerasinghe came and saw where the suit case was. The suit case was then in the same position in which it was found. (To COURT: That was about five minutes after that he came. He was on the spot.)

Further
Cross-examination.

B. E. WEERASINGHE (Recalled). Sworn.

EXAMINED.

I am the chief officer of the Fire Brigade. I am specially trained for my business in England. I was in charge of the operations on the night of the 29th September putting out the fire at the Times Building. I was still there on the early morning of the 30th. Yes, I recall Ahamadin bringing certain information to me that morning about six in the morning. He reported to me that he found two tins of petrol in a suitcase or words to that effect. I went up to where they were found. He did not tell me that he had not disturbed the position. I cannot recollect him saying that. At the inspection that day I pointed out roughly where I found them when I went up. I remember what was the doorway from the vestibule side. I was shown what the doorway was afterwards, but at that time no. At the inspection I was shown what doorway was. I pointed out a spot within a radius of three feet from that doorway. The suit case and tins were more to the left side as you enter from the vestibule than the right. That is very approximate. If Johar places it say higher up more to the right I would not say that he is wrong. This is merely an impression of mine as to where it was. After six hours' work there this was only one of the incidents

(tt) B. E.
Weerasinghe
(recalled).
Examination.

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singhe
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tion—*con-
tinued.*

I noticed. I was very busy that night. When I saw this suit case and tin one tin was outside the suit case as far as I remember. But I am not too sure on the point. I did not examine the contents of the suit case. I just looked at it. I did not examine it anything more than that. There was jute hessian inside. As far as I can recollect the jute hessian was wrapped over the tins. I cannot recollect whether the tins were wrapped up in jute hessian. It appeared to me as if that jute hessian was used to wrap the tins over and it was disturbed at the time. I cannot recollect whether there was any waterproof paper. I can remember that the top of the suitcase was burnt. I cannot recollect whether it had been removed from its form. (To COURT: I cannot recollect whether the exposed side was burnt.) I cannot remember whether that side which I saw on the top had little buttons indicating that it was the bottom. So far as my recollection goes one tin was outside. (His statement in the Police Court on this point is read.) Yes, that is correct. I also saw an empty mobil tin about two or three feet away from the edge of the suit case as far as I can recollect.

Q. Johar and Ahamadin put it as far back as eight or nine feet?—A. I cannot say. I did not inspect the scene at all carefully. I reported to the Police at once. I also brought it to the notice of Inspector Prins. He came there and took them in charge in the condition in which they were found. (To COURT: I did not allow it to be disturbed.) So far as I remember the suit case was like this and two ordinary petrol tins. There was debris in the immediate vicinity of the suit case. I cannot recollect how high. The suit case was exposed completely. Within about five minutes of the fire I got there. I got the message at 11.06 p.m. (To COURT: An alarm point.) There was a telephone call too, but I cannot say when that was received. That comes after this call. It was the first call with which we are concerned. But I can give you that information if you want that. I reached the spot about three or four minutes after the message. I was asleep at my bungalow at Slave Island in Bridge Street. I must have been there about eight minutes after the first alarm. The first fire engine went there within five minutes' time from the time of the alarm. That would be about 11.10. I got there about 11.12 or so. I live at Bridge Street next to the Elephant House. When I got there the fire was raging and the fire was going up that lift well. There was a flue effect on that; and that went right to the top of the building over the roof. We did not play up there. We directed the hose all over the place. The basement we regarded as the seat of the fire. (To COURT: The ground floor was burning too.) By the seat of the fire I mean the place where it is more likely to have occurred. We turned the water on the ground floor and regarded the basement as the seat of the fire. When I reached the spot portions of the ground floor had given way.

Q. And can you say from what portion of the ground floor the fire was raging most furiously?—A. More towards the back of that ground floor room. In fact all over the place there.

Q. You could not see a distinct heap of suit cases when you went?—A. I cannot recollect. The fire was burning on the ground floor and the basement and up the lift well.

Q. You got the fire under control when?—A. I cannot be definite on that point because it is such a large fire. Say in one hour or one and a half hours. It is a vague point to speak of under control.

Q. At what time do you consider the fire was under control?—A. When I thought that the main building was safe, the lift well being the more dangerous place, and I stopped the fire at the basement. After I had got just upstairs above, just up there, I knew that it was under control. It is too technical a matter.

Q. The upper floors were only damaged by the flames coming up from the lift well?—A. Yes. The direct burning was on the basement and on the ground floor. When I got to the scene I did not get the smell of coal gas. I know what the smell of coal gas is.

Q. Have you experience of coal gas explosions?—A. Yes, in Sheffield in England during the frost owing to the cold you find the gas meter full of frost and if there is a cellar on that level you find the gas leaking through the earth, and if the water of the cellar is such you can see through and then as the gas gains admittance there it may go up and then explode and that is how those two or three explosions occurred. No fire. In those cases there is no fire. Only an explosion. I can speak of two cases. What happened was the mains had burst and there was a leakage of coal gas under main pressure and then it went direct above up to the flag stones. If that is the main and there is the pavement it went direct up that way up to the flag stone; it leaks that way and it comes into the cellar and then as it goes up that way to some point of the building it catches fire and then flashes back and an explosion occurs there. In those cases there is just a bursting out of the doors and window panes. It occurs all over there inside. And in one case in that cellar fire explosion there was just a little flame on the wall. That is where the gas was leaking through. It was just burning against the wall there. There was gas coming out. No fire in the other parts of the building. There was other material there, shelves and so on.

Q. In those two cases were there any material which could burn?—A. Yes, there were shelves. No furniture. Shelves and sort of rubbish here and there, all sorts of things. They had no furniture. The wooden shelves had not burnt.

(TO COURT: There is only an explosion. There may have been a flame inside but there was both there at the time. When we went there was no flame at all except that all the gas was burning and coming out against the wall. There is plenty of smell about the gas used in England. I think the gas smell is the same in Sheffield as here.

CROSS-EXAMINED.

When I got there to the scene I found that the fire had reached the third floor up the lift well. That was the only passage by which the fire really spread upwards.

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(*tt*) B. E.
Weera-
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(recalled).
Examina-
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Cross-exa-
mination.

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(tt) B. E.
Weera-
singhe
(recalled).
Cross-exa-
mination—
continued.

Q. And it went up to the fourth floor and even the higher floor?—*A.* Along the lift well up there higher. But on the fourth floor it had burnt through and it had gone some way into a small room there. There was a room adjacent to the lift well on the fourth floor where certain furniture and papers had been burnt. I personally made a great effort to get from the third floor balcony to the fourth floor but without success. My hooks would not catch. The lift well appeared to act as a sort of flue.

Q. And a good deal of debris, planks and corrugated iron sheets came down that lift well?—*A.* Yes.

Q. And the electrical apparatus in that switch room showed indentations indicating that the brick wall supporting the switch room from the basement of Kennedy's had fallen in that direction and that the falling debris had damaged the electrical apparatus? It may have been the planks? or any of the other things fallen down the lift well?—*A.* Not down. More likely from sideways. It may be the bricks thrown out. There was indentation on the electrical fitting. *Q.* The fire had actually spread to a few of the bales of paper tagged in the Times basement as well?—*A.* Yes.

Q. A pipe in the Times basement had been opened? There was a flow of water let in from the basement side, the Times side?—*A.* There was no flow of water made by anyone. There was a tank down below and apparently something in that had opened and there was a leakage of water from the tank. The tank was in the basement. I cannot say in which section it was. It was somewhere in the basement. Against the wall as far as I can recollect. It was about four feet square. It was on the floor. I said I had experience of two previous gas explosions in Sheffield where I went to get my training, in the matter of fire fighting. They were both in private houses. In one case there was no damage by fire at all, and in the other case there was flame against the wall and the gas came out but there was no damage by fire.

Q. You do know that in this case Mr. Kennedy preparatory to shifting had taken down in the basement stock valued by the assessor for Rs. 200,000/-? You saw those racks at the bay at the back of the ground floor?—*A.* Yes, I can recollect. (The plan is shown to witness.) Yes, there was some stock down below but I cannot say whether that was all the stock.

Q. All the stock on these racks had been taken down? This photograph shows what the racks were like before the stuff was taken down? That is the back there? (The witness is shown the plan.) All the stuff had been taken down cardboard boxes had all been burnt up there? There would be in those circumstances lot of paper taken down in the basement and consequently particularly a good deal of dust in the air?—*A.* There may have been dust.

Q. The taking out of those boxes would disturb the dust rested on those boxes?—*A.* Perhaps, yes.

Q. In those circumstances of course you admit that the chances of a fire occurring in this case were greater than in a private house?—*A.* If it

was cardboard boxes and other material, I cannot be definite on the point, the fire may occur or may not occur.

Q. "Gambell on the outbreaks of Fires" is a standard book on the subject?—A. Yes, that is a standard book.

Q. You know of explosions consequent on the presence of dust?—A. Certain kinds of dust only.

Q. Such an explosion would not be dissimilar to a coal gas explosion?—A. May be of a same type. I got no experience of dust explosions.

(To COURT: Dust rich in oxygen coal dust and so on brings about an explosion. Dust very rich in oxygen. (Mr. Pereira reads a passage from Gamble's book on Fires.) The passage begins as follows:—"What generally happens is that the Oxygen laden dust holes comes into contact with flame instantaneous pressure, combustion takes place. . . . Then very rapidly spreading fire throughout the building"? The text book says that, "rapidly spreading fire towards the building"?—A. Yes. (Another passage from page 129 of the book is read.) I would like to add that from what I have heard from experience of these materials like that, that these explosions occur only in factories where that material is used all the time. (To COURT: Where the air is thickly laden with dust. This is going out of the point altogether if you are going to prove that explosions occur like that.) (Another passage is read from the book.) Coal gas is much lighter than air.

Q. And when it does leak it often is concealed above the low level of the door ventilators and so on, between the ceiling and the top of a door. It can easily lie there for a considerable time without being noticed?—A. It will not stop there for a long time. Air would disturb it.

Q. In that basement we have it that there is a small opening about seven feet by five feet or so over the shutter, circular 3/4 of an inch really where the spiral staircase lies and a wide opening six inches by about five feet above the border overlooking the Times basement? Those were all the openings in the basement? They were all above, is it not?

Q. There were girders as thick as eighteen inches some of them?—A. Yes.

Q. In between the girders leakage of gas can accumulate?—A. I do not think. (He reads another passage from the book.)

Q. All electric lights in switching off you get a spark?—A. Very often. If it is a bad switch.

Q. And such a spark can in the presence of inflammable gases cause an explosion?—A. Yes.

Q. Do you agree with this passage? (Another passage is read under the head coal gas; page 127 of the book.) "If after it is allowed to escape and mix with air the result will be that between the limits of eight to three per cent. of gas a readily ignitable mixture is formed?—A. Coal gas is lighter than air. Owing to this characteristic it will if allowed collect under vaulted ceilings and above the top of door or window openings, etc. where it will readily mix with air and remain an ever present source of danger to the first comer bringing a light. That is the light. "It is incredible but

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continued.

nevertheless a fact that some people still insist in searching for the escape of coal gas with a torch. The obvious method when an accumulation of gas is suspected lies in low ventilation with particular attention to high pockets and therefore a thorough search for the escape by orthodox methods”?

(To COURT : Q. If a man was expressly on the lookout for gas would his nose not be a good guide?—A. Before you get the smell there would be the explosion that is if you take the light. If the man knows about it he would take a torch probably, not a light. That is a case where you enter a building where there is gas. A closed closet or something like that if you enter and there is gas in it, it must explode.)

Q. You heard of explosions in streets where gas pipes and electric mains have been running side by side?—A. Yes.

Q. We had one when Governor Chalmers landed? At the junction of Prince Street there was an explosion?—A. I cannot remember that.

Q. With regard to where you found this suit case your recollection in the Police Court was that it was towards where the lift was?—A. I do not remember saying that.

Q. You said this “ I found it towards the corner of the lift ”?—A. That is to give an indication of the place where it was. It was towards that side of the lift. I may have done that.

Q. Mr. Prins also said that the tins were in a corner? The probability is that you took no particular notice of the thing?—A. Yes, I had seven hours work there. I went there and found that there were petrol tins and I went to the Police and told them about it.

Q. As a Firemaster did you look to ascertain whether those tins were empty or full?—A. No, I did not do it. I realised that it was the Police work.

Q. If they were full of petrol the presence of those two tins could not have contributed towards the fire?—A. No.

Q. Therefore did you not think that before calling the Police and making a hullabaloo about the disturbance of the two cans of petrol it was essential to find out what it contained?—A. I did not think. I sent for the Police and handed them over to the Police. I do not know whether the Inspector who took charge ascertained or not whether the tins were full or not. He did not do so in my presence.

Q. Did you seek to find out whether the cans had tops screwed on?—A. No. It was after the fire. It was all quite safe.

Q. The petrol cans were in your opinion something suspicious? The presence of the cans?—A. Yes, that is why I handed them to the Police.

Q. Did you not think it necessary to ascertain whether the screw tops were on the cans?—A. No.

Q. You cannot now say whether the tops were on the cans or not?—A. No.

Q. Are you aware that one of the cans contained a watery fluid?—A. No, I am not. After the Police court evidence I heard that there was some watery fluid in one of the cans.

Q. So far as your memory went the mobil oil can was about 2 feet away from the suit case?—A. I said 2 or 3 feet.

Q. Your statement in the Police Court is about 2 feet from the suit-case?—A. Yes.

I do not think it was so far as 9 feet. My recollection is very vague, on the point. Yes, I saw some boot polish tins in the basement. When I saw the suit case it was on its side.

Q. Can you recollect whether it was the bottom upwards or top upwards?—A. No, I cannot recollect that. As far as I recollect one can was outside the suitcase. (To COURT: I am very vague on this point altogether. I cannot say definitely whether it was out or 2 feet away. I cannot say who put the petrol tin back into the tin, the one that was outside. I recalled that the jute hessian was there. I said I could not recall the piece of water proof paper. The jute hessian was lying on the tin; it was wrapped over. It gave me the impression that it was on the top of the tins. If that was so the side that was exposed to the fire. These tins show signs of having been exposed to heat. One side of the paint of one can is completely off; 9/10 of it is completely off.)

Q. You would expect the jute hessian on that side to be charred if the jute hessian was on that side?—A. Yes, if it was burnt there I would expect it to be charred.

Adjourned.

21st September 1934.

Accused present. 21st September, 1934.

Same Counsel as on previous day.

B. E. WEERASINGHE. Sworn.

CROSS-EXAMINATION—(*continued*).

By the time the Fire Brigade got to the spot the fire had reached as high as the 3rd floor, and the well of the lift was well aflame.

Q. Can you tell me in what time they got there?—A. Well, from the point of receiving the alarm which was at 11.6 p.m. it took 1½ minutes to turn out and from there it would be the journey from the fire station to the scene of the fire. I am speaking of the brigade from entries of the books there. From the fire station to get to the scene would take about 1 minute or outside 2 minutes.

Q. Your brigade is not much more than ½ a mile from the scene?—A. It would be about that distance away. (To COURT: Within 5 minutes you could easily have got there.)

Q. And by the time you got there it (the flames) had reached the 4th floor?—A. I can not say that definitely. It appeared to be on the lift well side above the 3rd floor about that height (showing). I can not say whether the 4th or 3rd floor; but about that.

Q. When you got there you found the flames were roaring up that lift well?—A. Yes, They were going up that lift well. I would not say roaring, simply going up. I do not know exactly what you mean by "roaring."

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(*tt*) B. E.
Weera-
singhe
(recalled).
Cross-exa-
mination—
continued.

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(His report about the fire in which he used the word "roaring" is read to him.)

"Over which the flames were roaring"?—A. Yes.

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TO COURT: That word can be used to bring out the intensity. I said that some of the furniture and a good deal of paper on the 4th floor was burnt, just by the lift well.

(*tt*) B. E.
Weera-
singhe
(recalled).
Cross-exa-
mination—
continued.

Q. And you were able to save the things on the 1st floor of Kennedy's shop by reason of the fact that you got a jet on through the small lift?—A. Not from the small lift, but on to the small lift well. That small lift well was on the back and we got a jet on that point. That is a private lift of Kennedy's. 10

(TO COURT: If the main lift well was there, say it was here, there was a small lift well further inside about two floors only. After some time I noticed some flames going up that from the ground floor going up the private lift well. So that was the point on which I wanted it to stop. If I had not stopped that those flames would have affected the first floor stock. Then I went up this lift well which was burned and finished up and I caught one and from that ground almost on the left well because the stock had fallen down and on that left well we had one jet to play, on this small lift well. The top of the flames were going up that lift well; to stop the flames from spreading to the stock of the first floor. Thereby I was able to save the things of the first floor at least from the flames. They were damaged by water I believe. The first floor articles were more damaged by water and heat than by fire.) 20

Q. How long have you been the chief officer, the Firemaster in Colombo?—A. Over 1 year and 1 month.

Q. And I believe you on your appointment you went and took a course of training at Sheffield?—A. Yes, 9 months in England. (A passage from Gamble from page 130 is read.) "In any building where there is the possibility of the accumulation of explosives, vapour gases or dust clouds all fuses, etc., should either be enclosed in with gas-proof unflammable enclosures or preferably be enclosed outside in leather proof boxes?—A. Yes, that would be a perfect case which is never done really in actual practice. (TO COURT: That would be a perfect condition. They are not enforced in England. There are very strict rules for inflammable material like that.) (Mr. Perera continues to read from page 127 . . . "In this connection it should be borne in mind that some electric torches provide a spark sufficient to ignite gas air"?—A. Yes, if Gamble says so. (Mr. Pereira reads a passage from page 133 which says "All buildings in which inflammable area carbon vapours are likely to be formed should be assaulted in any ***** thorough ventilation must also be provided to all places including portions of sunk parts?" In this case the ventilation of the basement was certainly very inadequate?—A. I do not know about that. 30 40

Q. You have seen the area of that staircase well?—A. Yes.

Q. The rectangular opening over the area where the chute runs?—A. Yes.

Q. You would not call that thorough ventilation? Would you?—A. I would not call that “thorough ventilation.” I think that is an opinion better expressed by an architect.

Q. Do you call that thorough ventilation? So far as you know?—A. That is an area of about 4 feet by about 10 feet opening roughly.

Q. Inclusive of an opening 6” by 5 feet leading into the Times basement the total square foot area of opening is 45 square feet?—A. Roughly 10 by 4½. If there were fans working it would not be so.

Q. The size of the basement is about 16,000 cubic feet or else 17,000?—
10 A. I would not express an opinion. I could give only an idea. I have just the very same idea of what a layman would have. I can only form a layman’s opinion.

RE-EXAMINED.

Q. You were cross-examined about the amount of ventilation in the basement?—A. Yes.

Q. Suppose you see there was little ventilation would the result be that if there was any dust that the absence of ventilation would prevent the dust from being disturbed?—A. Yes, and mixing with air. I do not know for a fact that the things in the basement were taken down. (Crown
20 Counsel reads a passage put to the witness from page 149 of Gamble’s.) The passage put to you by Mr. Pereira was this: “The dust raised either accidentally or in the course of normal industrial working processes of many carbonaceous substances and such material not infrequently give rise to explosions of a most disastrous nature. A few of the principal offenders are (the list of offenders read.) Now are you aware that any of those substances were present in this building?—A. I cannot say that after the fire.

Q. Given that it was an ordinary shop it would not contain any of these substances?—A. I think not.

Q. And in fact this possibility of dust explosions from your experience
30 can you say that they occur only in factories, cotton factories where cloth is manufactured? A great deal of cotton might mix with the air and produce a carbonaceous mixture?—A. Well, yes. I cannot speak from my own experience but from what I have heard and read I can say yes.

Q. This is a condition which is applicable to large factories but would be inapplicable to high class shops situated in an area like Fort?—A. It must contain that material; that material must be present there in sufficient quantity to cause those explosions.

Q. A passage from page 130 was read to you, “In any building where there is a possibility of the accumulation of explosives, vapours, dust. . . I
40 understood you to say that that would be the ideal condition which however is not followed in actual practice except as you stated in some factories which have highly inflammable things such as Sallaloid?—A. Yes.

Q. Something dangerous per se?

Q. You know these ordinary tumbler switches which are covered sometimes with bakelite sometimes with brass and those coverings are more or less gas tight?—A. Yes. If they are screwed down tight they would

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(tt) B. E.

Weera-
singhe

(recalled).

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mination—

continued.

Re-exa-
mination.

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(*tt*) B. E.
Weera-
singhe
(recalled).
Re-exa-
mination—
continued.

be fairly air tight. I do not think the word air tight is quite correct. (To COURT: If the switch is there in position if there was gas round about the place it would not go about as it would when it is loose.)

Q. A certain amount of looseness must be allowed for the cover in order to . . . ?—A. Well, now for instance if you can imagine that switch without anything inside and then tried to inflate it up it will leak. Normally under ordinary conditions some other gas would not leak into that.)

Q. Were it covered in that way with either brass or bakelite covers then a condition almost approximate to a condition mentioned here would be produced?—A. As near as you get. Those switches would have been approved. I think that opinion is better expressed by an electrician. 10

(To COURT: I have had experiences of fires during my training in Sheffield. I have experience of about 600 fires a year. I have had no experience of fires which had undoubtedly been caused by petrol. I can only speak from theory.)

(*uu*) W. J.
Prins.
Examina-
tion.

W. J. PRINS. Sworn.

EXAMINED.

I am an Inspector of Police attached to the depot. On the night of the 29th September last I was in charge of a guard placed round the Times building. I recalled the last witness Weerasinghe drawing my attention to the presence of a suit case and 2 petrol tins about 6.30 a.m. The suit case was partly burnt. And these 2 petrol tins, when I saw them, they were inside the suitcase, both of them. One tin was partly out, and the other tin partly inside and partly out. The petrol tins appeared to me to be wrapped with thin gunny. Both tins were wrapped in what appeared to me to be gunny. The gunny was right inside the suitcase. I know it now to be jute hessian. It was over one side of both and part of one. (The witness demonstrates how the jute hessian was wrapped over the tins.) One tin was partly out. The leather was on top. It had not come off. I can't remember whether the side which was on the top had studs like that. I can't say which side of the suitcase was up. At that time I did not closely observe it. It was given to us to guard it. I can not remember whether those studs were on the side or the top. 30

Q. What you saw on top was burnt just as this is burnt?—A. This was on the top. Whether the surface of the bottom was on the top or not I cannot say. The other side is not burnt. That was not the side which was on top. I did not examine it. I only took charge of it. I made a note at the time I took charge. (He reads that note.) "At the Times of Ceylon Office Mr. Weerasinghe Superintendent of the Fire Brigade informed me that one of his firemen found a partly burnt suit case with 2 empty tins of petrol wrapped up in a gunny. Mr. Weerasinghe points out the spot the suit case was found. This spot is by the wall near the lift." (To COURT: It was shown to me. I asked him where it was found. That was on the verandah when I saw it. I was present at that inspection by the court. I saw the place where it was said to be found. I found it inside Kennedy's building. There is an arch 40

there as you enter, on the right, and right by that arch I found it. (The witness indicates on plan P24 the spot where he found the suit case.) I call it the verandah because there is an entrance further down.

Q. That is within the ground floor very near the entrance?—A. I can not say exactly. I have never been to Kennedy's before the fire. Witness reads from his note, "The spot the suit case was found is by the wall near the lift. I placed a Police Constable on guard over the suit case which had been kept on the verandah of Mr. Kennedy. No, I thought it is the verandah but it is not right to call it a verandah. That place was not the place where they said it had been found. (Witness marks a spot on the plan where Weerasinghe found it.) I made that note at that time. I have written down the time 6.30 a.m. The gunny I found that time is jute hessian of this description. I did not open the bag at all. (TO COURT: I just lifted the bag to see if it was heavy. We were sent there to guard the building and see that no people went in. We had nothing to do with the inquiry.) I was concerned with the custody of these tins. In my note I say "2 empty tins." I said they were empty because I lifted the suit case. I did not glance through the top and see. It might have contained anything. I could not say. That is my observation, that it was empty. Mr. Musafar Sub. Inspector relieved me at 7.5 a.m. and I handed these tins to him. Mr. Muller the Superintendent of Police was present at the time and I pointed them out to him.

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(uu) W. J.
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tion—con-
tinued.

CROSS-EXAMINED.

Cross-exa-
mination.

I am quite certain that one can was slightly tilted upwards and the other one inside the suitcase but not altogether invisible. That is how it was. This can was visible from a side. One can was slightly to a side, the other can like that. I can not say whether the front side or back side was more exposed?—Q. Your evidence in the Police Court is that when you found them the suit case was partly burnt, and there were 2 empty tins packed up in thin gunny?—A. Yes. That tallies with what is in my note book. In the Police Court as well as in my note book I say when "I saw them they were in a corner close to the lift." Yes, close to the wall by the lift. "By the wall near the lift" is how my note book reads. I do not think I was asked by you to mark the spot where I found them in the Police Court. I do not remember your asking me. The Magistrate did not ask me to mark the spot. Mr. Ferguson asked me to show the spot in the Police Court. I must see it. When I marked the spot at Obeyesekera's request I knew where the lift was. I know now. I was shown where the lift was.

Q. So far as you can recall, how many feet away from the lift was the suit case?—A. It is very difficult. From the lift I cannot say how many feet away it was. There was a wall by the lift and that is how I got my bearings. I can not recollect how many feet away from the lift it was.

Q. When you went there there was no wall separating the wall from Kennedy's premises and Times premises?—A. No, there was a wall and entrance too. The wall was partly down. My impression is not rather faulty.

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(*uu*) W. J.
Prins.
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mination—
continued.

Q. The whole of that wall inclusive of the doorway had been blown down?—A. There must have been a bit of a doorway because I remember it. There must have been a short wall somewhere. As far as I remember the whole wall was not knocked down. A part of a wall was there sufficient for me to know that there was a wall. I remember the back wall. There is a concrete wall. There was a $\frac{1}{2}$ " brick wall separating the Times premises from Kennedy's premises.

Q. From P42 you see a section of the wall, right up from the ceiling? The ground lift remained? There is nothing to show that any section of the wall was on the ground?—A. A part of it did remain. The rest of the wall is not visible in that photograph at all. That wall did continue right down to near the lift. 10

Q. That wall did continue close to the lift?—No answer.

Q. As a matter of fact this plan is erroneous with regard to that wall? This wall has not got this break here? It is a straight line from here to that pillar?—A. Yes.

Q. As a matter of fact this is the left wall?—A. Yes.

Q. Now, that spot that you marked according to this plan would be about at least 8 feet away?—A. May be, yes. That is certainly not close to the lift. 20

Q. Your evidence in the Police Court is that you found it in a corner close to the lift?—A. That is a wall. I cannot remember whether I marked a spot in the Police Court at your request somewhere here. I must see that. That is not correct. That is in the passage leading to the Times Office.

Q. This wall had been blown down?—A. No, this is not. This doorway was partly there I recollect.

(TO COURT: The ends of the wall from the way the walls ended there was an opening in that broken wall. I did not know that there was a door there before. I understood that there was a door there from what I saw that morning. (X) is more closer to the lift than this spot I marked at (A). 30

Q. The spot X on that plan is also by the wall but much nearer to the lift than this spot?—A. That is not correct. I called that a verandah because I thought it was a verandah at the time. (TO COURT: It was inside and the floor was a bit raised further on. There was a difference. That is why I called that the verandah. There was a difference between the back portion of Kennedy's building and the front portion. If I marked X that was erroneous. It would be where I showed it just now. B is by the wall. When I said in the Police Court "by a wall near the lift" that was to show which wall I meant.)

Q. If your story now is true, "near the entrance to Kennedy's premises" was the more accurate description of it? Not near the lift?—A. That is where I described it at the time. The spot I found this suitcase with the cans was not the spot where the suitcase was originally found. That is quite clear. I did not ascertain who had shifted the box. 40

Q. Had you been told anything about either of the cans being put back into the box?—A. No, I did not question anyone.

Q. Then I take it you assumed that the box was as it was described?—
A. I took it at the time.

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Q. Did you inquire why it had been shifted from its original position?—
A. I made no inquiry at all. (He reads the note made by him) “Mr. Weerasinghe indicated the spot where the suitcase was found. That shows that it was found somewhere else from where I saw it. I did not shift it on to the verandah myself. I call that portion the verandah. I did not move the suitcase. No, I took it at that time to be the verandah. Outside Kennedy’s would have been the pavement. I know now what the verandah of Kennedy’s is. It was not on the verandah. “I placed a Police Constable on guard over the suitcase which had been kept on the verandah.” (He reads his note.) “I also showed the production to S. P. Muller and showed him the spot where it was discovered.” I do not remember taking the suitcase to the verandah. I did not shift it to the verandah and place a guard. There was slight smoke at the time. No, but I do not remember touching that suitcase, taking it out of position. I had been told that that wall separated the Times vestibule from Kennedy’s ground floor.

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(uu) W. J.
Prins.
Cross-exa-
mination—
continued.

Q. You must have had it taken away from these smouldering debris that was on the ground floor and kept it outside and put a constable on guard.
20 —A. I cannot remember having done it. Yes, that is probable. I would have done it, but I cannot remember. This spot is by the wall near the lift. There is no mention of a verandah. I do not know that these cans and the box was removed by Mr. Collins the Government analyst. I do not know that in one tin there was found a rusty fluid. I did not test the tins to see whether they were absolutely empty or not. I did not meddle with the production at all.

Q. You saw no blackish coloured paper?—A. I cannot remember that. (To COURT: I know the sort of paper which is water proof, or oil cloth on one side. I cannot remember seeing any oil paper.)

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RE-EXAMINED.

Re-exa-
mination.

In that note of mine I say that when I saw the suitcase and tins they were by the wall near the lift. To-day I have marked that spot as A. I see the main Times lift marked No. 1 in that plan. The entrance to that lift is on the Times side of it. And that wall the wall by A runs on the side of the lift.

Q. Do you say that the spot (A) would be accurately described as by the wall near the lift?—A. Yes. I referred to No. 1 lift, the big Times lift by main street near the entrance. (To COURT: I know the other lift on the other side. I have seen that. That suitcase may have been placed on the verandah, but I have no recollection of moving that suitcase. I do not remember whether the constable removed it. The constable may have taken it further out when he took it on guard. I left it where it was when I saw it.)

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MISS L. B. BAMPTON. Sworn.

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I am a nursing sister attached to the General hospital. I was on duty in the merchants' ward on the morning of the day after Mr. Kennedy was admitted. I came on duty at 7 o'clock. I know the clothes Mr. Kennedy was wearing when he was admitted to hospital.

(*vv*) Miss
L. B.
Bampton.
Examina-
tion.

Q. They had been taken charge by an attendant and given to be washed by the dhoby?—A. No, they were not taken charge by anyone. They were dealt with in the usual way. The attendant did not take them out. They were put in the bathroom. That is the usual procedure and then if there was sufficient delay then the attendant would attend to them and wash them fully or else they will be handed over. I remember Mr. Bantock coming there. Yes, the clothes were given over to him by me. They were on the lawn. They had been washed and put out to dry. In fact they were wet at the time. The clothes were ordinary men's apparel. I remember there was a pair of shoes. I cannot identify the items.

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(To COURT : These clothes of patients are not marked in any way. It is quite easy to distinguish each other. They would not get mixed up.)

CROSS-EXAMINATION.

Nil.

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(*ww*) J. R. G.
Bantock.
Examina-
tion.

J. R. G. BANTOCK—Affirmed.

EXAMINED.

I am the Superintendent of Police, Crimes, Colombo. I remember the morning of the 30th September last year, the day after the fire. About 9 o'clock that morning I went to the General Hospital. The object of my visit was to take charge of Mr. Kennedy's clothes. Miss Bampton a nurse on duty gave me the clothes of Mr. Kennedy. All the clothes were wet at the time except the shoes. I have got a list of the clothes given to me. One pair of white trousers, one white coat, one white collar, one white shirt, 2 whitish coloured socks, 2 white handkerchiefs, and one pair of brown shoes. (The witness identifies the articles mentioned.) There is a rent in the coat. It was wet then. I did not observe any burns. His name is on the pair of trousers and coat too. The white shirt also bears his name. The socks were also wet. The burns on the socks were there at the time. One sock is more burnt than the other. Yes, the edges at the time were burnt. It is slightly singed.

30

Q. Did you observe those brown edges on both socks at the time indicating burning?—A. I am afraid I cannot remember at this point of time. I have no note of that. This pair of shoes has no indications of burns. The skin of the leather I notice now but not then. There is a slight mark on the shoes, both shoes. (To COURT : They look as if the shoe must

40

have come in contact with something rough.) The shoes are now in a cardboard box. That box was brought either by a Reserve Sergeant or a constable. I asked for a box in which to pack it at the Colpetty Police station and this box was given to me. I had to record the statement of a witness at Colpetty Police station. I then called for a box in which to place the shoes and this box was given to me. I believe that I packed the shoes in this box. I then took these clothes along to the Times building, and handed them over to Mr. Collins the Government Analyst. I met him at the Times building at 10.10 a.m. I handed over the clothes and these productions
 10 to Mr. Collins in the condition in which I got them. The clothes were wet and the shoes were dry.

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tion—con-
tinued.

CROSS-EXAMINED.

Nil.

A. A. MUSAFER. Affirmed.

(ex) A. A.
Musafer.
Examina-
tion.

EXAMINED.

I am the Sub-Inspector of Police attached to Wellawatte now. I remember the day after the fire at the Times building. It was the 30th September. I took over duties from Inspector Prins that morning; from 7 a.m. I was in charge of a Police party that was watching the building.
 20 Inspector Prins handed over to me a suitcase and 2 petrol tins. (To COURT : At the time I saw the suit-case and tins they were close to the lift. I know Kennedy's shop. I know what is the verandah and what is the shop inside. The suit-case and tins were inside the shop.)

Q. Can you describe the spot a little more particularly?—A. The only other thing I can remember is that it was close to a lift. I had not been to Kennedy's shop before the fire. I have seen it from its outside. I know the verandah the front entrance. (The plan is shown and explained to the witness.) That represents the glass window.

Q. On the side was the main entrance to the Times building?—A.
 30 I remember that.

Q. And as you entered it on your left was the lift?—A. That is right.

Q. You pass on this vestibule and there is another door which is marked F here by which also you can enter Kennedy's shop?—A. I remember that. Passing on to the right is a small lift going up to Kennedy's shop and then on to the Times inquiry office.

Q. To begin with when you saw this suit-case and petrol tins were they in the verandah?—A. Not on the verandah. I have no doubt about that.

Q. When you went there what had happened to that doorway that was there? This wall here?—A. There was a doorway after the fire. There
 40 was an entrance. I presumed that there was a door there. (Witness marks on the plan the spot at which he saw the suitcase.) I remember it was near a lift. I did not pay any particular attention to the spot where it was found. (To COURT : I am quite sure it was not the verandah in which I found it.) I had a look at the suit-case. It was similar to this suit-case produced. The

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petrol tins were inside the suit-case when I went. There was jute hessian inside the suit-case. The only thing I can remember is that there was 2 petrol tins inside the suit-case and some jute hessian. How the jute hessian or petrol tins were placed I did not pay any particular attention.

(To COURT : I never touched it at all. Q. Can you say whether that side which was exposed was burnt as much as this side is?—A. Yes.

(xx) A. A.
Musafer.
Examina-
tion—con-
tinued.

I was able to see both tins without disturbing them at all. I never touched it. Muller made a visit there. I was present when Mr. Ferguson took charge of them. (To COURT : I was there until Ferguson took them in charge.) When Ferguson took charge of them they were in the same position 10 because I was guarding them right throughout. I am certain that I did not disturb the contents until Ferguson took charge.

Cross-exa-
mination.

CROSS-EXAMINED.

Ferguson took charge of them about noon. I said there were 2 cans in the suitcase, both visible. I was taken there by Inspector Prins. My recollection is when I looked at the suit case from above both cans were visible.

Q. Were you able to see whether any of the cans were burnt partially?—A. I cannot remember, that.

Q. Your recollection is that the suit case was at the time it was handed 20 over by Prins close to the lift—the main lift?—A. I cannot say which lift it was. I am positive that it was near a lift, but cannot go beyond that. It is correct to say it was about 2 or 3 feet from the lift. I made no entry in my note book.

(yy) K.
James
Perera.
Examina-
tion.

K. JAMES PERERA. Affirmed.

EXAMINED.

I am an attendant of the General Hospital. I was on duty at the merchants' ward at the general hospital at the time Mr. Kennedy was admitted. I undressed him. He was dressed in a white coat, white trousers, white shirt and there was a collar, 2 white handkerchiefs, a pair of cream 30 socks and a pair of shoes. There was blood in the collar and tie. The tie too was there in the room where the clothes were kept. There was blood in the trousers also; not much, a small quantity of blood. (To COURT : In the handkerchiefs too there was a little blood. I cannot remember any blood in the socks but the socks were burnt. (Shown socks.) I have no clear recollection now whether the socks were burnt like this. But I know that they were burnt. Such traces as I found of burning I have no recollection whether they were singed. I have no recollection whether they were burnt. To COURT : There was blood in this. It was I who took it out, but it was not burnt. No, I cannot say even now whether this is burnt. Following the 40 usual practice I kept the clothes in the bathroom. And handed them over to the morning attendant James Perera.

CROSS-EXAMINED.

There was blood on the shirt.

Q. Can you remember what part of the trousers there was blood?—

A. Lower down on the legs. On the lapel of the coat there was blood, and in front of the shirt. I saw him as he was brought into the hospital. I saw him bleeding. That is all I can say.

Q. From both sides of the face he was bleeding and also both hands?—

A. I do not know whether either burnt or not but there was blood on both the hands. I do not know Mr. Owen. There was another European lady and gentleman who came along with Mr. Kennedy. Whether the gentleman wore glasses I cannot recall.

Q. That gentleman helped in getting off the shoes do you remember?—

A. I have no recollection of that either. It was I who removed all his clothes including the pair of shoes. I who removed the shoes. If the gentleman says that he took out the shoes I would say that I cannot remember that.

Q. That gentleman says he was trying to unlace the shoe laces when he was asked not to do so? Is that so?—A. I have no recollection. No, I cannot remember that there was a gentleman present in the room at that time. I recollect the fact that I removed his clothes myself. I removed the shoes. I actually took them off and kept them in the room.

Q. Did you get any smell of petrol whatsoever when you were removing the shoes?—A. Nothing whatever. The shoes were in the ward. He was not taken to the operation room.

RE-EXAMINED.

I just removed the shoes without paying any particular attention to it. (To COURT: I do not smell the shoes when a gentleman is brought into the hospital).

To JURY: It may be that Kennedy was chloroformed after they took off the clothes. When he was brought the flesh in his hands and face were all raw. And there was a smell of blood rather powerful smell. I could not say whether his hair was also burnt.

A. JAMES PERERA. Affirmed.

EXAMINED.

I am an attendant at the General Hospital. I came on duty to the Merchants' ward at 7 o'clock on the morning of the day on which Mr. Kennedy had been admitted. Yes, the clothes had been put in the bathroom and I was shown them and given in charge of them. They were all in one heap.

Q. When you took charge did you take them up one by one and check them in any way?—A. Yes. The articles of clothes were a white collar, a white pair of trousers, a white shirt, 2 small handkerchiefs, a pair of cream socks, and a pair of shoes. I have no recollection of the condition of the

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(yy) K.
James
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Cross-exa-
mination.

Re-exa-
mination.

(zz) A.
James
Perera.
Examina-
tion.

pair of socks. I gave them over to the ward cooly to wash, all except the shoes. That is the usual practice when a patient is brought in with blood-stained clothes.

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CROSS-EXAMINED.

(zz) A.
James
Perera.
Cross-exa-
mination.

I found the shoes in the almirah. Not on the floor of the room. I handed them over to the sister in the morning. That sister handed them over to Mr. Bantock. I took the shoes into my hands and kept them close to the sister in the duty room and then handed them over to Mr. Bantock. They were not wrapped in paper or parcelled. I got no smell of petrol on those shoes.

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(aaa) Dr.
C. S. P.
Peiris.
Examina-
tion.

DOCTOR C. S. P. PEIRIS—Sworn.

EXAMINED.

I was the admitting doctor of the General Hospital. On the 29th of September last year when Kennedy was admitted to hospital. I noted the time he was brought to hospital, at 11.30 p.m. He came in the company of another gentleman whom I did not know, another European gentleman. On admittance he gave me a history of having accidentally burnt himself as a result of an electrical explosion at about 11.15 p.m. that day. Kennedy himself told me that. I cannot remember beyond that note of what he told me. Well, he had burns of the 1st 2nd and 3rd degrees. He was seated in a chair in the dressing room and spoke to me when I saw him 1st. He was able to speak but he himself told me that he was dazed and knew nothing. He spoke to me rationally. He was in great pain, unconscious. Later on he told me when I went into the details of the accident, "I do not remember, I am all dazed." He appeared to be in a condition of shock. He was not quite himself. He was a little confused mentally although he spoke rationally owing to the burns. I rushed him to the ward at once—the merchants' ward where he was attended to. I did not attend to him at all. I just ordered a morphia injection and the sister attended to the temporary dressing and he was rushed to the ward. I produce a copy of the bed head ticket. I gave him over to the house officer—Doctor Ramanathan.

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(To COURT: The burns of the 3rd degree are burns exposing the flesh. I did not see any actual blood coming from the hands of Kennedy but it was raw, the skin had peeled off. It is not a thing that leaves very much hæmorrhage. His condition did not give out any unusual odour. Once he said it was an electrical explosion I took it to be that. I did not examine him for anything else. Obviously he was burnt.)

Cross-exa-
mination.

CROSS-EXAMINED.

I wrote the name of the ward, the date, the time and the name. That is all in the upper part of the report, and a history of the case. The date of admission was written by a clerk.

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Q. Did you write the disease, or injury, burns of both hands and wrists, and both ankles?—A. Yes, that is at the bottom. I wrote these 1st three entries up to here. And also this is mine. This is Doctor Ramanathens'. All I have entered up is of his history of having been accidentally burnt as a result of an electrical explosion to-day at Times building. A burn of the 1st degree is a burn just affecting the epidermis; 2nd degree the dermis; 3rd degree affecting the underlying tissue itself. A burn of the 2nd degree is necessary before a blister is produced. I found burns of all 3 degrees mainly 3rd degree burns. The whole of the face
 10 on both sides were burnt, and presented a raw appearance. The skin was off. The skins were hanging on the hands like festoons. I saw it hanging. It was rather unusual. I have seen mostly these ordinary flames causing burns, not electrical burns; and as such I thought it was just possible to be caused by electric burns. I know not why it was that the skins was hanging. I thought at that time that it was due to electric burns. I thought that a current could have come and peeled off the skin. I did not see the patient thereafter at all. I am aware that Doctor Ramanathan attended to Kennedy that night. (To COURT: He was the Doctor who actually dressed him.)

20 Q. Neither Doctor Fonseka nor Silva was on duty that night?—A. On that particular day I do not know whether he was on duty.

AFTER LUNCH.

DOCTOR C. S. P. PIERIS.

CROSS-EXAMINED.

Q. You were asked whether you got the smell of blood on Mr. Kennedy?
 —A. No.

Q. A human nose cannot smell fresh blood?—A. I can smell fresh blood. If you show me blood I will get a particular smell. I should think there is a peculiar smell in blood. That is if a person held his nose very close
 30 to it. Ordinarily it is the feline tribe that can smell blood.

RE-EXAMINED.

I had no experience of electrical burns. This is perhaps my first electrical burn of any serious nature. When I saw the flesh was hanging from Mr. Kennedy's hands I said it might be due to an electrical burn. That is a surmise and also what was told me.

R. GOVINDEN. Affirmed.

26 years of age. I am a cooly employed at the General Hospital. I remembered Mr. Kennedy being brought to Hospital burnt. The day after he was admitted I washed his clothes. James Perera gave me the clothes.
 40 I do not remember what I washed. It was a coat, a pair of trousers, a shirt, a banian, 2 handkerchiefs and a collar and a pair of socks. I washed the

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(aaa) Dr.
 C. S. P.

Peiris.
 Cross-exa-
 mination—
 continued.

Re-exa-
 mination.

(bbb) R.
 Govinden.
 Examina-
 tion.

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clothes with soap and Jeyes fluid. There was much blood on the coat and the pair of trousers.

(To COURT : The socks I washed bore a faint white colour.)

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(Shown P7.) It was one like this. At the time I washed the socks one was badly torn and one slightly burnt. It appeared to me as if they were burnt.

CROSS-EXAMINED.

(bbb) R.
Govinden.
Cross-exa-
mination.

Q. Before you described the socks you said they were khaki or red ?
(To COURT : There was much blood on them and I was unable to find out the colour before I washed them. After I washed them and put them to dry they were taken away.) 10

I am an ordinary cooly. I did this washing.

RE-EXAMINED.

No questions.

(ccc) W.
Small.
Examina-
tion.

W. SMALL. Sworn.

I am an architect and an associate member of the Royal members of British Architects and a member of the Institute of Constructional Engineers. I am a member of Adams & Small. I have been doing business for 12½ years. My total experience as an architect has been since 1928 when I have been studying the higher type of architectural building. My firm were the architects for the Times Building. I produce these two plans marked P23 and P24; one for the basement and the other of the ground floor, in particular Kennedy's section of it. Those plans were prepared by me. They were prepared at the time the building was erected but it was prepared for the insurance claims. It was marked by letters to identify with marks so that the Assessor might be able to identify the goods on any particular wall. They were sketch plans and when application was made for plans I had blue prints made of them. I made the plans not at the instance of the Times Building. 20

The basement plan is prepared to the scale of 8' to an inch. It is an approximate plan. Kennedy's section of the basement is shown on the left hand side between two rectangles and a curve. I cannot say what the floor space of the basement is but I have got the cubit capacity—it is 16881. It is what I have computed from the personal survey. 30

The only openings are the spiral staircase at B and the chute entrance at A. Except for those two openings and a small aperture on wall D I would not say chamber is air tight. That is a partition wall. G.E. and D come up to the ceiling. One would not say that there was a hundredth part of an inch between the wall and the ceiling. Over the chute and near the girder there was no opening except for where the gas pipe is. I know the side wall D. At the top there is a girder. Between the girders and the ceiling there is no small opening. The wall "D" went from the floor to the underside of the girder. The wall was not there and so the aperture was not there. 40

The wall is not there. The wall D is not now in existence. Between the beam and the ceiling at D I have not seen any aperture.

The five little rectangles marked in the plan consist of columns. I examined the building after the fire on the morning of the fire. I arrived there about 8 o'clock and I first made a general inspection of the building to see whether it was safe, to discover whether the damage to the upper part was serious and whether the building was in danger. On Saturday I had to see to the services to the building water, electrical lights and gas being restored. On the following day, Sunday, I again inspected the building
10 and from the Monday onwards I spent my whole time in the building.

I marked what is called the in-take chamber. The entrance to that is by the door C, a metal expanding door. The intake chamber is completely cut off from Kennedy's section of the basement except for openings at the top of the wall. It was constructed to be completely separate from the intake chamber. I also show in the intake chamber what ought to be the position of the main lift. On the Times section of that plan are paper reels placed against wall D going to a height of 7 to 9' roughly and again paper reels are placed on the other side. In that way between the reels there is a passage. It is through that passage one comes to the door C. When I inspected
20 the actual damage I found that the wall at C had disappeared. It was found afterwards when the debris which had fallen in the intake chamber had been taken out. That was $4\frac{1}{2}$ thick and plastered on one side. That is on the side next to Kennedy's. As a matter of fact portions of that wall were flung across to the opposite corner to the wall besides No. 1. On the intake chamber side of that wall there was attached to it certain electrical apparatus. The position marked No. 4 on the plan was a 220 volt distribution to the various sections for the lights and fans. That had been thrown over the wall. It was a skeleton hanging on which a cast iron box was fitted. It had 2 legs to which it was fixed and the legs had been bent and was lying
30 on the floor like this (witness demonstrates).

The wall F was badly broken but it had not fallen down. Part of it had fallen down. The fabric of it was badly charred. As a matter of fact it had to be removed on Saturday because it was in danger of falling on the people. It had fallen towards the paper reels. One had to climb over it to get to door C. Coming from the Times side one had to get over the debris to get to door C. C. was the metal expanding door. It was badly bent. It was still there standing up in a corner. That was a collapsible gate. I do not know that pressure could have bent that gate. Probably some flying piece of masonry might have bent the door rather than pressure.
40 The top wall at K in junction with the wall across had been driven in. A small triangle of it had been driven into what is marked "store." It looked as if a *glass coming from "C" had come in that direction and * Sic. knocked the ceiling and blown it out.

The top of the wall D has the chute running a short distance and that part of the wall over the chute had been completely blown out except where it had been stopped from being blown out by the paper reels. The debris of the other piece was thrown along the passage, H, and found about

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60' away. That portion of the wall D is supported by separate walls which actually stood up. It was the same with wall E. The walls D and E were 4½" thick and plastered on both sides.

(To COURT : It is merely a partition.)

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Small.
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tinued.

I also examined the condition of the spiral staircase. The steps of that staircase radiate from one common post. The steps presented an appearance of having met with some pressure. They had all been moved a bit. They had been moved upwards. Taking into consideration that the post was radial and supposing there was pressure on any step and on the next step that would tend to lift the whole staircase.

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(To COURT : There would be air flowing through. The steps do not overlap. It was only a matter of an inch.)

Q. You agree with this proposition that where there was pressure applied on these steps from upwards the cumulative force would be applied on the top step where the most pressure would be?—A. I do not follow the question.

Q. If there is pressure on one step and pressure on the step above it there would be two pressures and the maximum pressure would be on the landing step?—A. That is so. I did not notice that the staircase was buckled.

20

* Sic.

The chute consisted of 2 ¾" * and bricks with some iron reels and a platform of concrete. That platform of concrete had cracked in one place. The walls carrying the concrete slab had bulged outwards.

Q. Are you telling us that the two retaining walls which carried the concrete slab had bulged out?—A. Yes.

Q. They reached up to that slab or were joined on to them?—A. No they were just cast on them.

Q. At the bottom of the chute is an entrance?—A. Yes.

Q. You say the supporting walls go up to about 1½ feet?—A. Yes.

Q. At the bottom of the chute is an opening inside?—A. Yes.

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Q. That will form a closed passage as it were?—A. That will form a pocket.

The walls on Kennedy's side had bulged considerably less than the other side.

(To COURT : The walls had both bulged outwards from the pocket.)

Q. What in your opinion is the cause of the bulging of the supporting wall?—A. It was clearly an internal pressure in the internal pocket.

Q. Would it be consistent with a pressure produced by, supposing there was a petrol explosion in the basement, and the portion of the vapour went up the chute partly and where this aperture entered the pocket would vapour enter into the pocket?—A. I cannot answer the question. I am not an expert on gas. I simply say that my opinion is that the walls were bulged outwards from pressure. It is consistent with a pressure from expanding gas.

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Q. Can you assign a reason why the wall on Kennedy's side was bulged less than the other wall?—A. Yes. I think it was an accident. This wall happened to be stronger than the other.

Q. If there was pressure in the outward pocket and it entered from Kennedy's side would that result in that wall bulging out less?—A. You mean in the small space in the wall D and in the chute there was no pressure and in the wall next to it suppressed the pressure. The less bulging out might be due to a difference in the strengths of the walls. Those two supporting walls were of the same thickness made of the same mortar and
10 from the same materials. They were both capable of doing what they were wanted to do. I could not say what their relative strengths would be with regard to an explosion. On Kennedy's side of the wall there was a counter-acting force.

Q. Is it correct that there were no cracks in the walls of the basement? I am talking of the retaining walls?—A. There are no visible cracks now. The wall of the basement consisted of a concrete retaining wall going up to the beam which carried the ground floor. That is where the accident was. I found no sub-soil but it is part of the wall. The wall consisted of certain concrete of certain thickness sloping upwards. That concrete wall stopped
20 short of the ground floor. The beams were in the form of stanchions. The bottom side of the beams are on the top side of the floor and the walls are brought to the ground floor level by filling in. No part of the concrete wall had cracks. Some of it was concrete and some brick. It is a mass of concrete and brick. The plastering had given way. That could be produced by heat. They were flaked off and parts were in smoke. The floor of the basement shown no damage at all.

In the plan I first show a verandah round. E is the main entrance to Kennedy's shop from Main Street. Plate glass windows going round are shown on the side. The main entrance in the building is "U." The
30 main lift is on the left. There is a door at "F" to Kennedy's shop. That was a teak panelled door hung in 2 halves one opening into the shop with bolts and the other has a lock to. I see the wall marked (T) was attached to that wall. The wall is continued in a straight line up to the lift. The circumstances in which this plan was made was that on the morning of the fire I had two tracings made from the plan in pencil. These I took round with me on my inspection. For the next fortnight the other things did not exist on the wall T and so I did not mark them.

On the right hand side of the vestibule was Kennedy's private lift going to the first floor only. B is the top of the staircase. C is a door
40 opening into a spiral staircase chamber. It is a single wooden door closed from the inside. At "U" is a wall 7—6" high—not as far as the ceiling. It was merely a screen so that the people could not see the chute entrance and the back entrance of the shop. It was $4\frac{1}{2}$ " thick. On the top of the wall there was nothing. It was just a short wall. D is the chute door first a metal expanding door and inside a wooden door. The wooden door opened inwards. A is the entrance to the chute. "SS" are two stanchions cased in concrete where two switches are cased. Drawn on that plan

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are two lines in purple ink. Those lines show the corresponding area of Kennedy's basement. They show where the wall came from underneath.

The back bay of Kennedy's portion would be above Times portion. The back bay of the ground floor is the portion not above Kennedy's was damaged. Taking a line as dividing the floor slab is actually deflected from the beam but there is no other danger. The beam is from the line S to K. The wall of Kennedy's basement is under the beam. The rest is reinforced slab which formed the ground floor inside the shop. It was very much damaged, torn to pieces and outside the verandah it was in the condition it can be seen in to-day. Some portion of that slab had actually fallen into the basement; other portions were hanging down suspended by the reinforced wires. It was 4" reinforced with No. 9 British Reinforced Cement fabric. That is a product made by the British reinforcement company. It was reinforced over the beam where they occur at the top. Generally it continuous through the bottom where the beams actually came in contact and the slabs had been bent the other way. The verandah over the slab is generally split and cracked everywhere. In the corner marked (J) the slab is split at least $\frac{1}{2}$ across to the end of the plan actually the point (J) where the pieces had been broken from the slab where one could see to the basement. The wall "TT" had fallen into the vestibule along with the door "F." (Shown a photograph of P42.) I see remnants of the wall standing up. I cannot say if there were remnants standing up at the other end. The wall "U" had fallen in the direction of the staircase. It had actually fallen on the wooden fixture that stood there. There was a wooden fixture there. It was a wooden shop fitting or some such thing (Shown P43) I see the main Door at "E." It was chiefly plate glass in a frame a sliding door. The windows at "G" were all plate glass with grills over. At the window "E" the glass had been blown out and the window had been entirely blown out. I saw pieces of glass on the middle of the street. I recall seeing one part of it burnt. It was a sliding door and it overlaps the wall. It was panelled on the sides and as each had glass in the metal side so that when the door was opened we had an opening. It was one of these pieces I saw standing there. I cannot say if any of the wood work were blown out. I am only speaking of the glass. I see the lavatories shown in the plan. The doors were shut. The doors did not burn through. Everything was destroyed by heat and smoke. It was scorched but the fabric was not destroyed. The door of the lavatory near the front was more scorched than the door of the lavatory further. (Shown P42.) Racks in the back bay were not destroyed utterly. They were removed but still there are the marks of the shelves.

Along SS there is a beam and in the line of that beam there was a fracture. There was a fracture. The ground floor consisted of a reinforced slab 4" thick. Generally the reinforcing was at the bottom except where there were beams. The concrete slab if pressure was exerted from below upwards the tendency would be for the slab to crack at the top. That is generally speaking. In other words if a slab is designed to take loads in the downward direction and took loads in the upward direction it

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would crack. Concrete is a brittle material. It is a material which is strong in pressure but weak in resistance. A piece of wood is equally strong in pressure and weak in resistance. Concrete will give way on the tension side and break down. The object of introducing steel in the tension was to supplement the strength. That is the purpose of reinforced concrete. We reinforce slabs at the bottom where the tension would be downwards. In this case the slab on the ground floor would have to bear the weight of fittings. This slab was merely resting on girders. So far as the verandah portion of the slab is concerned that is the portion on which there was no furniture or fittings and no pressure from upwards below and in that area I found that peculiar crack would be at the top would be like that (Counsel indicates the position). That is consistent with the force of pressure coming from below upwards. I am not of the opinion that this is the only way of explaining the damage in the verandah but I am certain that the crack at H was due to the explosion. I know from my personal experience in observing the verandah slab the H iron was not exposed to as much heat as the rest of it. What I mean is that the density of the fire was sweeping to the other side and went up the lifts. I cannot say the damage to the verandah was caused by upwards pressure (Shown a photograph from a manual of reinforced concrete by Marsh and Dunn). I am not familiar with this book I know it is a book. I can see it. It is a diagram. This a type of fracture shown in text books and the verandah fracture does not follow that line of fracture. (To COURT): I do not think it is anything like what is shown in the book. I do not know that book. The illustration given is of a typical fracture of distributed pressure which is ordinary. It is very elementary.

The rest of the floor which was inside the shop was removed after the fire but a great deal of it was broken and hanging on the reinforced wires. Mr. Ross went to work down below and it was dangerous for him and I had to help to have the stuff cut away. The condition of the slab inside could only be said to be chaotic. You could not form any specific conclusions from the damaged conditions. It was not possible to say from where it had broken first. I see the letter "S" near the letter "G". The floor had given way entirely between "S" and "C". That was one of the pieces that was broken down in the basement. There was a heavy mass of machinery standing on the slab behind "S". That was standing naturally on the floor. If the floor was pushed up the machinery would have given way. The diagram is that of a slab fractured by pressure from on top. Turning the slab over you get the same condition. It makes no difference. One side was entirely torn away. It was fallen over hanging downward. A person could jump from "S" to "C" It is only about 6—7". After the fire one could not walk from "S" to "C". Part of it was there. The wall "U" was leaning over the staircase. It was. It is difficult to say if one could have got up the staircase after the wall came down. I only saw the thing afterwards. I do not know at what point the wall fell. I would not give an opinion. I do not know whether it was physically impossible for a man to come up. The entrance to the staircase was

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obstructed and the wall was in a leaning position. I could not say what a man could get done or what a man could not get down (Shown P23) I see the point marked "G". I see the point marked "G" (P3). The gas pipe came from the intake chamber somewhere near that point and went through that wall and was carried parallel to the wall "G". The floor above is still there. It is a verandah. The floor everywhere is cracked but less extensively there. There is no crack about that point or anywhere near it.

Q. You told us that you built this—the Times Building? Now I am passing on to the foundation of the building. You supervised the foundations?—A. Yes.

Q. You dug the ground how far down. To begin with did you use piles?—A. No. The foundations were actually 17' below the ground level. The ground level varies between 17 and 18'. When I dug down as far as 8' I got loose cabook and rubbish, etc., which one would normally get. Where it was filled there was no trace of its being built on before. Immediately behind it was a wall of Leyden Bastian. Below that was sand of various kinds and I dug below 17' and it was sand. The quality changed to heavy quartz sand. Another bay of the building is being built and the foundation is being built to a similar level. That is between the existing Times building and what is there now. When I dug the foundation I did not come across any stratum of vegetable decomposition. They might have been rubbish. The concrete raft is an entire structure. At the bottom there is reinforced concrete slab 14" thick and above that there is a network of rectangular beams 4' high. The space between was filled with sand. The cubic capacity of the beam was 5' side but generally they vary between 36" and 4' wide. On the top of the piles is another concrete ground floor 11½ inches thick and that is reinforced and forms the basement floor. The basement walls are the back of those. Assuming the slab and beams to be in existence one has to put on the beam finished dry concrete. I would say it is impossible for the gas to pass through the bottom concrete slab 14" thick. Water under pressure might come to 14" there.

The slab is made of reinforced concrete and is made of British Reinforced Cement fabric. The manufactures claim is given in their handbooks as a hundred-weight and a half with a safety factor of $\frac{1}{4}$. It is usual to refer to pressure in hundred-weights. It is given in the manufactures' book with a 100 and $\frac{1}{3}$. I have calculated the upward pressure required to destroy the slab and a pressure of 264 lbs to a square foot applied in an upward direction from an explosion would destroy the slab. That is 2 hundred-weights. 64 lbs per square foot. That exceeds the safety limit. The slab is designed for a super imposed load of a hundred-weight with a safety factor of 4. By safety factor I mean the yielding point. The steel divided by the pressure employed will give you the safety factor. One would then expect the slab to be destroyed at 4 times that load of a hundred-weight. Now in the case of upward pressure the reinforcement is on the wrong place that is the reinforcement is made to counteract the pressure downwards. Now grossly exaggerating the possible strength of a slab I can say with certainty that an upward explosive pressure of 264 lbs to 1 square foot of

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2 lbs to a square inch would destroy the verandah slab. A pressure of 30 lbs per square inch would cause considerable damage. There might have been any amount of surplus energy in it. That is distributed pressure. When I say pressure it is a pressure applied to the whole of the underside of the slab enclosed. If there was a pressure of 30 lbs to the square inch it would cause considerable damage. It would not cause visible damage but once it was broken it is broken. If 2 lbs did it 30 lbs would break it more readily.

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(ccc) W.
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Examina-
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tinued.

24th Sep-
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1934.

Cross-exa-
mination.

24th September 1934

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Accused present.

Counsel as before.

W. SMALL. Sworn.

CROSS-EXAMINATION.

Q. You went in on the morning after the fire?—A. Yes.

Q. You continued your investigations until the 5th October?—A. Until the Wednesday or Thursday following the day of the fire.

Q. You found the roof of the basement and the floor of the ground floor broken in all directions. In fact it had been obviously shattered?—A. Yes.

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Q. The wall "G" on the plan (P23)—in the basement plan—when the debris was removed was found lying at position marked (1) on the plan? Separating the in-take chamber from the basement? It was all over the floor but the furthest piece of it was near the opposite wall which is marked (1). Pieces of it had actually indented a water tank at No. (2).

Q. You said this in the Police Court. "After the fire "G" had disappeared entirely . . ."? I do not mean that it was the whole wall. The wall had gone as far as (1). There was a good deal of debris over it. There were racks of stuff burning in the basement. That is the debris I mean. The debris of the wall itself did not hide it. You must also remember

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that the place was inaccessible.

Q. There were racks lying up against the wall?—A. Yes, I believe so.

Q. Is it your theory that there were two explosions one in the basement and one in the ground floor?—A. I have no theory in so much as I can only go by concrete evidence of what an explosion did. I have an idea that it was two explosions.

Q. You did not go further than to suggest this in the Police Court that the wreck as you found it was consistent with the explosions in the ground floor and the basement?—A. Yes, the wreckage appeared consistent with that. I said the conditions are consistent with an explosion.

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Q. If the explosion was in the basement alone it must have been a very powerful one?—A. Yes, except for the release of pressure from the basement.

Q. Because it not merely blew down the walls "G" portions of H. and B and the basement, it had shattered the roof and the floor, the ground floor and it had blown down the walls of the ground floor?—A. Yes.

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Q. And four plate glass windows?—A. Yes.

Q. The pressure created by the gas of the explosion on the ground floor was so terrific that if a human being had been in the basement he would have been flattened out against one of the side?—A. You would have to ask the Doctor that. I am not competent to say that. I have seen many explosions. I have seen people blown from downstairs upstairs. What happens in an explosion cannot be estimated.

The steel door was shown to me on the morning after the fire. I saw it against the opposite wall on the other side of Duke Street, but it may not have been blown there. I was actually there between 6 and 7 a.m. but I did not get into the building till 8 a.m. as the Police were on guard. I was one of the earliest to get there. Duke Street is a private Street. The fireman had been running about there the night before. Where I saw the gate was not necessarily the place where it was. I found pieces blown by the blast on the opposite side of the road. These things had been collected. I did not personally discover them. They were shown to me against the wall. 10

Q. You did see portions of the wooden door on the Street?—A. I was shown them actually against the wall.

(Evidence on page 26 (Record) read out to the witness.)

I did not find it lying on the street. It was collected and my attention was drawn to them. I do not know who collected them. It is impossible to calculate the force necessary to wrench the door out of its hinge. What was actually holding the door in its place was the lugs of the frame. 20

Q. Taking the pressure at 30 lbs per sq. in. as the pressure reckoned by Mr. Collins would you tell me what the pressure on the chute gap was? That is if the pressure on the back door was 30 lbs per sq. in. You mean the total pressure on the chute door. I can work it out. It was simply a question of multiplying the quantity of air on the door by 30. It is a very large pressure.

Q. The whole of that pressure was created by the gas rushing out of the basement?—A. You are now asking me to accept that the pressure was there. 30

The speed of a tornado or a typhoon exceeds 90 to 100 miles an hour. I cannot say if 13 or 14 times the speed of a tornado or a typhoon would have actually flattened out a person against the sides.

The wall—7-6" had been blown out with the door.

Q. I put it to you that a human being in that basement would have been blown to pulp?—A. I cannot answer that question. If he was in the blast he would have been carried away with it. I know of people blown through walls by explosions without being flattened out or killed. That is because they were in the blast. There is a case of a straw being blown through a tree of great thickness. 40

Q. Now in the Police Court you stated that the tensile strength of reinforced concrete is not stronger than ordinary concrete? If it is down in that form it does not represent what I mean.

To COURT: Concrete is a material very strong in compression and relatively weak in tension. That means that it is very readily moved apart. If one side of it is being squeezed and the one side is being opened the side opened is weakest on the tension side. A tensile strength is taken to be 1/10 of this comprehensive strength.

Now if you make a slab and you put steel at the bottom you have made a reinforced concrete slab. That slab is stronger than an ordinary slab. The properties of the material have not been altered. I would not admit that concrete that is reinforced with steel is stronger than plain concrete. 10 I will not admit that. I must insist on saying that a structure of steel reinforced concrete is not stronger than ordinary concrete.

Q. If the strength were not greater nobody would reinforce it?—A. Yes.

Q. As a matter of fact what is the bending strength of reinforced concrete?—A. A concrete mixture is one of cement, two of metal and four of sand results in a bending strength. If it is properly set a bending strength of concrete would be 750 lbs to a sq. in. It is not impossible but it is not likely.

The thickness of the concrete floor was 4½" with cement at the top. The weight of concrete taking it at 144 lbs. is 4 lbs. to a sq. in.

20 Q. Can you calculate for me the force that would be required to destroy that slab?—A. It depends entirely on the spans. The reinforced material is embedded in the lower side of the concrete. It was 1/2 an inch. It was embedded in the steel.

Q. There were primary beams, girders and secondary girders? The roof was resting on secondary girders but the top were resting on the beams.

(Shown a 9 British Reinforced Cement fabric.) This is the fabric. The cross pieces are welded. It is made of drawn steel wire.

Q. The co-efficient of expansion of steel and of concrete is for practical purposes the same?—A. It is practically the same for ordinary limits.

30 Q. The division of concrete to steel the average is 600 lbs. to a sq. in.?—A. It depends enormously on the quality of the concrete. You must not understand it as an adhesive. If you stuck a piece of steel to concrete and if the concrete has stuck to the steel a certain amount of force is required to take it out. That force varies with the quality of concrete. The best 124 was the cement employed but that was the best concrete. That does not alter the fact that it is the best concrete. 124 concrete gives between 600 and 774 lbs. to a sq. in.

40 Q. Taking the adhesive strength as 600 lbs. to a sq. in. you could imagine the force required to shatter a concrete floor, first to sheer it.—A. That has nothing to do with it. I do not understand sheering to mean making a hole in a concrete floor. I have not worked out the force required for sheering the floor because you have not described sheering to me. The only place where I can calculate that pressure was the verandah. I could not calculate it on the ground floor. Nobody can say what force was required to break the floor. I must say that adhesion of steel to concrete has nothing to do so long as the adhesion to the steel is sufficient to enable the steel to develop

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itself to its full tensile strength. I did not take into consideration the atmospheric conditions when calculating the pressure at 2 lbs. to a sq. in. I have got a very large margin on the 2 lbs a very colossal margin. I treated the reinforced floor as panelled.

Q. You did not reckon the adhesive strength of the steel to the reinforced material?—A. I have.

Q. Will you work for me how you get 2 lbs. to a sq. in. The adhesion of steel is not a measure of the strength of a slab. A measure of the strength of a slab is the strength of the concrete. If the steel is not in the proper place.

Q. If an iron safe of 8 cwt. were placed on the floor the legs would not go through the concrete floor?—A. No. I have not said that. I took the adhesive strength into my reckoning. It is beyond credibility that 137 lbs. is required damage a sq. in. of the floor.

Q. What force directed upwards would produce this break or sheering in the concrete. (No answer.)

According to my reckoning, over 1 lb. per square inch would be required to break this slab. That is the only way to determine the strength. You have to take a bit of concrete and smash it and test the adhesive strength. It is not necessary to take it in hundred weights.

Q. I put it to you that the adhesive strength of concrete to the main girders which were embedded in the concrete to 1½"—I put it to you that the adhesive strength of the floor to the girders works out at 53.3 lbs. square inch?—A. You mean that the force from below would be able to wrench that floor from the girders. 53.3 per square inch on how large an area.

This is a slab and there is a beam embedded in it. You speak of 53.3 per square inch forward pressure put to what I mean 10" or 10'? To what is the 53 lbs. being applied?

Q. I put it to you that the total force upward pressure required to break that floor is 194 lbs. per sq. in. and not 2 lbs. per sq. in. May I say what the force amounts to. The force required according to the handbook of the reinforcement makers is that if the reinforcement is in the right place it is 400 if it is in the wrong place it will be 21 times 400 which is fantastic.

Q. According to you a 10' verandah subject to 300 degrees, farenheit would expand 1"?—A. That is not according to me.

Evidence on page 27 (Record) read out to the witness.

Is that what I have stated in the record. It is a statement I would not dream of making. He has put those words into my mouth. I was not confused at all at the time. I refused to give any dimension because I said would have to work it out. I mean that the 1" is wrong. I mean the whole sentence has no meaning. It would be less than 1/4 of an inch. It is nearer 2/10.

Q. As a matter of fact the temperature of the verandah was much higher than 300 degree farenheit?—A. I should imagine that it was.

Q. You will admit that the explosions had a simultaneous effect on the lateral walls and the floor?—A. The gas develops equal pressure on all sides.

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Q. If anyone said that the floor was subject to 30 lbs. per sq. in. and that floor was anchored to the girders would it fly up and hit the ceiling?—
A. It was in fact all anchored to the girders all the way round. It was the loose bit of concrete that would get up. There is an opening over the girder. I know there was but I was looking for it in the wrong place.

Q. Have you worked out the area of those openings?—A. No.

Q. Did you take the measurements of the opening of the chute?—A. No.

Q. The formulæ for working out the velocity of air is given in Kempts' book?—A. I do not know that.

10 Q. The figures for the cubic area of the basement is 18881.—A. That is allowing for the pillars but not for the racks.

Q. The opening of the stair case was $\frac{3}{4}$ of a circle?—A. Yes.

Q. With regard to the basement ground that was taken out. You say there was sand and for the first 8' there might have been interposing matter?—A. I mean that from the top. The reason why I said that was because I did not see anyone taking it out. I could not say it was or not.

Q. The walls of the chute had bulged unevenly?—A. Yes.

Q. On the right hand side it had bulged 3" more than on the left hand side?—A. Yes.

20 Q. You made the plan for purposes of claims by Times people against the Insurance Company?—A. Yes. The claim was not excessive. I myself with the assessor assessed the damage and it was assessed under several heads. It came to rather more than Rs. 50,000/-. It was not more than Rs. 100,000/-.

Q. I suppose you are aware that Mr. Lornie of the gas company removed the gas pipe?—A. I am aware they were removed but I do not know who removed them.

30 Q. Did you request a removal of the gas pipe?—A. I made no request. As far as I can recollect at all events I cannot recollect even when they were removed. (To COURT: My first object was to get the services there to have the papers out.) Mr. Adams is at home on leave. I am sorry I cannot remember whether Mr. Adams was away in September. He was away a lot for these last two years. I can not recollect having made a request to Mr. Lornie to remove the gas pipes. I could not say he was wrong if he says so. There were hundreds of little things like that to be seen to. I can recollect the circumstances. I had asked it to be taken away. It was hanging on the floor with no gas in it. It was doing no service. I wanted to get the electrical services restored and I asked Mr. Ferguson if I might clear the place up.

40 Q. The new gas supply was afterwards by the pipe outside the building?—A. Yes.

As far as the pipe line was concerned it was not necessary. The new pipe was carried to it so that the other pipe was dead.

(To COURT: There is a sub-meter inside the Times building. I do not know that some of the pipes were being shipped out of Ceylon. I had no knowledge of it. I remember distinctly now. I only wanted the pipes

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removed because they were in the way. The pipe was hanging down. I wanted to rebuild the wall. The intake chamber has been built a long time. There is a wall round the intake chamber now. If I thought there was any reason for leaving it, it would have been left.

RE-EXAMINED.

Q. Your attention was drawn to a statement you apparently made in the Police Court "As I found the wreck the conditions were consistent with a simultaneous explosion from the ground floor and the basement" ?—

A. We have damage caused by an explosion in the basement. We have damage caused by an explosion in the ground floor. There is no doubt that the damage caused from the basement is greater than that of the ground floor. 10

The first condition is an explosion in the basement alone rupturing the floor and causing pressure released in the ground floor. The damage done to the two rooms is consistent with two explosions occurring on both floors at the same time provided that the one in the basement was greater in magnitude. It is also consistent with an explosive mixture existing in both places and being fired at two different times. That is to say consecutive.

(To COURT : I mean the one fired the other.)

This condition is also subject to the proviso that the damage in the basement is greater than in the ground floor. 20

The last condition the 4th is an explosive mixture in the basement and the pressure from it being released into the ground floor through the floor ruptures or through any ruptures outside.

(To COURT : That would be taking in the expanding gases.)

Q. You were asked whether the door D the metal expanding door whether it had been blown out and found on the other side of Duke Street. You said you found it next morning. Given the pressure of 30 lbs to a sq. in. working on this doorway would it be sufficient to blow the doorway out? It would be quite sufficient. 30

Q. You were also asked whether if a person were in the basement an explosion occurred whether he would not have flattened out or not. You know that after the fire the uprights were standing erect?—*A.* I know that some of the columns were standing charred and burnt but a certain number of them were standing upright.

(To COURT : Some were burnt entirely.)

Q. You say you cannot say whether there was any decomposing matter in the first 8' of soil dug because you were not present all the time nor were you aware that any decomposing matter was found?—*A.* The circumstances were these. The first part of the excavation was done by anybody who liked to take the earth away. Besides the excavation showed no signs of a stratum of peaty soil or of black earth. I do not know what earthen was removed away. 40

Q. Have you seen the present excavation on the other side?—*A.* Yes.

Q. You see the door " D " there is a certain drop to the road. As you come along the level of the verandah does that decrease drop gradually till right at J the verandah is on the level with the street level?—A. No about 2 or 3 steps. At J it is about 1 or 2". There are a few steps there.

Q. As regards the removal of the gas pipe you saw them the next day. You saw the pipe inside Kennedy's basement were they alright?—A. They were all in festoons. I do not know about the condition of the pipes. The only condition I asked them to be removed as that they were of no use.

10 (To COURT: I certainly asked Mr. Ferguson whether it was possible to get out all the debris.)

(This Witness was recalled see page 521.)

D. C. LORNIIE. Sworn.

I am an engineer employed by the Gas Company. I am their distributing engineer. I am an associate member of Gas engineers. I have 22 years experience as an engineer, in Scotland and Ceylon. I have been in Ceylon for 9 years. I installed the gas in the Times building. As far as Kennedy's section was concerned the gas pipes went through the basement but they had no supply. (Shown P40.) I know what has been described as the intake chamber of the Times building. I know where the old gas pipe is. The main supply of the gas came in through that, to the main pipe, in Main Street 11 marked the position of the meter in that plan. From the meter was a 3" outlet pipe rising to within about I should say 8" from the ceiling. That is on the intake chamber side. The height of the meter from the floor was approximately 3-6". It rises from that height to practically 8" of the ceiling. I should say the height of the chamber was about 12'. It has to be opened by a pass cock and to be closed by a shut cock. We have a key in the Times of Ceylon. It is a bye pass lock. They have a key and we have a key. They could lock it up themselves. That pipe goes from the meter to a 3" pipe. 30 That went through the ceiling of the intake chamber into Kennedy's basement. The pipe was clipped from H irons. It was resting on the wall. The points of entry and exit were cemented up. That pipe was reduced on the Kennedy's side to 2" pipe and carried along the wall, suspended from clips. It was a gradual fall all the way towards the meter. There was a fall from where we have the chute marked on the plan. It falls back towards the meter. The highest point of the pipe was near " H " and it was a gradual fall until it came to the meter. That pipe was carried along to the other side of the wall up to near the chute and through that wall into Times building. On the other side it was 2" right through. It was not increased. 40 Up to that time I went to Times building once in ten days or once in a fortnight to look at the apparatus. There was no definite period.

(To COURT: That is done in the case of large consumers but it is not done in the case of small consumers.)

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The Times people used gas for heating their printing machines. I go just to make sure that the gas is burning. We had completed the installation of gas in the Times building in 1931 approximately in 1931. At the date of the fire it was 21 months old. During that time we had no complaint that was aware of that there was any smell but we had a complaint from the mono casting department in the third floor that they could get no gas sufficient for melting the metal. That was on the 14th June, 1933. A mechanic was sent round and he examined the machines and he went to the Times basement and he discovered the syphon full of water. That was in the Times basement at the very end of the building. 10

I did not inspect it myself. The fault was due to condensation in the pipe line. That is a variation of temperature due to hot gas or cold gas or hot air or cold air.

(To COURT : The gas is stored over water in the stores. There is a very low percentage of water in the gas).

It depends on the atmosphere the pipes are subject to. It will only seal the gas. That is why we have a syphon. That fault was rectified. There was no complaint of any leakage that I am aware of. That 3" pipe and 2" pipe were made of wrought iron and tested to 300 lbs. per square inch minimum hydraulic test. It is an extremely high pressure. 20

(To COURT : That is the makers' guarantee.)

The joints are screwed in sockets. The thread on the 2" is anything from 1" minimum to 1¼". That is the close thread. That is the length of the thread. The length of the thread is screwed into the socket. It is usually 1 to 1¼". That is usually screwed into a socket. I cannot say how many sections there are in Kennedy's section. It was cut and screwed. It was difficult to get 17' lengths into the basement. We have 2 joints and there was a transformation of the 3" pipe into 2" pipes. I would say there were 8 joints in Kennedy's section of the basement. I would not be definite. I would not like to swear that there were 8. There might have been 10. The meter man is called Hassen Ally. He goes round to see if there is any smell and to report it. 30

(To COURT : There would be a smell because when we water the meter the water has a gasy smell.)

When there was a smell the water line would below. The Municipal Council would not allow the supply of gas if there was a smell. I would not say that gas is entirely odourless. Colourless water gas is used for enriching gas.

To my knowledge that man had got reported any fault in the meter not within any appreciable time of the fire. The meter readings are taken by a meter reader. The day after the fire I went there with Mr. Ferguson about 9 o'clock. If I got the smell of gas and probably if there was a smell I would have sniffed about but I got no smell. We turned on the tube cock connection in the Times building basement but there was no gas coming. 40

(To COURT : A tube cock is a control cock.)

When I found no gas coming I found that the meter was not functioning not sending any gas.

There is a syphon on the surface at the end of the pipe. I concluded that the meter had got stuck. I did not examine the meter, but the meter engineer did. The meter was not working otherwise we would have got gas in that tap. I examined the pipe lines where I could get at them just at the joints. Only by observation I could not say whether they were intact. All the pipes were found inter screwed in some places sagging. It was sagging like "U" from one wall to the other of Kennedy's side.
 10 That was the wall dividing the intake chamber. That wall had been blown into the intake chamber but the pipe was still in its position except that it was sagging. The bending would be due to the excessive heat. The pipe in that building had been subject to a distortion. An external examination of the pipe showed that they were screwed on and were in that position. It would be correct to say that the explosion had not damaged the pipe or even bent it. The pipes might have been stretched but very slightly not noticeable. They would contract on cooling. They would only bend with the heat applied to the pipe. It would not flatten.

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20 Q. You remember you told me that these joints are screwed in sockets and that varies from 1" to 1¼"?—A. Yes.

Q. There are 2 types of thread, a finer and less finer thread, gas thread and wick-work thread?—A. I understand there are 2 types of wick-work thread. Which do you use?—A. The ordinary wick-work thread. It is not a finer thread. I cannot differentiate the finer from the heavier. I cannot say which thread. (To COURT: I get this from England. All English thread. This thread is special gas tubing. We get the best we could get.

Q. With regard to that photograph you say the pipe went along one wall like that and then along another?—A. Yes. That is the intake chamber
 30 wall which was blown across and this wall was damaged in the corner and at the top. The crutch on that wall had opened up and given way, both walls came towards the centre causing the sag. I will not say there was any necessary tendency. The 2 ends came down in their own way as a result of the clips opening up. (To COURT: The pipes had bent at some point. And bent as a result of its own weight, under weight subject on it. I thereafter applied a certain test to the pipes to find out whether there was any leak. Applied that test on the Monday morning the 2nd of October. That test is known as Monometer test. We subjected that part of the pipe from the Times basement right back to the outlet meter cock in the intake chamber
 40 right through Kennedy's basement back on to the meter cock, the outlet cock of the meter. We closed that. We put the pressure on that section of the pipe up to 4½". (To COURT: Air pressure.) At the end where we put the pressure on we intersected in the Times basement, at the other side of the wall we put on the pressure there. A portable Gasmeter will make the pressure by putting the weights on this Gasometer, but not with gases, merely air.) The pressure was subjected to 4½" which is a normal limit

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pressure. The outlet meter is closed. We cut the pipe in the Times basement. We did not cut near the meter. We cut in the Times basement, right outside of Mr. Kennedy's basement altogether. The pipe was cut in the middle of the Times basement. It is shown on the plan. That is not the intake chamber. That is the basement. This is at the opposite end not at the meter end. The pressure was applied at that point. We gradually increased the pressure, of the air on the gauge intersected in the outlet of the gasometer.

Q. You applied this pressure of $4\frac{1}{2}$ " of water gauge which you say is the normal town pressure?—*A.* Yes, when I applied that test the water rose to 4" and remained. (TO COURT: We could raise it to 6". It did not go beyond $4\frac{1}{2}$ " because that was the pressure we apply. We did not apply further pressure. We did not test more than the normal town pressure. At that hour of the night the pressure was still reduced. We started reducing at 10 p.m. The gauge remained stationary. 10

Q. If there had been a leak what would have happened.—*A.* The gas would have dropped down to normal. The fact that the gas remained at that level is that it is a sound test indicating there was no leak anywhere between the point at which the test was taken and the outlet of the meter which was closed. That of course includes the entire section which was in Kennedy's basement, right through in Kennedy's basement. (TO COURT: We made another test, by opening the outlet cock and closing the inlet cock and applying the same pressure. That includes a test of the meter as well. 20

TO COURT: That is the surface pipe of which you speak of. That was not tested. Just an examination of it was done. We could detect a small leakage would still be there. It had not been cut up. That is coming through the meter; between the meter to our street pipe. It was unnecessary to apply this Gasometer test to that portion. As we did not get the smell we did not apply the test. We could have got the smell from any other of the wires as well. (TO COURT: It was about 2 feet length coming through the wall.) 30

TO COURT: *Q.* There was no flaw or anything in that?—*A.* Not on examination.

Q. As a matter of fact certain rules for testing are laid down in the gas meter Ordinance? I have read it. (TO COURT: Well, I had the meter there. If anything was registered on the gauge I had to test meter to measure the leakage. The test I applied was as complete as possible. *Q.* When you applied this Gasometer test to the meter plus that piping and you applied $4\frac{1}{2}$ " pressure when it remained like that indicating that the line was sealed?—*A.* As far as we ascertained the drop had ceased. The bearings had ceased and the drum did not retain. The length of piping within Kennedy's section I should say was between 75 to 80 feet from where it entered to where it went out. That was 2" piping. 40

Q. Suppose there was a cut somewhere in that section what amount of gas would leak in say an hour?—*A.* I have not worked it out but I can give you the basis on which we do work it out. The meter could only pass

12,000 feet. I prepared that statement which I produced. Those are the figures on which we base our calculations. That is various aggregate bearings to various lengths of piping. With regard to 7 feet 2" piping it is 560 cubic feet per hour. That is if the 2" pipe was cut escape would be 560 cubic feet of gas in an hour. If it was a 3" pipe of the same lengths 1,630 cubic feet.

10 Q. Does the amount of gas that escapes depend upon the length of piping?—A. Yes, nearer the meter you get more leakage more gas will pass through a fracture. The further you get away from the meter the less will gas escape because there is less pressure. The Syphon would also effect the leakage if it was sealed not otherwise. The meter is so constructed that there is only a certain maximum of gas that can escape in an hour. The meter in the Times basement, the specific meter, was 1,200 Cubic feet per hour. That is immaterial of what size of pipe. I supply coal gas, up to a certain standard. We are under contract to supply in Colombo, to the Municipality 400 British Thermal units. I cannot tell to what parts of Colombo the others are. I have never analysed the gas in Colombo. I can only give you an approximate figure. Carbonaceous temperature 200 degrees Fahrenheit. This is only an average of the ordinary coal gas; sulphurated Hydrogen 48%. I said sulphurates Hydrogen, 48%, 27% Mathyne, benzene 1%, carbon manoxail 9%. Nitrogen 9%, carbon dioxide 3.5%. Hydro carbon 2.5% I cannot say that these are the figures of the Analysis of the Colombo coal gas. To COURT: I believe Mr. Bruce has analysed the Colombo gas for the Municipality.

Q. What proportion of gas to air would you require that gas to produce an explosive mixture? We supply at 4.20. We are under contract 400 but we are always above the 400x. To COURT: This coal gas has no combustion at all without air. Q. To produce an explosive mixture what proportion of that stated gas to air would you require?—A. 5 parts air to 1 part of gas. That varies as I say with the composition.

30 Q. Suppose you were given a cubic area of 16,800 cubic feet a volume 16,800 cubic feet what amount of gas do you require to produce a explosive mixture?—A. A 5th part. This is 3,260. Then that will all depend upon the ventilation.

(To COURT: There will be a draught pulling the light gas out. That is provided it is sealed up. Provided that is all retained.)

40 Q. In what period of time do you require for that quantity of gas to escape? Suppose there were a hole clean cut?—A. At least would be 2 hours. The meter would really pass 12,000 feet. It must be served to produce that amount which I said. I produce that document P47. A statement giving the consumption of gas by Times of Ceylon from January 1933 till the last reading on the 28th of September. Reading on September was taken on the 28th September. The average daily consumption according to that statement is 4,750 cubic feet.

Q. What is the consumption of gas from the 28th September when the last reading was taken to the time the meter stopped working at the time of the fire?—A. 8,800 cubic feet. From the 28th September to date of

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fire approximately 2 days it was 8,800 which is within the average. Average consumption went on until the stopping of the meter. During that period it was slightly less than the average. If there was a leakage of gas it would try to find some means of escape.

Q. And if there was a leakage in the basement the leakage could only be there it would try to find some means of escape either up the spiral staircase or up the chute?—*A.* It would. Gas is lighter than air. It is approximately half the weight of air. It would go up immediately.

I know the chute, the staircase right at the bottom. *Q.* If there was a leakage of gas with the tendency of gas to rise immediately you would not expect it to enter into an aperture?—*A.* It would go right to the ceiling?—*A.* Well, if the chute was closed and the spiral staircase was closed. In the 1st instance it would not have got into the chute. If there was a leakage of gas it would have been escaping at a much higher level than the level of that aperture. 10

Q. And gas does never come down?—*A.* It depends upon the draught, on the fusion. It depends upon the circulation of the area.

Q. Even if there was an escape of gas and it mixed with air and formed an explosive mixture something is necessary to make it explode?—*A.* Well, unless the temperature is to a degree of approximately 700 degrees centi- 20
grade something is necessary to produce that heat, compression.

Q. Ordinarily would it be correct to say that some introduction of something inflammable say a light would cause it?—*A.* I would expect in that case. About there being compression and the temperature being of a high degree is very unusual. When I carried out this test Mr. G. H. Ferguson was present, and we had the coolies carrying the meter. I carried out that test on Monday the 2nd October. Those pipes were removed later. The reason for the removal is given in the letter of authority from the Building Architects written on the 31st October. The pipes were removed I believe the following morning. I did not bring the job card. I 30
had the cover on but I did not bring it. When I got that letter I arranged for dismantling the pipes and removing them. Mr. Ferguson knew nothing about the removal of the pipes. He was only present at the test. We did not communicate with the Police or anybody before we removed it. On the letter of authority we removed it. The pipes belong to the Times of Ceylon (Shown P87). This is a piece of the 3" pipe. That is the actual pipe. This is the bend. This is the outlet of the meter. And that is the section of the 2" pipe also an actual portion.

Cross-exa-
mination.

CROSS-EXAMINED.

I do not remember an action filed against the Gas Co., by the Electric 40
Lighting Tramway Co., Boustead. I do not remember an explosion occurring at the junction of Prince Street and Queen Street. I have no recollection of a complaint being made to the Gas Co., about the leakage of our gas. I have been 9 years in Ceylon. I have heard of explosions in man-holes and other street explosions. There are plenty of explosions as the result of gas coming in contact with short circuiting wires and causing

explosions. And however carefully gas fittings are put on there is always a possibility of a small escape.

Q. You will also admit that to form an explosive mixture you do not want the whole of the 16,000 of the cubic feet basement to be filled with explosive mixture for explosions to take place?—*A.* I will not say anything on that point. If there was an explosive of $5\frac{1}{2}$ of air and 1 of gas there can be an explosion. And if the upper strata of that room alone were filled with an explosive mixture there can be an explosion in the upper strata quite irrespective of the fact that there was no gas in the lower strata.

10 *Q.* Of course from the point of view of the Gas Co., it would be fatal for them to admit that there had been a leakage of gas?—*A.* I do not say so. Of course we have no responsibility on these pipes. They are all Times property. We are not responsible for defects in the pipes.

Q. For a leak either in the pipes or a defect in the joints you are not responsible?—*A.* Not after the test had been made by us. Yes, there is an agreement between the Times and ourselves that we are not responsible for the fittings beyond the meter even though we put them on ourselves. We are not responsible for them after they are handed over in good condition. If we give them over badly we are responsible until they are rectified.

20 With regard to this rate of flow of gas that is a matter of mathematical formula.

Q. The discharge of gas cubic feet per hour is equal to 1350 into the square of the diameter of the pipe into the square out of the pressure of gas and quantity of gas done into the pipe going upon the specific gravity of gas into the length in yards of the pipe?—*A.* Yes, I have not read this just now but it will be the same. That is the very formula as I have here. The figures I stated is a recognised formula.

Q. Working that out according to the dimensions of the piping, one gets about 6,000 cubic feet per hour in a 2" pipe? Pipe diameter 2", length 72 feet, specific gravity of water is .23?—*A.* That is a very low specific gravity. The kind I am based on is .50. I agree about 6,000 cubic feet per hour is the result of working out that at $4\frac{1}{2}$ ". I give my figures on a list showing a portion between ends of pipe of pressure 1/10 but when you increase the pressure automatically it increased your stand of Coal gas exploded in atmospheric air if it existed in any proportion from 6 up to 30 per cent. It is possible to have an explosion with considerable less gas than I gave, which is 50 per cent. air and 10 gas.

Q. If the explosion was limited to 2 feet of the upper strata of that chamber the area of that chamber in square feet is 1,480 square feet? And if there was an explosion to a depth of 2 feet 3,000 cubic feet the quantity of coal gas required to bring about explosion in the upper strata of 3,000 cubic feet would be only anything from 300 to 900 cubic feet would suffice? *A.* I accept those figures.

Q. And at 6,000 cubic feet per hour 300 cubic feet would leak out in 3 minutes?—*A.* Not with the meter there. Yes, I was not asked to state whether that gas was passing through the meter or not.

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It would not if it had to pass the meter, 300 to 900 cubic feet could pass at 3 minutes at $4\frac{1}{2}$ ". We fix the meters to suit the rate of consumption. The Colombo Times of Ceylon consume a good quantity of gas. Provision is made for a maximum consumption and the meter is fixed to suit that. If anybody had opened the by-pass it could not go more than 6000 feet. If somebody turned on the by-pass and assuming that the meter is in working control the gas would not go through the meter and gas pipe. It would go through the by-pass 6,000 cubic feet. The by-pass cock in this case was locked when I saw it on the morning after the fire about 7.30. The Times of Ceylon people had a key and we had a key for the by-pass. 10
To COURT: The by-pass is an ordinary stopper like with a locking attachment put to it and no one can open that without opening the padlock and then turn on the cock. You must open the padlock and then open the cock. When that is done the Gas Company are notified. The last time we went there I cannot recollect having seen a padlock there. There was a specially made metal clip. I think that was removed too by, I cannot say whom. That is Gas Company property. That is on the inlet side. I have a lot of books with regard to gas. I have got Mentor. I got the composition of gas from Mentor's "Self-instructed in Studies and Gas supply advanced." I have not read Keps Engineering book. My 20
book gives not Sulphurated Hydrogen by Hydrogen. I am not a qualified man on gas manufacture. At the Monometer test Ferguson was present. That was on the 2nd October Monday morning. Of course you said that the pipes were in a "U" shape sagging up within 2 feet of the ground approximately.

Q. And one of the corner bends had straightened out in the sense that it was straighter than it was originally?—A. I did not find that. The bend had loosened itself on its own joint and come down of its own weight.

Q. And the actual bend itself was not as angular as it was originally eventually?—A. I did not notice that. 30

(Shown plan). These (being shown a point in the plan) are not supports. What they are I cannot say. Probably they are the cases in which the electrical supplies were. They were in wrought iron cases I believe.

Q. They would have been removed apparently when the Court visited the spot?—A. I was there. I did not notice it when I went there that day. The whole intake chamber was cleaned up.

Q. If there had been a small leak in the pipes the intense heat of these pipes were subjected to had a slight drawing tension caused by the weight of the pipes would tend to seal the leaks?—A. I could not say. I would not swear that that would seal it to soundness. It would tend to close it. 40
The extension of metal would tend to close it. It depends upon which way the weight was lying.

Q. The effect of the heat plus the drawing effect of the weight would be to tighten up the joints somewhat if there had been a leak?—A. They were hanging about 3" below the girders. A crack in the pipe would probably open out. No one was present when I removed the pipes, except our own employers. Most of the parts of the pipes removed were used.

Some of the parts are still lying ready to go to England. We have not got all the piping which was in Kennedy's basement. We used some parts. I have got 2 portions here. I have still another 6 pieces in my office. The 3" pipe came into the basement. The two ends on the outlet of the meter they were more or less staunched, the tightness of themselves kept them in position. We did not test our pipes to find out there was any gas in them after the fire. The only test we did make was to open the chute box in the Times basement. Q. With regard to the consumption of the gas in the Times the examination was made, the reading of the meter, somewhere
 10 about 9 or 9.30 on the 28th morning?—A. I cannot say the hour of reading. The meter man can say that. It is recorded in the book. There is a small consumption at the Times during the night. I cannot say whether the Times is usually printed on Friday except for the middle page. As a matter of fact 2 days had not elapsed when the fire occurred after the reading. I was asked about the possibility of coal gas getting into the chute.

Q. Whatever the cause of the explosion was there would naturally be a very violent rush of air at the outlet at the top of the chute in that direction?—A. I would expect that. I cannot say whether that air would
 20 naturally go into the chute. Experimentally of course there is enough gas in a pipe even if you shut out the meter to cause a flame to burn for some seconds. I did not test to find out how much gas there was or any gas at all actually in the pipes. We tried to light but there was no gas in the pipes. There was only dead gas. There was no gas to ignite at the chute. (His statement on this point in the Police Court is read.) I cannot say that the meter had stopped. There was probably gas on the inlet of the meter but not at the outlet.

Q. There was nothing wrong between the meter and steel main?—
 30 A. I did not gauge. I did not examine it to see it. We have undone the by-pass clip ourselves. No, I did not try to find out about the padlock who had unlocked it. The by-pass clip and lock had been taken off probably when we dismantled the fittings. I saw that padlock the morning I went, straight after the fire. I am sure I saw it then. That was the first thing I looked at. About a month after I went for the removal I cannot recollect whether I saw the lock attachment there or not. It was of no interest to me at all. There was no gas. There was only 2 keys on this by-pass padlock, one for the Gas Company and one for the consumer. The Times by-pass padlock was handed over to the management. I have no idea where it was kept. The meter department keeps the key not myself.

40

RE-EXAMINED.

Re-examination.

I remember I found that by-pass padlock the morning after the fire when I went there and that was in the presence of Ferguson and my general manager. There is no doubt about that. The duplicate key is useless when some mischievous person wanted to unlock some gas, but they could not without the key for the padlock of that lock itself. That may be had by the

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mination—
continued.

watchmen. If a knife or anything was available it could have been removed. When I inspected it I found that the tap could not have been opened. I did not go to the meter at all on the second. After I constructed the pipes in this building and before I handed over to the Times of Ceylon the pipes were all tested. Yes, after that our responsibility ends.

Q. It is correct that there is no 3" piping at all in Kennedy's section?—

A. There was a short piece just at the end of the bend where it was reduced. I said that if there had been a leak the heat plus the weight would tend to close that leak. It would not seal it. If that had occurred it would answer this Gasometer test. It would have shown on the gauge sound or unsound. 10
The fact that the Gasometer showed that it was sound precludes the possibility of there having been a leak. (TO COURT: If there was a leak and it was partially closed yet the Gasometer test would reveal it. It would only close. I would not say it would completely close it. I have never known it to do so. The gauge would have dropped if that occurred. I examined the joints I could get after the fire, in Kennedy's section. I did not find any fault, not from a general examination. Yes, if there was a leakage in one of those joints they have to leak through that length of that wire. That makes it all the more air tight. I also turned on a cock the day after the fire, no gas came. That indicates that there was not enough gas in the pipe sufficient to light. There was no pressure to get a fall. Some of these pipes are being sent 20
to England. We propose doing so if we have authority to show that they stood the test of the intense heat. That would be a good advertisement to the manufacturers.

25th Sep-
tember,
1934.

25th September 1934.

Accused present.

Same Counsel as on previous day.

D. C. LORNIE. Sworn.

RE-EXAMINATION (*continued*).

TO COURT: When I had the test Ferguson was there by arrangement. Ferguson arranged it. After we took the pipe away we cut it in shorter 30
lengths at our workshop. We gave the whole length of piping careful scrutiny. I do not think there was any possibility of any leakage in the strips. It would depend upon the soundness of the joints for the gas to escape at the joints. The escape would be very slight.

Q. In the spaces between the joints would any leakage visible to the eye?—A. The space would be visible either opened or closed. There is a chance of a leakage through the meter but that meter was tested. The second test includes the meter back to the inlet cock.

Further
cross-exa-
mination.

CROSS-EXAMINED (With permission).

Q. You had not been in that basement for 2 years after the gas pipe 40
was fitted?—A. No, not Kennedy's part of the basement. I had not entered I mean on the floor.

P. HURST. Sworn.

EXAMINED.

I am the meter Engineer employed by the local Gas Company, I have held that position 5 years here. Well, I have had experience for the last 10 years. 5 years before I came here; 10 years experience in all. I remember the meter which was in the Times building being brought to my workshop. I went there and removed the meter, on the 24th October. Given (P53) the job card. I read the meter before it was removed. I produce the job card (P53). The reading was then 2907. Yes, I had the meter taken to
 10 pieces at the workshop. When I took the meter down the internal Cylinder which is known as the drum, which actually measures the draught the seams of that had melted and the drum had partially collapsed. The internal Cylinder which actually measures the amount of the gas passing through the meter had their seams which were soldered melted through the heat, and the bearings had expanded. In consequence this drum had ceased revolving and when it ceases to revolve in that way no gas would go into the fittings.

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(eee) P.
Hurst.
Examina-
tion.

CROSS-EXAMINATION.

Nil.

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ASSAN ALIAR. Affirmed.
Age 43, Fitter, Gas Company.

(fff) Assan
Aliar.
Examina-
tion.

EXAMINED.

It is my business to go round periodically and test the meters.

Q. Particular installations where large amounts of gas is used?—

A. I have certain allotments given to me in a book. It is my duty to attend to those allotments. "Allotments" are particular meters which I examine. I go to the Times office, to test the meter there every Sunday. And that time I inspected it I took a reading of the meter. It was on a Friday night that there was the fire in that building. The previous Sunday
 30 I was absent on leave. On the 17th September I inspected the meter, and on that day I did not find any fault with the meter none whatever. I produce this book (marked P49.) This is my handwriting. You have against the date 17.9.33 the reading 28495. 2 lbs. stands for 2 bottles of water which I add to the meter. I add water according to the order given to me by my instructors. If you do not add water the issue of gas will be different, will be short, or the Company will notice some difference. I did not find any fault with the meter at any time that I inspected it. Since July 1933 I have been examining the meter. I did not smell gas when I opened the meter on any one of those occasions. No leakage of gas
 40 when I examined it.

CROSS-EXAMINATION.

Nil.

S. M. A. CADER. Affirmed—Age 22.

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EXAMINED.

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Prosecution.

(ggg) S. M. A.
Cader.
Examina-
tion.

I am the Meter reader of the Gas Company, I go round once a month and take a reading from the meter. On the 28th of September I did that. (Shown P31.) The reading on the 28th was 28982 and the consumption was 1367. I went to take the reading about 9 or 9.30 a.m. on the 28th September. The day before the fire. I did not smell any escape of gas when I went there.

Cross-exa-
mination.

CROSS-EXAMINED.

28982 is the reading of the meter. That is in thousands. These 10 figures were first marked by me in pencil and when I took it back to the office the office marked it in ink.

Q. I suggest that what was originally here was 28782 and that you erased a figure in front of the 88 here? The figures were originally 28782? The difference was bigger than 88?—A. No answer.

(Shown card). This is my reading. This column. This is done in the office by the clerks. The second column of figures is done in the office by the clerks. To COURT: I only noted the reading not the consumptions.

The office inked it over. I use this pencil (showing one.) It is an 20 ordinary lead pencil.

Re-exa-
mination.

RE-EXAMINED.

On the 28th of September the reading taken by me is 28982. I can remember that I put down the correct figures in pencil. I had no reason to put down what was not correct.

Further
cross-exa-
mination.

CROSS-EXAMINED—(With permission).

8800 cubic feet was consumed in 2 days. 8800 represents hundreds and not thousands.

Re-exa-
mination—
continued.

RE-EXAMINATION—(Continued).

These figures in the first column are entered by me. And some clerk 30 in the office writes up the consumption figure the next day. And also figures in my entry. My entry for the 28th September is 28982; to get the consumption for that month you have to subtract the previous figure from this figure and you get 1637 which is the consumption for September. There is no alteration in that figure. 29070 is not a figure taken by me. It is a figure taken by Hurst; 88 is merely the subtraction between these 2 figures. I go to make the note of the reading once a month. To JURY: There appear to be 4 reading in a month?—A. That is the Sunday water figures. Assan Aliar's readings are also there. Those are put only in pencil. Assan Aliar writes his readings in his book in pencil. The office 40 writes down Assan Aliar's figures the next day in pencil first.

C. D. ARNOLD. Sworn.

EXAMINED.

I am an Electrician in charge of the sub-station in the Fort. Yes, the sub-station is a couple of fathoms from the Times building. Yes, the Times building comes within the Fort sub-station. Current comes from that sub-station to the Times building. On the night of the 29th September last year No. 3 machine circuit breaker tripped, at 11.7 p.m. To COURT: Yes, the clock is there just by and I noted the time.

10 I produce (P34.) which is my daily log sheet and there is an entry by me at about 11.7 p.m. No. 3 machine circuit breaker tripped for a short in Times building which is on fire at that moment. Immediately started No. 1 machine and put the current on. There was no supply in Fort for 2 minutes only. That is my handwriting. That is a correct record of what happened. When that circuit breaker tripped in our sub-station all the lights in the Fort area went out. The whole Fort area including street lamps. When I put on No. 1 current all lights came on again excepting the lights in the Times. I know that there is a circuit breaker in the Times building.

20 Q. If that circuit breaker trips does it follow that the circuit breaker in the Fort sub-station also trips automatically?—A. Not only due to the trip, but if there is a big short outside the machine here in the sub-station will trip. To COURT: By short I mean short circuit.

Q. When the circuit breaker in the Fort sub-station tripped did you know at once that there was some big fault in the Times building?—A. No, I did not know that it was due to that. It may have been somewhere else. There is not only a connection from the sub-station to the Times building but there is a connection to the Gaffoor buildings and Walkers and so on. If the circuit breaker in the Times building trips the circuit breaker in our station would not automatically trip. It would happen so if it was a big
30 short.

CROSS-EXAMINED.

If it is a big short circuit it would effect the sub-circuit station. There is a clock there and there are charts there and the time is registered in those charts as well automatically. To the clock is attached a rod at the time the tripping took place it is registered there. We have got a revolving drum with a pointer writing. That time 11.7 is what was recorded there automatically and then when we referred to the clock on the wall that also indicated the time independent of what was registered there. Yes, the time is actually automatically recorded. When the machine trips the clock stops. No,
40 the pointer draws a line there.

Q. Did the recording stop as soon as this trip occurred?—A. It works but the indications was that there was no current at that moment. It draws a stroke indicating that there is no current at that moment. Then I looked at the clock and saw the time. The time itself is not recorded automatically but there is an indication of the trip. It drew a long line like that. The time is indicated from that from 1 to 12 and I can point it

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tion.

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mination.

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Arnold
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mination—
continued.

out. (Witness is shown graph.) This is the line which indicates the trip. The time is here indicated. And I looked at the clock and I made the entry at about 11.7 p.m. No. 3 machine circuit breaker tripped off. Our sub-station is between the Times building and the Young Men's Christian Association. They would be almost in a line. Before the machine tripped I was not aware that the Times building was on fire. At about 11.5 there was a big explosion before the trip and after that about 11.7 our machine tripped. According to me there was an interval about 2 minutes between the explosion and the tripping of the machine. I am quite certain of that. To COURT : It was 11.5 when I heard that loud explosion. The clock is just opposite me and I could see the clock. I am seated there. 2 minutes later when the machine tripped there was a big fire at the Times building. When it tripped I saw the fire. I could see through the window.

Q. From your window you could see the fire actually in the Times building and was that fire emerging from that lift well the 2nd floor 3rd floor and lift well?—A. I do not know from where but I saw the fire going up above the Times building. With the fire there was smoke escaping above the Times building. At 11.7 the fire and smoke was visible above the Times building. I made that note in the log book about 5 or 6 minutes after I put the No. 1 Machine into operation.

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(iii) T. E.
Misso.
Examina-
tion.

T. E. MISSO. Sworn.

EXAMINED.

I am Electrical Engineer supply and Maintenance branch of the Government Electrical Department. The Government mains that is in the Supply of electricity at Times building enters the basement into the wall of the intake chamber. To COURT : We call it a service main.

I inspected the premises after the fire. I went there in the Company of Ferguson and Mr. Collins on the morning after the fire about 9.30 or so.

Q. What was the condition of the electrical gear in the intake Chamber?—A. Parts of the gears were still hanging on the wall. The iron clad cut and the 4 meters were out of gear. Those are on the wall which is towards Main Street. The Service mains terminated at the iron clad cut out. Beyond that is the consumer's main. There were 4 meters. There were 2 different rates for the building, one for power supply and one for lighting; each rate had 2 meters for each of those supplies. To COURT : That is a scheme of supply. You transmit one water rate and carry it to the consumer of the lower water rate.

30

The portion of the gear was still hanging on to the wall burnt but it was still hanging on the wall. The cut iron was iron clad. The outside portion was scorched but the inside was not damaged. There were some circuits in the installation. That was for lighting purposes and power as well. To COURT : I do not know whether there were 6 circuits.

40

Superficially I examined those circuits. Some of the switches had broken away, some of the coverings had been broken away by the wall. That was on an iron frame work. One portion was out parallel to the

service mains and the switch gear there had broken up by some iron falling on the case. The meters were burnt outside. Being an iron case I do not think there is anything done inside. They were all charred but they were still there hanging above. The cases were not damaged. The rubber covering were burnt but the connections were still intact. If there had been a serious short circuit I should have expected to see the fusing of the metal where the wires came into contact with each other. I did not find such a condition. If there was a serious short circuit I would have expected to find fusing of the metal at the point of contact. I should have expected where-ever the

10 wires touched each other if they were opposites wires of 2 different positions to have fused. As far as the service portion I did examine and there was no fusing; beyond I did not. I examined my cables at the main intake chamber and they were in order. There was no evidence of any melting at all, none whatever. There is the Fort sub-station and there is a circuit breaker at that sub-station. From the circuit breaker at the substation at Fort service is radiated going up along Prince Street into what is called a feeder a connection box opposite Gaffoor buildings in the Main Street and from there the wire goes back to Kennedy's or the Times building. Two mains go to Kennedy's from there. Two service wires go back into the Times building.

20 They are duplicate various consumers. You got those 4 meters, 2 for power and 2 for lighting. The circuit breaker is a controlling medium for this main along Main Street and Times building. The circuit breaker in the Times building would not come into operation in any portion of the supply until the feeder over it passed the meter. Then it will come into operation. After these wires had passed meters they go to the circuit breaker which controls the supply in the Times building only. And the circuit breaker of the Times building acts as a check to the entire supply in the Times building. It acts as a safety valve. To COURT: It is not a fuse. It serves exactly the same purpose. If there is a big fault in the Times building a major short circuit

30 that circuit breaker trips. That is its purpose.

Q. If the circuit breaker of the Times building trips what is the result the action in the circuit breaker in the Times sub-station?—A. They are not interconnected. One can trip without effecting the other. To COURT: If a Times circuit breaker trips it does not necessarily follow that the Fort Circuit breaker should trip.

There is evidence that in fact at 11.7 the circuit breaker in Fort sub-station tripped.

Q. Is that in consequence of the Circuit breaker in Times building tripping?—A. That is difficult to say. But afterwards when we eliminated

40 the different circuits they found that is the cause. That is now my opinion. There is no other cause which I can say now. If that was the cause it is quite possible, that the two would trip simultaneously.

Q. If the tripping of the circuit breaker in Fort sub-station was the result of the circuit breaker in Times building tripping would the 2 have occurred simultaneously?—A. Yes, it all depends upon the severity of the fault. If the fault was great both would go out together. If one of those circuits fused it would not effect the circuit breaker in the Times at all.

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If the circuit breaker in the Times failed there would not be any current all along that main. It would still be on but there would not be any current. No, if the circuit breaker of the Times tripped it is put down there to clear the local fall. If the local fall is very severe then it is taken back to the station. In this case the sub-station breaker did trip. It is possible for the circuit breaker of the Times building to trip simultaneously with the tripping of the circuit breaker No. 3 in the Fort. I should not say that it would not occur other than simultaneously. There must have been a very small interval between their tripping but very unappreciable. A matter of seconds. There are some lags on the circuit breakers, so that all the circuit breakers do not come out together, the ones on the furthest point are set to come out first. Taking a case where you have a string of circulations if there are numbers of circuit breakers the far ones would come out first and then the others. It has a cumulative effect. They have got a setting on these circuit breakers. It might be a matter of just a few seconds. The most is about a minute. The maximum setting is about a minute. In this case it was so severe that it really took out the machine. So I think there was very little time. Between the circuit breaker in the Times and the circuit breaker in the substation there was a machine circuit breaker that fits into a scheme of distribution board. From there you have similar circuits going to the end. All those tripped. I cannot say which circuit breaker tripped first. The machine circuit breaker tripped, and the result was that there was no current in the whole of the Fort. The evidence of Arnold was that he had to connect another machine because the circuit breaker broke in the sub-station the source broke off. He started another machine which feeds on to the same point. They had either to start the same machine or bring another machine. Well, they usually as a matter of routine do not start the same machine and they start a different machine. To COURT: The same machine would have been damaged as a result of the trip.

I examined this switch board. (P27). (Witness indicated the top and bottom of the switch board.) The switchboard is mounted on another slab. The other slab was burnt out. I saw it in the Criminal Investigation Department Office.

Q. This switch board as you know was fixed on to meter on the ground floor of Kennedy's shop?—A. I cannot say. This is the main switch (indicating.) That is covered with iron. It is now on. All the loose ones are in the off position. To COURT: On and off are marked.

Q. Is it kept loose like that deliberately?—A. No, it comes on with a snap. While it is in this position there will be a little movement not sufficient to put it off. If it is off I can see the on mark. It had not passed the on. When I examined it that day with Ferguson and Wilson it was on. If there had been a major fault in Kennedy's section would that have still remained in that on position. That would not have been effected. To COURT: This is not automatic. This is hand control.

You can take on and off by direct physical force.

Q. That is consistent with its being on. It is quite possible with the lights being on at the time of fire?—*A.* If that is on the lights will be on.

Q. Was that cover removed in your presence by Wilson?—*A.* Yes, we tried to put the switch off but the inside of it was burnt. We did that in the Criminal Investigation Department Office. We were going to put the switch off but we found it would not operate. The inside portion of it was burnt off. I opened the cover. (Cover opened.) That is the condition in which I found it. The jaws are all brass and the blades all copper. They were exactly like this. That indicates that it was on. These (indicating) are the main fuses in Kennedy's shop. Those are covered, with iron I did not examine those fuses to see whether they had closed. They are intact. But the blade is cracked. That would not effect the fuse. The other one is also intact. To COURT: The fuses are all copper.

No signs of having been effected by it at all. If there had been a major fault in Kennedy's section of the lights or fans would you expect one of those fuses to be blown?—*A.* Yes, that is their purpose. The main switch would not go, the main fuses would go. The current goes down to the switch and from the switch to the fuses and from the fuses to that sub-circuit fuse.

Q. If there was a short circuit before it came to this board it would. Suppose there was a major fault before the wire reached this main switch that would be between the intake chamber and that switchboard?—*A.* There is another distribution board on that iron frame which controls all those. I did not know the condition of the fuse which controlled this. Those (indicating) are the main distribution board and if there was a serious short circuit before the main reaches the switch they would fuse at the control. The fuse controls the wire before it comes to this switch. These (pointing) are the tumbler switches. Some of these are in the on position and some off. These are the sub-fuses. They were damaged too. They could not be examined. To COURT: Those are (indicating) circuits that supply certain groups of lights or fans.

Q. The supply of electricity to Kennedy's section comes through a lead covered cable from the intake chamber through that circuit distribution box up to this main switch?—*A.* I do not know.

CROSS-EXAMINED.

I first of all went there on the morning of the 30th about 9 o'clock. On that occasion I did not examine the switchboard. I examined nothing further than the service main I was interested only in the service main. I know Mr. Ferguson was there on that date when I went there but I cannot remember who the others were. I cannot remember Mr. Symons being there. There were several people there. It may be that I have said in the Police Court that I went with Ferguson and the Government Analyst. The Government Analyst who was holding office in September last year was Symons. To COURT: I know him. I cannot recollect whether he was there.

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The outside covers of the switch gear and the switches were burnt. We did not open the box. The fuses were not burnt. (His Police Court evidence on this point is read). The outside portions perhaps were burnt. There was more than the fuses, meters and wires and other things. The circuit breaker was on another part, a little away from all these fuses and meters. There was a board not on the wall but a little way from the wall parallel to Main Street side, the circuit breaker was in another board parallel to Main Street.

Q. Not on the wall separating the basement from the Times Kennedy?

—*A.* There were circuit breakers there too. This was the main circuit breaker. I saw a piece of wire across the main circuit breaker and the breaker was off. The main circuit breaker was off; that means the part was broken. I did not examine the other circuit breakers on the side wall. 10

Q. If it broke the main there would not have any current on the others?

—*A.* It depends. There was an iron board across the circuit breaker. I do not know whether it fell on the iron. The main circuit breaker was broken. The first time I examined this board was in the Criminal Investigation Department Office some days after the fire. I have got no memorandum in writing to fix the date. I had nothing to do with taking down this board or its transport to the Criminal Investigation Department office. Nor had the electrical Department. I could not say when I had been actually taken to the Criminal Investigation Department Office. 20

Q. It is quite a simple matter to unscrew that nut and put the gas into the jaw?—*A.* You cannot do that until you take out that iron cover.

Q. You can with a screw driver or anything else or knife raise the jaws out of the sockets or put them back?—*A.* Yes. But with the cover on you cannot do it at all. There is an installation between the hook and blade. That is burnt up so that the jaws do not apply. The momentum of the handle did not effect the jaw. (The witness demonstrates to Court how the switch works.) (Witness unscrews the cover.) There is some indication that that switch was on because those blades are bright. (The witness shows the blades that are bright.) To COURT: When it came to me with the cover on I could not turn it off. 30

In ordinary switches particularly fan switches turning them on one gets a spark often. That is ordinarily to be expected. Small spark. It really amounts to that switching off one speed and getting on to another speed. I am not aware that this switch board was lying at Kennedy's ground floor, taken off that pillar and lying there for some days. There is no intermediate position on or off.

Q. As you are putting it off if the man got a shock if he put it off and got a shock the hand might put it off into the on position?—*A.* That can do anything I should say. The ordinary switch when you put it down it goes off. 40

Q. When you pull it down to a half way point the light goes off? If directly you switch off a man got a shock of some sort the hand might go back automatically and shut the switch?—*A.* That is 2 different operations. If you switch off it is over. That spring control makes it a positive action.

(Demonstrating.) Up to that it is less. Somewhere about that. Direct you get beyond that it is off definite.

Q. If you are bringing it up and do not bring it right down the bottom the spring tends to make it go down?—A. No. When you heard the noise it is off. It is still on (shown). When you hear the noise it is off. Some of the minor switches are on some of them are off.

Q. With regard to the circuit breaker of the sub-station Arnold said he heard the explosion at Times building or somewhere in that direction about 11.5 and the circuit breaker of the sub-station tripped at only 11.7?

10 —A. I do not think that would happen. If the lights went off all lights would have gone off at once.

Q. At 11.7 it was a circuit breaker tripped and at the time the circuit breaker tripped he saw the fire in flames emerging from the top of Times building? So that obviously the circuit breaker at the substation tripped some interval of time after the fire had started?—A. I could not say. I was not there. It would be extraordinary rapid for the fire to have reached the top of Times building within 2 minutes of the explosion. The gas could do it.

RE-EXAMINED.

20 So far as the switch is concerned there is no intermediate position. It is either off or on. And passing from the on position to the off position is a momentary thing. Suppose this switch was in the on position and a person was putting it off and as he was doing it he got a shock would the result of the shock be further to contract the muscles and push it forward or to sent it the other way?—A. I cannot say.

Q. It was put to you that the evidence of Mr. Arnold was that he heard an explosion at 11.5? If that explosion were the result of an electrical spark igniting some explosive mixture then that spark would have occurred immediately before the explosion?—A. Yes. And the fault of which that spark was the result would have also been present immediately before the
30 explosion. The spark is not a fault. Whether the spark you get from releasing the speed of a fan is sufficient to cause an explosion I cannot say. You must ask an expert.

Q. If it was a spark which would have burnt through the metal casing that would have occurred before the explosion?—A. May be. May I define what I mean by a spark fault. What I regard was a fault is an abnormal setting. We set these on currents. If I raised it for 100 H and it takes about 500 momentarily that would be a fault and such a fault could produce a spark, liable to produce a spark. To COURT: It would be caused by 2 conductors coming in contact or might be caused by 2 wires burning. A
40 spark is caused where there is group.

Q. Suppose there had been such a fault as you are having in mind and that made the circuit breaker in the Times building trip would it have taken so long as 2 minutes for the circuit breaker in the sub-station to trip?—A. No.

Q. Would it not be one shock which was interrupted and broke the Times circuit breaker and then another operated on the sub-station?—

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A. That is possible. That is if there had been more than one fault. If it was one it would have been more or less simultaneous. These blades are still bright, and that indicates that at the time these were burnt the blades were in the jaw and that in turn indicates that it was in the on position.

To COURT: The other portion of the blades have been effected by it.

That shows the blades were in the jaws that portion of the blade which is in the jaws would not be exposed to it.

Q. That is a very strong indication that the main switch was in the on position?—A. That is my opinion. That is what I gathered.

(His Lordship orders Mr. Misso to bring a new switch board of the same type as is produced in Court.) 10

(This Witness was recalled see page 299.)

25th September, 1934.

AFTER LUNCH.

J. V. COLLINS. Sworn.

(jjj) J. V.
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tion.

I am the acting Government Analyst. I remember the day of the fire the 29 September last year. The following day the 30th September I went to the scene of the fire. That was about 9 o'clock in the morning or about 8 o'clock. Mr. Ferguson was in charge and I met him (Shown the suit case). I say this suit case I took charge of it in the morning in the presence of Mr. Ferguson. It is rather difficult for me to arrange them in the position I found them. The two tins were side by side inside the suit case between the tins was a large piece of paper and on top of the tins was a piece of hessian. (Shown the oil paper). This is the paper. This is some wrapping paper—packing paper. It is water proof packing paper. That piece was crumpled up and it went on one side of the bag was loose on top more or less and you would have to lift it up before you saw the paper. One side of the bag had come off. I think that was inside the lid. When I saw the tin it had a large loose piece on the top. I remember the paper was loose. The hessian itself was jammed in practically on the top and the hessian and the paper were wet. To COURT: Either of the tins was not wrapped in hessian. 20

I am not exactly certain as to whether the paper was on the top or at the bottom. The tins were both in the suitcase. The suitcase was looked more than like a suit case then. When it was handed to me it looked like a suit case packed. It was behind the end of the building, I think. I think it was on the verandah. (The witness points to the spot outside the door "E"). It was either by the door or in the doorway. I now produce the suitcase marked P9, two petrol tins marked P10 and P11, the jute hessian P12 and the paper marked P13. I examined the contents of the petrol tins. In one of them there was a very small quantity of liquid about 5 cubic centimetres. It was petrol. (To COURT: About a liquor glass full.) 30

I examined the other tin too. The other tin also contained a little liquid of the same quantity. That was not petrol. I was not able to identify it. The bulk of it was water and the rest of it was not water or petrol. A certain part of this substance was water but with this water

was a substance neither petrol or water. It was a substance with a peculiar acrid smell. This quantity was too small to be identified. There was some sort of a fatty substance traces of it floating in the water some deposit which was lighter than water and it was collected at the top of the test tube. The jute hessian was burnt I think as it is burnt now. (Shown the oilpaper). There is a burn on the edge. I think they were either burns or scorches. The stopper of the tin which contained the petrol was marked A, P11 by Court, was on. When I removed the stopper in the tin "A" there was a vacuum and the stopper was removed indicating that there was a partial vacuum
 10 in the tin. The vacuum must have been caused in the tin by expansion driving the vapour out so that the vapour could not get in and contracted when it cooled down and the vapour condenses. This was consistent with the tins being exposed to a fire. It might happen in that way. (To COURT: At the end when you came to a small amount of petrol in the tin you might get circumstances as in this case. It might burst; it might not if the vapour could escape.)

The stopper had been screwed with that. Some of the vapour must have escaped to get a vacuum afterwards. I think it is more likely that the tin was empty than full to survive the fire. In the other tin there was a
 20 vacuum. The pressure was normal. Both the tins showed that they were subject to heat and the outside of the tin "B" is burnt more than "A".

Q. The point I was making was this. These two sides are not burnt at all. On the other hand that side is burnt and this slightly burnt. If the packing had been in between those would have been the sides least exposed to the and the two bottoms are not burnt? They were slightly scorched.

Q. It is consistent with those two tins being packed in the suit case before the fire in the way they are now before me?—A. If the tin "A" had been full of petrol it is more likely to have burst than not. It depends an
 30 awful lot on the amount of petrol and the temperature to which it was exposed.

I also had a mobiloil tin. It is marked P14. It was in this condition when I got it. The top was cut out. It was quite empty.

(This witness was recalled see page 300).

T. E. MISSO. Recalled.

The flame occurred at the moment when the blades ceased contact with the jolt. This is fire proof. It is covered in a flame proof switch. The reason why the blades did not come out was because the mica had burnt out.

CROSS-EXAMINED.

Q. This is gas proof?—A. No, it is only flame proof.
 40 This switch is identically the same as the switch in Court. Only it is smaller size. When the mica burnt the shaft revolves in the clip. There are different sorts of insulation. This looks like press pan paper and varnish. I have no knowledge of where the switch board was or where it was connected, I saw this switch board for the first time in the C.I.D. office.

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called).
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tion.

I also took charge of the clothes worn by Mr. Kennedy at the time of the fire. They were handed to me by Mr. Bantock. I handed them back to Mr. Ferguson before the Police Court inquiry. I identified the articles of clothing. There was a pair of trousers marked P3, a coat marked P2, there is a rent in that coat. There was a tear in the coat. Looking at the threads of the tear I would not like to say whether it was new or not. There was no indication of a burn on the coat or trousers. I also produce the shirt P6 and the collar two handkerchiefs and a pair of socks marked P7. Those socks have burns on them. There are some burnt. I would not like to say that all the holes are burns but they are definitely burns where-
ever there is a singeing there is an indication of burning. There is one place where the singeing is not in evidence. All the clothes before I received them were wet. The other sock is comparatively less burnt. The second sock is more difficult to say. The tear might be a burn. I was also given a pair of shoes inside the box marked P8. It was in this card board box. When I got them from Mr. Bantock. I examined the socks and the pair of shoes. I smelt it and got a distinct faint smell of kerosine or petrol. The smell did not come from the shoes but it came from the box I shut up the box immediately. I asked Mr. Shammugam my assistant to do likewise and he did so. Both kerosine and petrol have definite identifiable smells. They have rather characteristic smells. I think I am certain I got the smell when I smelt the box of shoes on the same morning. I took the box back and I suppose it was between 11 and 12 on the Saturday morning. The proportion of petrol to air necessary to produce an explosive mixture varies from about 1.5% to 6% as being the limits of a petrol explosion. To COURT: The mixture of petrol and air containing 1.5% petrol vapour is explosive.)

The mixture at which you have 1.6% of petrol vapour and the rest air is a lower limit.

The highest limit is above 6% of petrol vapour and the rest air. To COURT: If you get 10 or 15% you cannot get an explosion. It is not inflammable. It will not detonate and cause an explosion).

It is flammable in excess of 6%. Pure petrol is flammable as it has oxygen in it. Within these limits you can have an explosion.

Q. Have you worked out the amount of pressure which 2 gallons of petrol explode in 16000 cubic feet of air would exert?—A. I have made some calculations.

Q. It is 16800 it would make very little difference?—A. Yes.

If the evaporation were evenly distributed through the air it would not explode. You have got to pre-suppose that that there was a pocket somewhere. If there is one or more pockets it would be possible to produce local explosive mixture in that area. It depends largely on the effect of the wall whether you get an explosive effect on it. I think it would flash but I do not know whether it would detonate. I think you would get a flame. I have been to the basement. The only opening exit there is the spiral stair

case and the chute entrance. When I saw the building it was full of debris and what access there was to the place was not visible. I know the lift chute and I know where I was told the spiral stair case was. I know about the bottom of the left shaft. I saw chute entrance. I also saw the walls of the basement and the position of certain pillars.

Given that the place chopful of boxes and flower stands you might get a condition there where you would get a pocket.

10 *Q.* However working on the cubic capacity of 16000 square feet 2 gallons of petrol would explode in that?—*A.* If it is mixed with air it would not explode because there is too much air but in making this calculation you have got to make a large number of assumptions and you have got to imagine that two gallons of petrol are vapourized, secondly that they mix with the optimum quantity of air, and thirdly that they were all in a little space by themselves. If it is mixed with the whole of 16000 cubic feet it would not but if it is mixed in the corner of the room with 1 or 2000 cubic feet then you would get a high explosive mixture. I cannot say what optimum of air there was. It is somewhere between 94 and 98.4.

20 *Q.* Suppose you had half that quantity of petrol but the other conditions you assume were the same what increase would result?—*A.* You would get an increase of more or less directly a decrease in the pressure.

Q. I give you as the datum that the room was full of racks, parcels of shoes, and other stores as you would get in the basement of a shoe store, that circumstance would certainly reduce the cubic capacity of the air?—*A.* Yes.

Q. Suppose the cubic capacity were reduced to 8000 the pressure would be double that?—*A.* The proportion again is not the same considering that the assumptions you have made are not the same.

Q. Marsh gas is found in decomposing matter and also sewerage?—*A.* Yes.

30 *Q.* Usually are marsh gases found with other gases?—*A.* In sewerage and decomposing matter they are found I think.

Q. Those other gases are they capable of forming explosive mixtures with the air?—*A.* I do not really know. It depends entirely on what they were.

Q. If for instance there had been marsh gas in this particular building coming from below you would expect to have more or less a continuous flow of it?—*A.* Yes. To COURT: I do not think it was a gush unless there was an underground cave. I think it would percolate gradually.)

40 *Q.* Would that be accompanied by a smell?—*A.* It depends on what source it came from. If it came from decomposing matter it would, from other stuff it was possible. To COURT: The other name for Marsh Gas is Methane. This is the same gas found in coal mines.

Q. Suppose it had been percolating gradually like that sufficient to produce an explosive mixture would the fire have had in any way effected the source of it.—*A.* I am afraid I cannot state that. I am not the architect of the building. I do not know what the source was. The source might have

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dried up if you had a heavy drought. If there was a heavy drought you might have expected it to be going on.

Q. Most probably that might have gone on?—*A.* A heavy drought like this might have dried it up.

Q. Did a drought occur in October last year?—*A.* I do not know. To COURT: Methane is lighter than gas.

Q. What proportion of Marsh Gas to air would you require to produce an explosive mixture?—*A.* The book has given it as 5.5% and 14% being volume and the rest air.

Q. Petrol vapour is heavier than air?—*A.* It is.

Q. Would it gradually rise?—*A.* It would tend to spread rather than rise. It would difuse more laterally than upwards. To COURT: Petrol vapour would come off and push it up although it is heavier. It would tend to diffuse a little.

10

Cross-exa-
mination.

CROSS-EXAMINED.

Q. Could you tell me the weight of two gallons of petrol?—*A.* I think about 14½ lbs. It depends on the gravity of it.

Q. From 14.3 to 14.5 lbs.?—*A.* About that.

Q. 1 lb. of petrol gives a how many cubic feet of vapour which is completely vapourized?—*A.* 1 lb. would give 33 divided by 7.2; it is a little over 4 cubic feet.

Q. 1 gallon of petrol gives approximately 30 cubic feet of gas if it completely vapourized?—*A.* It is about a little over 4 cubic feet.

Q. How do you work that?—*A.* I got it from a table from a graph from the book. It is a hand book on petroleum and gas.

Q. Is that an American book?—*A.* Yes.

Q. The specific gravity of American Petrol is better than the stuff we get out here?—*A.* This particular table gives it as the cubic feet of vapour from the specific gravity of petrol. There are petrols of specific gravities which would give specific amounts of vapour.

30

Q. What is the specific gravity?—*A.* 72.

Q. Petrol takes a little time to vapourize?—*A.* Yes.

Q. If it were poured on a cement floor in 10 minutes could you tell me what amount of petrol would be vapourized?—*A.* I cannot tell you that. I do not think there is a weight formula for it. I think you will have to experiment with it.

Q. Will you agree that 48.7% of petrol would vapourize in 10 minutes?—*A.* I do not know.

Q. Are you aware that petrol spreads on cement?—*A.* It spreads itself out on most things.

Q. And that 2 gallons of petrol can be spread out on 1500 cubic feet?—*A.* I would not disagree. I do not know.

40

Q. The pressure developed as a result of the combustion of petrol mixture and air depend upon the calarophic value working on the metric system?—*A.* Can you tell me the calarophic value in units this petrol would be?

A. Again I am afraid I would have to do a division. The figures I have worked on was 144,111 which is in units. I have got the figures from an American Book where and it gives the calorific values of the petrol and I took the lower limit of those and worked on that. I have taken the lower one for my calculation. I have taken the lower one which has not so much energy.

Q. The presence of water vapour in the air has a bearing on the degree of evaporation of petrol?—A. Yes.

10 Q. As well as on the pressure that will result from the explosion of petrol?—A. That does not depend on the pressure very much. I do not like to be very definite about that.

Q. The calorific value is effected by the degree of moisture in the air and also the temperature in the air?—A. Yes, but if you have a gallon of petrol with a certain calorific value, you have got that value stored up in that petrol.

Q. The calorific value is reduced if there was an amount of water vapour in the air?—A. I do not know.

Q. The heat absorbed by the water vapour would reduce the calorific value?—A. Yes.

20 Q. There was rain on the 29th September last?—A. I do not know.

Q. On the 28th there was 1.79" of rain? (No answer).

Q. There was rain on the 29th as well. That would tend to make the basement rather moist if there was rain? (No answer).

Q. The humidity of air as registered was 87%?—A. Yes. TO COURT : That is relatively high.

Q. The basement we have it from Mr. Ross is for practical purposes below the surface level and it is therefore likely to be cooled in the night because of the rain and moisture?—A. I do not know that.

30 Q. Concrete is not absolutely non-porous. Mr. Ross himself said he would expect the sides of the basement to sweat?—A. I have not been to the basement.

It depends on the basement. I know that it sweats but that passes off rapidly and the concrete walls if sufficiently thick would not let water through otherwise the basement would have been used as a store room.

Q. In any event the fact that the walls were set and the ground was sodden would result in the basement being cooled?—A. I do not know. The temperature of the ground would not have been very much.

Q. The mean temperature on the 29th September was 73 degrees?—A. That was out in the open.

40 If there was considerable rain for two days, there would be considerable moisture.

Q. Do you know that buildings in the Fort area are built on piles in order to prevent their sinking?—A. Normally that is done to prevent all buildings sinking. Foundations are put to keep buildings from sinking.

Q. Are you aware that where the Times Buildings is was part of the lake at that time?—A. I do not know that.

Q. Methane is lighter than air?—A. Yes.

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Q. And in certain proportions it can produce explosions?—A. Yes.

Q. It is one of the constituents of coal gas?—A. Yes.

Q. 2 gallons of petrol would give 33.6% of vapour, if completely evaporized?—A. 2 gallons would give 66% of vapour.

Q. You do not know you say how long it would take to spread if put among card board boxes, leather, etc.?—A. I can not say.

Q. You would not expect 50% of the petrol to evaporate in 10 minutes?—A. I would expect the evaporation to be rapid.

The quantum of vapour available for the purpose of an explosion would also depend on the quantity mixed with air. 10

Q. Now this basement, its openings are so few and small that the conditions are conducive to the air being still?—A. I would suppose so. To COURT: There would not be much in the way of a draught.

Q. You saw the door of the chute?—A. Yes.

Q. There is a space of 7' 2" by 11' 3"?—A. I have not measured them.

I have experience of trying to pump up a tyre which is punctured. It all depends on the size of the puncture.

Q. Were you present at Mr. Gray's experiments?—A. At one or two of them I was present but not at all of them.

Q. At which were you present?—A. I am afraid I cannot tell you. 20
What the other ones I do not know. The ones I was present at was when different preliminary tests were made. To COURT: I took part in the way of the quantity that was being put into the tins.

Q. Did you assist in any way?—A. No. I really could not say I assisted him except that I poured out the petrol out of a bottle into a measuring cylinder.

On one or two occasions I did measure them out but not on every occasion.

First of all I suggested the quantity of petrol to be poured out and it did not work and we went on lowering the amount and eventually it did 30
work. I began with a quantity of petrol in excess of 1.5 I think our first experiments were not made with big 4 gallon tins but with drums. I think we began with 3.5 cubic centimetres of petrol.

Q. You reduce the quantity till you were able to get it exploded?—A. Yes.

Q. I take it you thereafter continued the experiment to find out what was the maximum petrol that would be exploded?—A. I do not know what Mr. Gray did afterwards. That was to see that they would go well.

Q. It is quite easy to work it out. We know that Mr. Gray's figures were from 1.5 to 1.75 in a 4 gallon tin?—A. Yes. 40

Q. The equivalent of a gallon of petrol in 16800 cubic feet in the basement would be 8½ gallons of petrol?—A. I am not quite certain, but it certainly would be about that.

Q. The equivalent for 1.5 cubic centimetre for 16800 cubic feet is 8.2 gallons of petrol and for 1.75 cubic centimetres for 16000 cubic feet would be 9.72 and for 1.75 cubic centimetres for 16000 cubic feet for 4 gallons would be 9.72 gallons of petrol?—A. I suppose the calculation is right.

Q. So that in reality Mr. Gray was using in the tins 4 times as much petrol as is said to have been used in this building?—A. So far as I know Mr. Gray was using the optimum of petrol or something fairly close to it.

3.75% of petrol was too much and for some curious reason we could not get an explosion. At the primary experiments I was present. I measured the petrol from a bottle into small 10 cubic centimetre measuring cylinder. I think he did not use a rebate. The total capacity of the cylinder was 10 cubic centimetres. For the experiments we were making at that stage it was sufficient.

10 Q. Do you know that black powder when exploded produces 700 times that volume of gas?—A. I am afraid I do not know that. It is possible.

Q. Were you present at any of the experiments where a detonation was produced by using a fuse alone?—A. Yes. I think so.

Q. Now what happened when he performed the experiment was that there was a small report?—A. When the thing went up there was a large detonation. There was no bang.

Q. If Mr. Gray says first there was a small detonation then a gradual filling of the tin is it correct?—A. The tin did show a crinkle before the thing blew up. I did not hear a detonation before that.

20 (Page 18 (Record) of the evidence read out to the witness.) 1st of all I heard a small noise in the tin and then the tin went up . . . He must have been referring to the experiments at which I was not present. At one at which I was present one of the tins burnt and there was a visible crinkle—expansion of the tin, but there was no small previous detonation I heard. I did not hear it if it was a small noise at first. I cannot say what happened inside the tin. In some of them it might be safe to say that the petrol detonated. That would be in the case where there was no bulging at all. The bulging was systematic with the formation of gases inside. An explosion is extremely sudden.

30 Q. Have you tried an experiment with electrical wires at all?—A. I have not. I think Mr. Gray did. I do not know though.

Q. Did you actually at the time the experiments were being carried out in working out the mean quantity that should be used on the assumption that 2 gallons were available, to whoever set fire to the building?—A. I did not work out the proportion at the time.

26th September, 1934.

Accused present—Same Counsel.

40 Before the proceedings of the day commence Mr. J. E. M. Obeyesekere, Deputy Solicitor General applies to His Lordship for a copy of the notes of evidence taken down at the trial (Supreme Court).

Mr. Pereira for the defence states he has no objection if he is also furnished with a copy of the evidence.

His Lordship allows the application.

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J. V. COLLINS. Recalled. Re-sworn.

CROSS-EXAMINATION—*continued.*

Q. Was your pressure of 33 lbs. per square inch obtained by theoretical methods?—*A.* Yes. It is a theoretical calculation. That calculation made no allowance whatever for the openings of the basement, nor for the humidity of the atmosphere nor for the water equivalent on the basement.

(TO COURT: The water equivalent is the equivalent amount of heat absorbed by the building itself, for instance, if you put heat into a building a certain amount of it goes to raising the pressure. But the walls, fittings, and everything else will absorb a certain amount of heat or energy. The amount of energy they absorb is known as the water equivalent.) The heat is absorbed by the superficial contents of the basement. The theoretical calculation is based not on the explosion of petrol in oxygen but on the explosion of petrol in air with sufficient amount of air to provide the necessary oxygen for complete combustion. (TO COURT: Air that normally contains oxygen.) But for this purpose I adopted British Thermal Units. B.T.U. are given in various books. 10

Q. That is obtained by the explosion of petrol in oxygen?—*A.* I do not actually know how the figures are obtained.

Q. As a matter of fact I understand you work up the calculation value of fuel?—*A.* I do not. I have not worked out the calculative value of this petrol. I do work it out in liquid fuel and it is worked out with oxygen; not air. 20

Q. In point of fact these theoretical temperatures obtained in explosions are never actually obtained in practice?—*A.* I do not actually know that. I rather think they are obtained in small cylinders because they have been actually measured.

Q. Take the ordinary petrol engine—the efficiency of the petrol engine in actual practice is only 22 per cent of what it theoretically should be, and the air craft engine is only 27%. The oil engine goes almost with 26%? Those are the best designed engines?—*A.* I accept those figures. I do not know from where they come. I do not have any knowledge of those figures myself. I accept Kemps' figures. (TO COURT: That is a book of repute.) 30

Q. So that in actual practice one seldom obtains more than a third to a quarter?—*A.* No. I do not quite agree. You may get the theoretical pressure but you may not get the theoretical efficiency of the engine. I think that is slightly different.

(Witness reads from Kemps.) (On being questioned witness state he is reading pages 221 to 223 of Kemps.)

Q. There is a difference between the efficiency and the theoretical temperature?—*A.* I do not think it is. Efficiency of the engine and the theoretical temperature obtained are quite the same thing. The complete efficiency of the engine depends, . . . it is really not my subject at all. 40

Q. Your pressure of 32 lbs per square inch is of course obtained on the assumption that the whole of the two gallons of petrol had been completely vapourized, not only by complete mixture with the optimum amount of

air?—*A.* My calculations are made on theoretically ideal conditions. In actual practice I do not think it would have been obtained in this case.

Q. In point of fact working on the theoretical basis a very high temperature is produced by the explosion of two gallons of petrol vapour completely mixed with air?—*A.* A high quantity, yes. The temperature I have got worked out is 1780 degrees Fahrenheit on the absolute temperature scale. (TO COURT : It is a different scale. It is used when calculating volume. It is not necessary for our purpose to know anything more than that.)

Q. If it is exploded in the ideal condition to heat?—*A.* It means that
10 the theoretical instantaneous temperature caused by the liberation of all that energy would rise to about that theoretical figure. That high amount would be momentary and would not be measured by the thermometer. I think there would be a flash with detonation—a very rapid burning. The temperature worked out by me i.e. 1780 degrees is the theoretical temperature caused by the explosion of two gallons of petrol in an optimum mixture. I took as my explosion area 16000 c.f. The actual area by the mixture did not enter into my calculation.

Q. Was that area occupied by the optimum mixture? No. The temperature is calculated on the basis that you got 16000 c.f. of air and that
20 somewhere in that air you explode a distinct mixture of two gallon of petrol.

Q. As a matter of fact the optimum explosive mixture would not occupy space of more than about 3200 c.f. ? I think the figure would be about that. The limits of the explosive mixture if you calculate from 1.5% to 6% would be 1038 c.f. to 4350 c.f. and the mixture obtainable to that would be somewhere within those limits. If there were only two gallons of petrol in the whole of 16,000 c.f. it would not explode. It would be so diffused that it would not ignite at all. I took the whole of the 16,000 c.f. into my reckoning,
30 because you got to find out how the energy is used up. You have got a certain weight of air too and all that air is going to be affected. It goes to absorb the heat.

Q. The explosion would have simultaneously wrecked the side walls separating the basement from the in-take chamber, and the roof, and the damage would have been more or less simultaneous?—*A.* Explosions are very curious things. But I think it would probably have been very close to each other otherwise the pressure would have been released.

Q. Otherwise the wrecking of the partition wall would have at once reduced the pressure very considerably?—*A.* Yes.

Q. So that it must have been simultaneous?—*A.* Yes. Very very close,
40 I should imagine so. I have seen the ground floor as it is now.

Q. It wrecked the ground floor and blew down the wall separating the vestibule from the ground floor, and the plate glass windows were blown out?
—*A.* I don't really know what happened to the structure of the building. I saw the windows broken but I cannot remember that all were broken. I did not make any particular study of what happened to the windows.

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Q. So that there must have been still considerable force left in this explosive wave after it had wrecked the roof of the basement and thereby got into the ground floor?—A. Yes I would imagine there would be.

That 33 lbs. of pressure for every sq. foot obtained by me is the rising pressure after making an allowance for the atmospheric pressure. The actual rise is 33.5; the final pressure about 48.

Q. In all the experiments carried out by you or in your presence did you note the interval of time between the introduction of the petrol into kerosine tins and the actual condition of the fuse?—A. We did not actually make any note of the time. I did not do so. The tins were rolled round a bit and shaken over and in one case they were left for about 20 minutes or so before we fired them, and in the other they were kept for a much shorter period. I did not record the time. I think we tried 3 or 4 experiments. The first group of 2 or 3 tins were filled and left for about 20 minutes and then fired, while the others were not left for so long as it was unnecessary. I did not record the actual time we left them for. These were only in the nature of preliminary experiments, some were successful in blowing up the tins and some were not. In some of the first ones we did not succeed in burning up the tins at all. We were very successful in the latter ones.

Q. The interval of time is material from the point of view of the length of time the petrol is given to get into gas?—A. Yes. If the petrol is converted into gas in 10 minutes—any time longer than 10 minutes is immaterial. Any time shorter than 10 minutes is definitely material.

Q. Is it your view that in 10 minutes petrol in tins will get completely evaporated?—A. No. That is just a theoretical test.

Q. In point of fact the surface of all tins would approximate more or less the petrol on glass or porcelain?—A. I don't really know what the inside of those tins consists of whether of tin or plate. If they are of tin the surface I think would be slightly more porous than glass or porcelain. I would not like to be very definite on the point.

Q. Because it is absolutely non-porous that it is used for transporting kerosine oil in?—A. Yes. Comparing it with glass or porcelain. I have not looked up the books to ascertain how rapidly petrol evaporates. (Reads passage from authority.) These experiments were carried out in large shed, about 3 p.m.—I mean the first experiments. (To COURT: A larger surface area causes more rapid evaporation than a small surface area.)

Q. Whether the petrol burnt rapidly in an explosion or whether it burnt slowly (British Thermal Units) remains the same from a definite quantity of petrol?—A. Yes.

When I saw the suit case I am not certain whether it was near the door or on the outer edge of the verandah. It had been found by a Foreman I was told. I remember there was a constable at that time whose business it was to look after. I think there was a constable as far as my memory goes.

Q. Do you know S. I. P. Musafar?—A. I could not really remember the number of people I did see there. There was quite a number of police

officers there. I really could not say who was in charge. I cannot remember the face of that person.

Q. Did you examine the cans then and there?—A. I think we just lifted the lid and saw that there were two tins there. I did not take the tins out there at all, or unscrew it.

Q. Until you lifted the lids the cans were not visible?—A. I am not absolutely certain that there was no chink through which you could see the red portion of the cans through one edge of it. I made some notes at the time and I got it down in those notes that the larger piece of paper was
10 wrapped up and crammed between the tins. Along the top of the tins was a rolled up piece of gunny. They were certainly not wrapped round the tins.

Q. And of the two cans the one that showed greater signs of heat and burning was one that contained the non-inflammable fluid?—A. May I know which can that is?

Q. That is B according to your evidence? (To COURT: That one was a bit more burnt than the other) B. has been subjected to more heat than the other. I am afraid I cannot say whether this handle (shown) was loose at one end. I have nothing in my notes regarding the handle coming off.

Q. It is generally a lead tin solder that is used?—A. I do not know.
20 This can contained a non-inflammable and non-oily fluid. What I got out of the tins was non-inflammable and non-oily. I could do very little with it. The bulk of it was water, and in this water there were a few very very small yellowish sort of particles which collected on top of the liquid and did not burn. The yellowish particles had a very peculiar smell and I could not say what they were. It was a forlorn hope to find out what it was having no indication whatever. When the cans were produced in the P. C. on the 12th of April last this can (shown) contained a certain amount of water. That water was put in by me. That water contains a substance that was obviously inside the tins. It was very rusty water. Signs of that
30 rust are evident in the screw of the can, and the surface of the top. I introduced the water in with the idea of fluting out some more of the substance adhering to the tins. I added water to it and then emptied it and then added some more water into it a second time. I must confess I forgot and left the second water I put in, in the tin. This lead cover was screwed down completely and tightly. In fact both were tightly screwed. When this can was unscrewed it did not give a sound as of air escaping into it. This can (B) had the normal pressure inside it. This can is burnt on more than one side. (Side shown). This side is half burnt. The top shows signs of being subjected to heat. (Shown other can). About two-
40 thirds of this face is burnt; also slightly round this corner. The other side is quite red.

Q. Did you carry out any experiments to ascertain whether a can full of petrol when subjected to any particular temperature would explode?—A. No.

Q. Your evidence is to the effect that if it had been full of petrol it might not have burst?—A. Yes. (To COURT: Petrol evaporates. If the contents are absolutely closed it will expand; if there is any outlet

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for the vapour it will evaporate.) I found 5 cubic centimetres of petrol actually in that can.

Q. That would be to the size of this vessel the same as 24 galls. would be in that 1600 c.f. basement?—A. It may be. I did not work out the sum in proportion.

Q. 1.5 cubic centimetres was to a 4 gallon can as 8.2 galls. is to 16000 c.f. ? —A. Yes.

Q. A 2 gallon can would be equivalent to really 16.4 galls. of petrol?—

A. I am afraid I cannot carry these sums in my head. 1.5 in a 4 gallon tin is equal to 8.2 galls. in 16000 c.f. A 2 gallon can would be the equivalent of 16.4 galls. of petrol. And 5 cubic centimetres in a 2 gallon tin would be more than 50 galls. in 16000 c.f. This can did not explode. 10

Q. You suggest that some of the petrol had escaped through the ends?—A. Yes. Some of the petrol vapour of air or whatever was in it must have escaped somehow or other. Otherwise you would not have had a vacuum resistance when it cooled down again.

Q. In point of fact the temperature must have been relatively low judging from the fact that these tins have not melted on the outside?—

A. This can A shows signs of the lid having melted. You find soldered particles of lead coming off the joint near the opening. Whereas this other can shows no signs whatever of the soldering having melted. 20

Q. The actual melting point of solder is something like 346 degrees Farenheit?—A. I would not say that off-hand.

Q. Petrol vapour is actually 3.4 times heavier than air?—A. It depends upon the specific gravity of the petrol.

Q. Take petrol with the formula C.T.H. 14?—A. I don't think the table in this book gives it as that. (To COURT: Petrol vapour rise very slowly by diffusion. It would not rise like coal gas or any other gas.) From this table it would come out at about 2.7. This book is an American book. This is calculated by the gravitation of the petrol working at .72. I have never weighed two gallons petrol locally. Theoretically it would weigh 14.4 lbs. In actual practice locally it seldom weighed more than 14.3 lbs. 30

Q. Was the actual quantity of that weight accurately measured? (To COURT: I have never tested that. I obtained the figure of gravitations on which I worked from the Shell Co.)

Q. Being 2.7 times as heavy as air it would settle down if undisturbed at the basement and would form a sort of carpet at the bottom of the basement?—A. It would tend to form a layer in the first instance.

Q. You got a pair of shoes between 11 and 12 on the 30th Sept.?— 40
A. I actually got the shoes earlier than that but I examined them on that date, I don't know whether I got the time noted down at which I got the shoes. I got the shoes at the Times Building and I think I left the place somewhere about 10.30. I got the clothes from the police at the Times of Ceylon Building, from Mr. Bantock, and handed them over in a sealed packet after I had examined them. (His statement on this point in the P.C. is read to him.) Yesterday referred to in that statement was somewhere in

April. There were no sock suspenders among the articles worn by the accused. Silk socks would tend to sag in the absence of sock suspenders.

Q. Socks not adhering to the skin would sag, and if a flame was burning it would tend to burn more rapidly if the socks were sagging than if it was tight fitting?—A. I don't actually know. It might. Q. If there was air present and there were folds, it would tend to make it more inflammable than if it was worn straight against the legs?—A. I would not like to say that it would actually make it more inflammable. It might. Q. You

10 actually found no traces of burning on the clothes?—A. No. There was a small tear on the coat. It was an angular tear and I found no signs of burning at all. I smelt the shoes while they were in the box. Q. These shoe boxes have an odour and some of the shoe polishes have hydro-carbon in its composition and also things like turpentine, and this faint smell of petrol might have been due to some turpentine polish?—A. I thought it was due to kerosine or petrol; nothing to do with the polish or turpentine either.

Q. As a matter of fact petrol evaporates off leather more quickly than off anything else?—A. I don't know. I am not aware that petrol evaporates off leather at a much higher rate than anything else.

20 Q. You certainly smelt the shoes for the first time more than 12 hours after the explosion taking place?—A. No answer. I have not tried any experiments on the shoes by sprinkling a little petrol on them and keeping them uncovered for about 8 hours and then putting them into a box to see if they retained any smell. I got them about 10 o'clock and examined them somewhere about 11 o'clock the next day.

Q. Would you be surprised to hear that in 6 hours practically all petrol would get evaporated off leather? That in 15 minutes over 90 per cent. of the stuff evaporates off leather? Do you admit that in 15 minutes petrol put on leather would evaporate with an ascent of 94.5 per cent.? I don't know. I can't say. (Witness is shown shoe box marked No. 5.)
30 I do not get any smell from this. (Shown box No. 3.) No smell in it either. (Shown box marked No. 2.) No smell in this either. All these 3 boxes have no smell of petrol. It has got a smell but not of petrol. There may be petrol there but the smell of it is masked by something else. (Shown box marked No. 7.) No. 7 is suspicious but not definite. (Shown box No. 4.) That is also suspicious but not sufficiently definite, to say whether it is petrol or Kerosine. (At this stage the index to the contents of the boxes is handed over to his Lordship by Mr. Pereira with the remark that 1 cubic centimeter of petrol was put on boxes Nos. 4 and 7 about 5 p.m. yesterday. (Box No. 9 is handed over to witness.) There is no smell of petrol in it. I
40 can't smell any petrol in it. (Shown box No. 8.) It has a smell of Kerosine probably.

Q. As a matter of fact you would recall that when this shoe box was produced in the P.C. it had a fairly strong smell of new shoes? I don't think I recollect that I am afraid. Q. As a matter of fact about 2% of petrol is discharged from the exhaust pipes of cars? I don't know I am afraid. It might contain some petrol. I don't know; there may be.

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Q. When you gave evidence in the P.C. you went on to ascertain the specific gravity of petrol vapour; you were not certain whether it was heavier than air or lighter than air? No. (To COURT: I have not looked it up to see whether petrol vapour is heavier or lighter than air. When you mix it with air the mixture tends to—when you mix a heavy thing with a light thing it tends to lighten out.

Q. The velocity with which the gases have exploded as a result of the explosion would travel out through that opening at the head of the chute can be reckoned? I imagine you could calculate? I think there is a formula but I do not know it. I do not even know that there is one. 10

Q. 30 lbs. of pressure per sq. inch which you got would give an enormous pressure on the door at the head of the chute? It would give the same pressure at the whole of the inside of the building. Any person in that basement at the moment the explosion took place would be driven towards the opening? Would he be driven against the wall or would he if he was somewhere towards the centre be blown considerably against the wall? I would not say necessarily at all because explosions are very curious things. Sometimes you get an explosion when 2 or 3 men are close by and one of them is blown out, not the others. It is an extraordinary thing. It cannot be explained. Well, you get very curious results as to damage caused by the explosion force alone. 20
There would be damage from the outward dashing air. In the case of shell exploding, you could get killed by fragments of shell coming in contact with you; that is a high explosive shell. In the case of an explosion of this sort in a limited area such as a basement, as in this case, it all depends upon which directions the on-rush of gas is greatest, and where you get an open space, unless there was some sort of barricade which would take the shock from you, you would be knocked down. If it is in front of you, you might not be blown out. I agree that the instructions given to soldiers that if there is a shell in the vicinity which is likely to explode, to lie down flat.

Q. In a restricted area such as this basement the force would tend to carry a person in that basement towards the wall? It would depend on where the person was in relation to where the explosion started. If the explosion took place in close vicinity to where the person was, it would tend to carry him right on the explosive way, towards the wall. And I saw that as a result of this explosion the walls were shattered. 30

Q. If he had been anywhere there, stooping over an explosive mixture and trying to set fire to it, there would be nothing left of him? I don't really know.

Q. Would not the velocity of the gas as a result of the explosion have shoved him right into the chute? I could not really say. If he was standing straight up against the wall he would have got an instantaneous pressure. 40
Whatever that pressure was it would go over him and then the pressure would be released. He would not be blown off. I do not know what the pressure would be. It is practically a momentary pressure, because the pressure is blown up after the first wall is blown off. (To COURT: That is the theoretical temperature that would kill anybody.)

Q. Assuming that you had this intense high temperature at the moment of the explosion what be the effect on the human being subjected to it? It is theoretical temperature in that the energy causes that temperature in theory, but it is only for a period of time before that energy is dissipated in the expansion of the gas.

Q. Assuming that you have a thermometer that would register 1870 degrees and would not be smashed by this explosion . . . ?—A. They have recorded the temperature of explosions but they do it by optical methods. There is a page in this journal which gives a record of what people
10 have actually recorded of the temperature of explosions.

Q. What then would be the effect on a human being if when it explodes he was subjected even to that momentary pressure? I actually think the thing is so very rapid that it would hardly have any effect on him at all. You can take a piece of gun cotton and put it on your hand and burn it but you would not burn your hand. You could have a fairly high temperature very close to you but it would be so rapid that you would not feel it. The rate of burning in this case is very much more rapid than the case of the burning of the gun cotton.

Q. You realize that 33 lbs. per sq. inch amounts to 4752 or 2.13 over
20 two tons per sq. foot? That is so. The pressure on a man would be several tons theoretically.

Q. If he was leaning up against the wall his ribs would be flattened in? I really don't know. I am not able to say that. He may be flattened out or he may not. I have never seen it happen to anybody.

Q. If that pressure did strike him, he is bound to be flattened out?
—A. I don't know.

Q. You did not work out the pressure in the immediate vicinity of where the mixture would be? No. When I saw this suit case I did not make enquiries as to where the tins were found. As far as my recollection goes,
30 what I heard was that the suit-case was found by a Fireman. Nothing beyond that. The Jute hessian and the paper were wet.

Q. Else of course the jute hessian would have burnt completely? The water was on them after they started to burn. If the water had not gone on to it I would have expected the whole of that jute hessian to be burnt.

Q. In giving evidence in the P.C. you said with regard to the shoes "Faint smell of kerosine or petrol; very faint"? Yes I said that I did not take the shoes out of the box. (To COURT: Q. At what point is it that things take fire after petrol explosion? I think the fire comes more from
40 petrol that has not been vaporized, because in general the flame of an explosion of this type is so rapid that unless it breaks the gas pipe and causes light it does not always cause a fire. You get a number of high explosions but they are not invariably followed by fire. Barring any outside factor like gas, the fire would more likely start in the petrol that is not vaporized if there is any. If you had any petrol that there was which was over the explosive mixture it would burn but not explode, and that would start a fire. There would be a complete explosion where the mixture is adequate, and

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where it is not too intense and not sufficiently mixed with air, it would get burn. It would be extremely improbable in ordinary practice to the whole of your petrol in the optimum mixture. The flames burst out very rapidly after the explosion. If there was anything in the nature of unvaporised petrol still left, that would start a fire very quickly. There would have been sufficient fire in the Times basement to set fire to the 2nd floor. If there was a fire in the basement it would get up to the first floor very rapidly.

RE-EXAMINED.

I introduced water into B. I did not introduce water into the other tin as well. There was rust in tin B. 10

Q. Would the fact that you introduced water and allowed some quantity to remain explain that condition? I think probably it would.

Q. Also that tin B has its handle unsoldered? Is that a condition which can be explained by the application of heat? Yes probably through the heat. I told his Lordship that if some quantity of unvapourised petrol was left would start a fire very quickly. Q. Certain figures were given to you as regards the rate at which petrol vapourises? Yes.

Q. Given as a data that a gallon of petrol being emptied in that basement half an hour before the fire would a certain quantity still remain unvapourised? I think it is possible. 20

Q. You were cross-examined as regards the effect on a human being of a sudden explosion of this magnitude occurring in the basement and I think you said it is impossible to say what happens in an explosion? I personally do not know.

Q. Do you know as a fact that certain racks which were upright were still in position inside the basement? The cardboard boxes in the racks were not damaged at all except by water? (Shown P45 a photograph of the basement.) Those perpendicular erections are said to be the remains of the racks on which goods had been stored? They are still in position.

Q. And there is no reason to believe that this pressure escaped these up- 30
rights? You cannot say how pressure will act.

Q. It was stated that there had been a rather heavy downfall of rain 2 days preceding the fire and that would effect the humidity of the air? Would that not effect your calculation as regards the pressure? I made no allowance for humidity at all. I don't really think it would effect that result very considerably. I am not certain.

Q. There are certain openings, the entrance to the spiral staircase and the entrance to the chute, the area of which has been estimated by the defence at 44 square ft.? Yes, I made no allowance at all for that.

Q. Would that effect your result? Yes. I could not say to what extent 40
it would effect. You get your explosion starting and the openings there merely tend to reduce your pressure very roughly. I could not say to what extent. Of course those openings lead to what was a closed chamber opened.

Q. That chute door was closed? Would that effect it? I don't know whether it will make very much difference because you have another very large volume of air up there and the whole of your explosive force would

continue almost at the same rate. I can't give a rough percentage nor can I work it out.

Q. You were asked about a water equivalent which you described as heat which was absorbed by the superficial contents of the basement? Would that again effect that result? I don't know really how much is going to effect the result; very little I should imagine because the heat is so instantaneous that the temperature of the basement in general is raised very very slightly by the explosion.

10 Q. You said that for the purpose of this calculation you took as what you describe as the usual conditions for an explosion? Yes. And I took this figure 33 lbs. to the square inch.

Q. Given that that concrete floor could have been destroyed by a pressure of 2 lbs. to the square inch you would be allowing a very large margin? It would be allowing a margin of 2 and 33. So that when this pressure is multiplied over an area it becomes very really enormous.

Q. And even by that figure such as 2 lbs. per sq. in. when multiplied over a fairly large area becomes a very large pressure? You have to multiply by 144 to get the pressure of the sq. ft.

20 Q. You were told that the ratio of 1.5 with a centimeter of petrol to the cubic volume of that tin is as 8½ gallons is to 16,000? Yes. That is fairly an arithmetical calculation.

Q. Does not take account of the actual conditions? No answer.

Q. Here in this basement there were a large quantity of stocks shoes, the racks in which they were kept which would absorb considerable proportion of the cubic capacity? Yes. I have never seen the basement in the original condition but I should imagine that a basement which contained such a stock you will get a fraction of vapour.

30 Q. And if you get such a fracture you must take the cubic capacity of such a fracture rather than the entire chamber for your calculation? No, you must take the whole capacity because you get your localised explosion; that is immediately transformed to the whole 16,000 c.ft. whatever the covered capacity is. It is really after it is translated to that that the pressure starts to operate against the walls of the openings. At the point at which it is to bring the explosion you take the amount of mixture you had. I have no actual experiments of a coal gas explosion.

Q. You told us that if there is a unvapourised vapour left it would start a fire very quickly? Can you say whether ordinary coal gas explosion would start a fire at all? I don't know.

40 Q. It was also suggested to you that the Thermal value of various petrol engines, the actual value you get is much less than the theoretical value? The Thermal efficiency. I am afraid I do not really know how the energy of the Engine is dissipated.

As regards this index of the boxes I was put through a test. As a matter of fact from this index it appears that boxes 4 and 7 were sprinkled with petrol and those are the two boxes which I said were suspicious. Box 8 was sprinkled with kerosene which I definitely identified. This was a test which I carried out 19 hours after. In the other case I did it in a shorter period of

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time in about 12 hours. What I smelt in Kennedy's shoes is Kerosene or petrol. (To COURT: I do not think I rinsed out both the tins. I can't recall doing so. I know I rinsed the B tin but A tin I would not like to say definitely.)

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W. R. CHAMUGAM. Sworn.

EXAMINED.

(mmm) W.
R. Chamu-
gam.
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tion.

I am a sub-assistant to the Government Analyst. I recall Mr. Collins asking me to smell a pair of shoes inside a box one day. I remember it to be a Saturday, but I cannot remember the date. (Shown P8.) It was that pair of shoes in a cardboard box. I smelt the shoes in the box. I got the smell of a body resembling kerosene. I could not say petrol. It was a paraffin body. Kerosene are of different fractions coming from the same liquids. A paraffin body would include all the substances. This did not smell petrol. It smelt a paraffin resembling Kerosene. That paraffin body resembled kerosene. Petrol is also a paraffin body. There is no doubt about the smell that I got. I could not agree with Mr. Collins that it is petrol. I did not know Mr. Collins' opinion at the time. I formed my opinion not knowing what his was. 10

Cross-exa-
mination.

CROSS-EXAMINED.

I got the smell of kerosene. I and Mr. Collins both smelt the shoes while they were still in the box. 20

Q. You cannot say whether that smell of kerosene came from the shoes or from the box? No, I cannot say that. The smell of kerosene poured on any substance persists longer than the petrol. The specific gravity of petrol is higher than that of kerosene and it evaporates more rapidly than kerosene does. The smell which persists on these things only comes of a certain dilation but once you take the shoes out you find that the smell dissipates into the air. Therefore unless the whole thing is wrapped up and not exposed to the air you can get the smell. But once you take it out the smell would probably have disappeared. I did not know that Mr. Collins had said that it was petrol or kerosene. 30

Re-exa-
mination.

RE-EXAMINED.

Mr. Symons was then the Government Analyst. This box was kept for him to be examined.

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tion.

J. A. GREY. Sworn.

EXAMINED.

I am a Factory Engineer, I have held that position since 1921. I am in charge of the Government factory. I carried out certain experiments to test the bursting power of petrol, Mr. Collins was present but did not assist me. At some of the experiments he was present, not all. First of all I took kerosene oil tins and subjected them to hydraulic pressure. (To COURT: Pressure from within I applied that pressure with a apparatus known as the 40

Hydraulic test pump.) Just an ordinary hand pump. The seams began to give way at 11 lbs. to the best of my recollection. I think I handed a report to the Police at the time. But I am not sure whether I kept a record myself. I started with one cubic centimetre and worked up to 1.6 c. centimeters. That quantity of petrol I poured in to a petrol tin. (Witness shows what 1.6 c. centimeters of petrol amounts to.) That represents the bulk of it, and it was into an empty petrol tin the capacity of which is .64 c. feet. It is a 4 gallon petrol tin the cubic capacity of which is .64 c. ft. One of these tins (showing) I used an ordinary piece of fuse with a small primer made from paper with a few grains of black powdering. I pushed it through a small special prepared hole. (Witness demonstrates the hole in one of the tins.) (Witness demonstrates to the Jury how the primer and string is used.) There has never been petrol in the can. I took the precaution of steaming these tins out before I brought them here. It is very difficult to get out the smell of kerosene. I was able to produce an explosion when I had introduced a 1.6 cubic centimeter of petrol and before I did that there was no petrol inside at all and the tins had been completely washed out. (TO COURT: I cannot say what percentage of petrol vapour this makes to air.) I went on decreasing the quantity. I started with 1 cubic centimeter and worked up to 1.6 and then I produced an explosion. (TO COURT): I was able to produce explosions with quantities varying from 1 cubic centimetre to 1.6. Within that rate there was an explosion. I think in the early stages of the experiments I put half a tea cup full. I did not consider that within the scope of the practical experiment. Well, I fired up more tins with 1.6 than with any other I said that the range at which I was able to produce explosions varied from 1 cubic centimetre to 1.6 cubic centimetres of liquid petrol. I can't remember whether I was able to produce an explosion with 1.75.

Q. You said you produced most explosions when the amount of liquid petrol was 1.6 cubic centimetres? Yes. I produce 2 of these tins and (P25 and P26) actual tins I exploded.

Q. Can you say what the minimum pressure was that was exerted by that quantity of petrol 1.6 cubic centimetres? I can say indirectly from further experiments I have carried out that is to say I gauge it off these other tins, to a compressed air supply and of a fairly high pressure 100 lbs. pressure was supplied per square inch in the compressed air mains and there were two connections made to the tins one to the compressed air mains and one to the pressure gauge. Compressed air was admitted rapidly to heat the tins and they were finally ruptured in the same way as this one and it was noted during these experiments that the pressure at which they ruptured varied from 20 lbs. per square inch to 30 lbs. per square inch. (TO COURT): We have compressed air mains in the works for the internal pipes of the factory.

Q. Would it be correct to say that the action of the explosion was progressive? It certainly looks rather like that. There was such an incipient explosion first followed by a fuse from $\frac{1}{2}$ a second to 2 seconds and then there was a loud explosion.

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Q. Can you observe the gradual expansion of the tin? I think so. If you look closely you might see the sides bulge out. I have actually observed that in some cases. I think it is perfectly clear. (To COURT: I used a certain amount of black powder as a primer.) If I had introduced that amount of black powder into the tin without petrol and first heated and set fire to it nothing would have happened. I think I can demonstrate that.

Q. Would it be correct to say that black powder had no effect on the explosion? I would not say it had no effect, but its effect was negligible. I was not able to burst the tins with the fuse only. 10

Q. Did you also carry out certain experiments using the fuse without the primer? In the early stages I did and I succeeded in burning one or two but it was rather uncertain and I wanted to devise a certain means of shooting them off, but I did shoot off some without the primer. (To COURT: Ignition going off with the burning of the fuse alone.)

CROSS-EXAMINED.

Q. Would it be correct to say that your later experiments since you gave evidence in the Police Court with compressed air in a gauge established the fact that you could not cause a kerosene tin to burst until you got a pressure within 20 to 30 lbs per square inch? That is so with the tins I 20 tested. Those tins were after the Police Court evidence. They were Silver light kerosene tins.

Q. Because you have said early in the Police Court that you did succeed in bursting certain tins with 11 pounds per square inch? That was a hydraulic test. That was different from a mere test.

Q. What is the difference between the two? Water is not an elastic fluid like compressed air and it is a practice in engineering in a hydraulic test to see where leaks appear for the simple reason you cannot maintain a hydraulic pressure as soon as the seams begin to leak. Then the test is concluded. That is the general rearrangement of an hydraulic test. 30

Q. Would it be correct to say then that the pressure necessary to fracture the tins was 11 pounds but to burst the tins it was from 20 to 30 pounds. It would be correct to say that 11 pounds hydraulic pressure is necessary to fracture the tin and that it would require 20 to 30 pounds air pressure to burst or dismember them. (To COURT: They are two different mediums.)

Q. Your experiments began you say with one cubic centimetre? I spotted about with different quantities the very beginning.

Q. Mr. Collins was present? I cannot say with any degree of certainty some months or some weeks ago. In the early stages he was present I was 40 experimenting with then with only a small quantity 1 cubic centimetre and 1.6 and so on. I succeeded in getting explosions. It may be that the explosions began when I was carrying out experiments with 3.5 cubic centimetres. It may be that I went downwards from 3.5 centimetres. (To COURT: The first experiments I carried out was half a tea cup full of petrol knowing nothing about the subject. Afterwards I did a progressive test

from back onwards.) I knew nothing of the subject till I began experimenting. The subject of knowing how much liquid petrol it would require to dismember a petrol tin. (To COURT: I know of explosives and engineering.)

Q. As a matter of fact of course the books have laid down that from 1.5 to 6 per cent of petrol in an air would result in an explosion? Yes.

Q. 1.6 petrol will require 98.4 of air to 6 per cent 94 of air? I have not gone into the question of percentages.

Q. Once you knew that 1.6% of petrol vapour would cause an explosion you would also work out the quantity of petrol required to cause an explosion in a 4 gallon kerosene tin? Yes, but I did not gain my information that way. I did not work it out. It was a purely practical experiment.

Q. Both kerosene and petrol although the cans are for practical purposes empty contains a certain amount of kerosene and petrol in it? It is more likely in a kerosene tin than in a petrol tin.

Q. You do know of cases where there have been explosions with children playing about with empty cans as a result of a little petrol or kerosene being left in the tin? I have seen it. (To COURT: Well a little residue of kerosene or petrol will find its way into the capillaries of the seams and it takes a long time to evaporate. In the fold and seams there are capillary spaces. It will hold a certain amount of petrol.)

Q. That is really a factor that enters into the actual explosion produced of any kerosene that may be left behind on the tins? It was not so in my experiments because I took the precaution to ventilate the tins. There may have been a trace of it but it can't be of any appreciable amount (Mr. Pereira reads from "Gamble on the out-break of fires" with regard to petrol tins and how they explode even after they are washed). The precaution is really of no use. They did not do it properly. (Gamble page 134 read.) I do not know anything about it. If they wanted to free the tin of any trace of vapour it should have been steamed out. That is only one way of doing it. I emitted steam in some and compressed air in others. That is the only way to get rid of petrol vapour. I subjected that tin I produced in Court to-day to compressed air. It is a specimen of a tin that has been subjected to pressure. (To COURT: These ones I had I had no time to steam and I used compressed air. It is not as effective as steam. All these were steamed out. The tins I used as tested for explosions of petrol were steamed out first by me.) Those I tested for compressed air I did not bother. It did not matter at all. It had no effect on the tin. I measured out my petrol with a pipette. I use my own pipette (witness measures out with his pipette 1.6 cubic centimetres of petrol and pours it into a tube). You can get a pipette of final graduation. It is a difficult operation it requires a little practise. After certain preliminaries I began with half a tea cup. I could not get an explosion. It was too rich. I remember I took a piece of waste and filled that with petrol and put it into a can but I got no result. Thereafter I reduced the quantity. Thereafter I began working upwards with 1 cubic centimetre. I could produce an explosion with 1 cubic centimetre of petrol. It is not so certain.

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Q. You did use as much as 1.75 and got an explosion? It is quite likely.

Q. In the Police Court you said "In some cases I put 1.5 and in others 1.75 cubic centimeters and an average of 1.7 cubic centimetres? That is substantially correct I think. 1.75 is the one that is dismembered. That is P25 (P26) one is the lower percentage of petrol.

Q. In the Police Court you said first of all you heard a small noise inside the tin, that is the primer explosion? Presumably so. Then the tin swells out visibly and finally explodes with a loud report. It might have been half a second or 2 seconds, some small interval of time before it exploded. The thing visibly bulged out and exploded. 10

Q. You did not know actually whether the petrol inside the can was burning or whether it exploded? I don't know if there is anything between the 2 expressions. It is my opinion that if the petrol inside the can burnt or exploded it would still produce a bursting of the tin.

Q. Do you suggest that petrol on burning produces the same heat and same volume of hot gas as petrol that has exploded? I am afraid it can't be said to recognise the difference under these circumstances. The two processes are identical. One is burning fast the other little slower. Both processes were occurring inside the tin. But I have said I do not know the difference between the 2. I think there is no difference between the two processes. I am serious. It is only a matter of time. (To COURT :) An explosion is simply a rapid combustion. 20

Q. Surely a rapid combustion of an explosion produces a rapid formation of heat and a rapid expansion of gas is totally different to the slow long drawn out process of burning? But they are both essentially burning. One is burning fast and the other slow.

Q. It makes no difference to you from the point of view of the explosion capacity of the results of gas? If the petrol vapour is entirely oxagised in the tin and eliminating the loss of heat during the process there would not be much difference. Slow burning powders and fast burning powders differ. 30

Q. Did you try any other method than the fuse and primer method? Yes. I tried without the primer. To begin with I tried with an electric plug and an ordinary motor car magneto and I was able only to explode one tin by that method. I am afraid I did not go into that. My business was to shoot the tin off to get a surer method of doing it.

Q. How was that primer introduced? A fuse which passes through that hole to make it reasonably gas tight. Those caps are put on the tins. In this case I may have used electric current. There are two others. I don't think I used those. But I exploded it with fuse. The fuse is what you might call a gas tight one. It is just made so that you can push the fuse through it. This fuse leaves a fairly solid ash behind it. You can see when the explosion occurs a spark of smoke coming out of the hole. Afterwards I had to clear a place and clean the smoke before I could get the fuse off. 40

Q. Would not the rest of the fuse once it burnt through that drop? No, it does not fall off.

I do not think anybody would light it and screw it down.

Q. Not even with a small quantity of petrol? It would not be safe. You do not know what it is going to do. That is the point.

Q. It took a little time somehow? It took about 2 seconds. You will take more to screw it down.

Q. In the ones where you used the electric current there was no hole left? It was closed down. Yes, I could show you the quantity of black powder I use if necessary. I said I used a few grains in the Police Court.

Q. Black powder actually produces 700 times its volume of smoke? I do not know that. I have no particular knowledge of explosives of that nature.

Q. As a matter of fact you did not even in the Police Court know because in the Police Court you said you had not ascertained how much cubic feet of gas you can get from a gallon of petrol? No, I have not gone into that. I do not know that even now.

Q. You suggested in the Police Court a gallon of petrol would give 64 cubic feet of gas? I don't know I may have said so. I don't remember having said so. I don't know how much petrol vapour 1 gallon would give. I should think it should be very much more than 64 cubic feet.

Q. Your experiment had no bearing whatever to the ratio of 2 gallons of petrol to the cubic contents of that basement? No. Mr. Collins did not help me to measure the petrol. I did that myself. And I used a pipette all the time.

Q. In the Police Court you said "I burst 3 tins using the fuse only?"
—A. I meant the fuse with the petrol.

E. A. KOELMEYER. Sworn.

EXAMINED.

30 I am Acting Assistant Superintendent of Police Crimes. In September last year I was attached to the Criminal Investigating Department and I assisted Mr. Ferguson the Deputy Inspector General in the investigation of this matter. I went to Mr. Kennedy's bungalow Monsoon Lodge on the 6th of October and examined the safe. The safe had already been previously sealed by a Police Sergeant Hadjudeen. I examined certain files that day and put them back and resealed it. Mr. Ferguson was present that day. Then I went again to Monsoon Lodge on the 25th October with Mr. Ross. The seal of the safe was intact. I examined the files again in the presence of Mr. Ross and of Mrs. Kennedy.

40 Q. I think Ross was largely concerned with any evidence relating to stocks of skins Kennedy held?—A. Yes, we were looking at all the files there. I took away these files, amongst others P20, P28, P32 and P41.

Q. When you came across that file P32 marked Wewelduwa Tanneries do you remember what happened? These files were all handed to us by Mrs. Kennedy from the safe file by file. When she came to this file she

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*Page No.
refers to a
page in
document
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below
which it is
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remarked that it was an old file and wanted to tear it up. (To COURT) : She said that "This is an old file I might as well tear it up." Those are her words as far as I remember. I said that she could not do anything, that I had to take charge of all the documents and files from the safe. I gave her a receipt for all the files that I took from her and brought all the files to the Criminal Investigating Department Office.

Q. Mr. Ross says that Mrs. Kennedy at that time changed colour showed some reluctance?—A. That is exactly what she did. She did not want to hand it over. She made the remark that it is an old file and she wanted to tear it up. I can't remember any change in her face. I recorded the statements of certain witnesses in this case. This is Walsalam's statement which I recorded on the 30th October 1933. He made his statement to me in English. 10

Q. Did he make this statement? "All the parcels in the store roughly 20 to 30 and all these were from 2 feet downwards?"—A. There were also loose skins, lizard's skins, buck calves, willow calf. Some of the parcels of skins were brought to my knowledge and others were brought in my absence. The business of skins was entirely in the hands of Kennedy. I cannot say roughly even the number of skins. I have never taken stock of these skins. (Reads from Information Book) (That passage is marked P.R.1). Then also on *page 263? 20

At this stage Mr. Pereira objects to the Deputy Solicitor General putting to the witness passages which Mr. Pereira says were not put to Walsalam when he was giving evidence.

Mr. Obeysekera says that the passages he is putting to the witness are those which were put to Walsalam.

His Lordship thereupon makes the following order : "It is best under these circumstances that the record should be made by the shorthand writer of this Court on particular statements put to the witness by me of the statements made by witnesses to the Police which were to be put in by way of contradicting their statements. These statements were read out to the witness and it appears to me for convenience it will be well to have copies made of those statements, but it appears to me as an objection has now been taken to the course adopted that the statements which were put to the witness should be recorded by the shorthand writer in full. 30

This does not appear to be intended in all cases and I myself made notes of the passages put that are not recorded by the shorthand writers."

CROSS-EXAMINED.

I recorded the statements of witnesses not under oath. The visit by me to Monsoon Lodge were on 2 occasions on the 6th and 25th of October and once with Mr. Kennedy. The last time with Mr. Kennedy. That was the day Mr. Kennedy was produced in the Police Court on the 3rd April. I filed a plaint in the case and moved for a warrant. The warrant was issued without anything more against the accused than the plaint. There was only a written plaint when I applied for a warrant. Then I arrested him the same day and I produced him in Court and he was allowed certified 40

bail in Rs. 35000/-. On October 6th I found the seals that had been put on by Sergeant Hadjudeen intact. I sealed that safe after I had taken certain papers and I went there on the 25th and found all the seals intact. On the 25th I took certain files of letters, 3 files of letters and one file of skins. On the 25th I took charge of 3 files of letters that have been produced. This along with several other files. I took charge of every file. The other files are with us which have not been produced in the case nor returned to the accused either. To COURT: They have not been put in evidence.

10 Q. On the 25th of October Mrs. Kennedy told you that the file P32 was of no use?—A. She made the statement to both of us, Ross and I, that it was of no use and it was an old file. (To COURT: She said it was an old file and of no use.) I did not record a statement of hers that day. I did not jot down the words used by her. I don't remember her wanting to write the word "cancelled" on it. I have seen the file P39 in the office. It was produced by the auditors. That was a file in the hands of the auditor. P39 contains all there is in P32 and something more.

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continued.

RE-EXAMINED.

20 Q. It is correct that the law prohibits you from administering an oath or affirmation to a witness whom you examined in the course of an investigation such as this?—Yes. These files which I took away I produced 4 of them in court and I said some of them have not been produced presumably, because they are not relevant. I know that Mr. Kennedy was written to to say that he could inspect these files at any time in the Criminal Investigating Department Office. I do not know whether Cooke was also informed to that effect.

Re-exa-
mination.

30 At this stage Mr. Grey the Factory Engineer gave a demonstration on the green opposite the Assize Court on the explosive power of petrol. The experiments were carried out with 2 empty kerosene oil tins. In one tin he put no petrol whatever, and when he burnt the fuse there was an accumulation of smoke followed by a faint noise. In the other tin he put 1.6 cubic centimeters of petrol and burnt the fuse and after a few seconds there was a loud explosion which resulted in damage to the tin.

ADJOURNED.

27th September 1934.

Accused present.

Counsel as before.

27th Sep-
tember,
1934.

A. W. WAKISTA Affirmed.

40 I am a photographer attached to the Criminal Investigation Department. I took certain photographs at the Times Building. I produce copies P42 a photograph of the ground floor showing in particular the shelves behind, P43 a photograph showing the chute entrance and the door on the side which has fallen over the staircase; P44 a photograph taken in the basement. It shows the spiral stair case and it also shows

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the chute; P45 is a photograph of the basement itself. I see certain perpendicular things in it but I can't be certain what they are. I produce also P50 a photograph of the switch board. This shows the verandah on the Duke Street side P46. The window is the extreme window G.

(Shown P51.) This is a photograph of the ground floor facing the bathroom. It is a photograph taken from the doorway F facing Duke Street. The wall near the lift had fallen and the photograph was taken from near that.

(To COURT. The dates on which I took the photographs are marked on the photographs themselves.)

10

CROSS-EXAMINED.

(Shown the photographs.)

Q. P42 is taken from somewhere about G at the angle of the basement of the ground floor?—Yes.

Q. From the second one "G"?—It is taken from the verandah.

Q. In the foreground of that photograph there is a rectangular white object. That is a slab portion of the floor?—I can't tell you.

Q. On the extreme right there is a box standing there upright?—Yes.

Q. That is a box in the Times lobby or vestibule for putting in the cross word puzzles?—I can't remember.

20

Q. You don't know or can't speak to anything about these?—I took the photographs but I did not observe things.

Q. P43 is a photograph taken from the door opposite to the chute? That is taken through the door.

Q. From Duke Street looking through this door here?—Yes.

Q. The next one P44 is taken from the basement towards the centre of the basement?—Yes.

Q. With the camera tilted a little upwards?—To show this entrance.

Q. Can you tell me what this projection is?—I think it is a support of the staircase.

30

Q. P45 shows a pipe sagging there and just by the edge of the pipe half way up you see certain portions in the concrete floor hanging by the reinforcing materials?—Yes.

Q. Rather big slabs?—Yes.

Q. There are about 3 or 4 pieces hanging there?—Yes.

Q. The top of the girder is the top of the ground floor?—Yes.

Q. There are 4 pieces hanging?—Some pieces are hanging.

Q. On the right hand side there is another piece which is hanging?—Yes.

Q. Can you tell me what these things looking like cables in the foreground is?—I can't remember what these are.

40

Q. P46 is a photograph taken from the opposite to the middle "G"?—Yes.

Q. One sees there flower pots upset near the entrance, near the pillar. They are concrete flower pots?—Yes.

Q. Can you remember what this is in the foreground (shows P46). This is a show case. There are some shoes. It is a letter rack.

(To COURT : Q. Are you sure it is a letter rack?—No answer.)

Q. In the next photograph P51 what has happened to P47 to P49—through this window you see the roof of the building across the street?—Yes.

Q. The grating over the window has come down partially?—I can't answer that.

Q. That goes right round the building?—I can't remember how it was.

10 Q. What is this thing standing up against that pillar? So far as you can see?—That place is dark. There is no light there.

Q. Do you see the two projections of a drawer there?—No.

Q. That lumpy effect on that, what is that? Is that the resulting of charring? Can you remember?—I can't remember.

Q. To go back to this one. Is this the edge of the area of the floor where it had broken. This site?—Then what is it? This is taken from the front entrance. This does not represent the edge of the broken floor.

(To COURT : Q. Have you preserved the negatives of these?—Yes.)

(To Mr. Pereira with permission.) Q. Where did you photograph the switch board?—In the verandah.

20 Q. On the 1st October?—Yes.

Q. On what was it lying at the time?—It was on another board, a plank. It was inside the first floor. I brought it to the verandah. It was placed at an angle. This is the verandah with the board lying in it.

RE-EXAMINED.

No questions.

W. H. WILSON. Sworn.

30 I am an electrical engineer. I was working at Boustead Brothers, in charge of their contract department. I installed the electric lighting supplied to the Times building—the lights and fans in particular and also Mr. Kennedy's private lift. That was at the end of 1931. I know what is described as the intake chamber.

(Shown the basement plan.) This is a plan of the basement at the Times Building. I see the intake chamber and next to that Kennedy's basement.

Q. The evidence is that the electrical supply was received in the intake chamber, the main cables from there?—Yes.

40 Q. Is it correct in that intake chamber almost parallel to the wall which separates it from Kennedy's basement was an iron structure on which were six distribution boxes?—Switches for the lighting and fans. This was divided into six sections each section served a portion of the building and one of those served Kennedy's portion of the building. It was a controlling switch.

Each of these was controlled by two fuses one on each pole the positive and the negative. Those were in turn controlled by two main fuses. There

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was one main switch on Times Switch Board and one main switch on Kennedy's ground floor.

Q. When referring to the distribution boxes you called them switches. You told us that each of those boxes governed a section and each of the boxes had two fuses on each pole. Were those controlled by two main fuses?—They were controlled by one switch and a double fuse.

Q. To follow supplying the electricity to Kennedy's section of the building is it correct that a lead covered cable carried the supply from that frame work along the roof of the basement and up that pillar to the main switch on the ground floor?—Yes. That is correct. 10

Q. What is the thickness of that cable?—That is 7/18 the size of a cable twin lead cover.

Q. Is it correct that of those six there were on that frame work, these wires going to Kennedy's would run from one of those?—That is correct.

Q. Have you got a sample of lead wire?—I can bring one.

When the main switch was opened all the remaining six would become dead. Those two fuses are really connected to the main switch which governs the entire supply to the whole of Times building for lighting and fans.

Q. You have taken those two lead wires along the roof of the basement and up the pillar up to the main switch board and up to the switch?—Yes. 20

Q. That main switch on the ground floor controls all the fans in Kennedy's section?—Yes.

Q. (Shown the switch board.) This is the switch board which was on the pillar in the ground floor. You know the basement?—Yes.

Q. That switch which I was referring to as the main switch in Kennedy's building, was there (Counsel points to it)?—Yes.

That switch controls all the lights and fans on Kennedy's floor.

Q. Beyond that main switch there are two fuses?—Yes.

Q. Those, are they known as main fuses?—Yes. 30

Q. You pass on from there to a series of tumbler switches which control individual lights?—Yes.

Q. There would be controlling lights on the ground floor?—Yes.

Q. You pass on from those tumbler switches to sub-fuses. They go to the fuse first, then to the sub-fuse and then to the individual tumbler switch?—Yes.

Q. Is it also correct that the fans of the ground floor are governed by a series of switches on a parallel pillar? I don't know whether you know the plan of the ground floor. That is the pillar on which the main switch board was fixed, you see opposite to that is another pillar marked "S." 40

Q. Were the switches of the fans on that pillar or on another board?—Yes.

Q. You follow what I mean?—I don't remember whether the main switch was either here or there. I made a sketch.

(Shown the sketch.) Kennedy's main switch board is on the pillar "S."

Q. The switch for the fans were on the other pillar there. The switch for 3 fans was here.

Q. Those lead covered cables carried the supply up to Kennedy's main switch. What would that pass through going up to the ground floor?—An iron pipe.

Q. That iron pipe ran right from the lower level of the ground floor up to the main switch?—From the bottom surface of the ceiling through the ceiling and terminating below the board.

They were two lead covered cables enclosed in a lead case. They were cased in a lead envelope and the iron envelope ran in a tube.

Q. That tube went up that pillar and behind the switch board?—Yes.

10 Q. As it is now?—Yes.

Q. It went up the pillar and up the switch board?—It did.

Q. What was the thickness of the tube?—It was the standard size of a gas pipe. The diameter was $\frac{3}{4}$ inch.

Q. This metal envelope in which the two wires were encased did it fit into the tube?—No, it was loose.

Q. Was it kept loose?—It had to be kept loose so that it could be taken through easily.

Q. Do you cement the tube at the two ends?—Usually at the bottom end.

20 Q. Was that done in this case?—I can't say that it was done but I expect it was.

Q. You say it is usual to cement it? It is usual to cement it. (To COURT: The lead covered cables are not loose but they are plugged up at the end of an iron pipe.)

Q. That keeps the wires in position? It is intended as a fire proof plug.

30 Q. Is that the standard method of constructing a pipe like that?—It is. (To COURT: When the pipe is passed through cement floor if the floor was large and free the fire would pass through from one floor to another. It might pass through the iron pipe if there was nothing to prevent it).

Q. Once the main switch is off the main switch of Kennedy's ground floor, the wires radiating from there to the lights would be dead?—That is so.

Q. The wires would be live carrying current from the intake chamber to a point on the switch?—That is correct.

Q. Is it correct that there was a lead covered cable coming back along that pillar to the source of supply in the basement. That is where the basement switches were coming to where the lights were?—Yes.

40 Q. The switches for the basement lights were they on the same pillar on the ground floor?—I think they were marked on the plan. They were on a continuation of what is the same pillar.

Q. Then you remember you spoke to those fans on the ground floor which was on the pillar. How was the current carried for those fans?—The lead covered cable came down the pipe along the surface of the ceiling and on the switch board.

Q. Was that, too, a lead covered cable?—Yes.

Q. And did it go up to the iron covered pipe?—It did.

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Q. Was there a sub-fuse for the basement lights?—Some are on top of the switch board.

Q. If there was a short circuit in the basement those sub-fuses would go?—It should.

I examined the switch board. The fuses were badly damaged, when I saw them. They were broken and I could not see the sub-fuse. What would you call a major fault?—If there was a large fault resulting in a large flow of current.

Q. Such as would for instance originate a flame that would burn through the lead covered cable?—Supposing we had a short circuit at the same time it would become a big fault. 10

Q. These are the two main fuses which are above Kennedy's main switch. Would a main fault have blown one of those main fuses? It should.

Q. Are those fuses still in order?—They were when I saw them. (To COURT): I could not state the exact date when I saw them but it was at the Criminal Investigating Department office shortly after the fire. (The witness walks up to the switch board the fuses are in order). (To COURT: They do not appear to be damaged. They are intact. I was not able to see any sign to show that they were affected by heat). 20

Q. You told us that those wires which carried the power up to Kennedy's main switch and the wires that came back were lead covered?—Yes.

Q. Suppose there was a short circuit in one of those wires, for a wire to be exposed, would it be necessary for the lead first to be melted or burnt? If there was a short circuit between the lead and the copper covering and they came into contact that would cause all these small fuses to blow.

Q. Before the wires could be exposed and could give out a flame would the lead have to melt?—Yes. (To COURT: The fuse would melt first if the copper came into contact with the lead cover).

If the wire touches the lead covered envelope it causes a short circuit which causes the fuse to blow. 30

These fuses are insulated with rubber and encased in this lead cover. Each of those lead cables has inside them two wires each of which is insulated from each other.

Q. Before the lead case melted would the sub-fuse go?—I would expect that.

Q. The main fuse?—That would depend on the size of the sub-fuse.

Q. If it was the case of a large magnitude?—It would.

Q. The result of the fuse blowing would be to stop the fault?—It would make the wire dead. 40

Q. That is the purpose of a fuse to act as a sort of safety valve?—Yes.

Q. You told us when the main switch was off the main cable running from that point up to the intake chamber would be alive?—It would.

Q. Supposing there was a short circuit along that length of a wire what would you expect to find?—The fuse controlling that from the Times building would then go off.

Q. That is, the fuse connected to Kennedy's main switch would go?
—Yes.

Q. If there was a serious fault would the main switch controlling all those six switches also go?—It probably would.

Q. Those distribution boxes were of metal framework?—They were.

Q. The evidence is that the wall along which the metal frame work was placed was blown?—It was.

Q. And the metal framework got bent?—It probably would have been smashed up.

10 I was not able to get at the switches. They were covered with debris and I could not see their condition.

I have not seen the main switch board since. When I went down the place was full of debris. The six switches were on the same frame work.

(To COURT: The explosion might have caused another short circuit without the main switch having gone off.)

Q. You first saw this switch board at Kennedy's shop before it was removed? Yes.

Q. Before it was taken down at all?—I did.

20 Q. Then did you examine these fuses?—I saw them from a distance from the top of a ladder.

Q. Did you examine the main switch?—I examined the main switch for the first time at Mr. Ferguson's office.

Q. When you saw the switch board at Kennedy's basement still attached to the pillar did you observe the position of the lever?—It was on the on position.

Q. That was when?—That was on Monday morning, at 9.30 a.m. The fire occurred on Friday.

Q. When you examined it at Ferguson's office it was still in the on position?—It was.

30 Q. Did you open the iron housing?—I did.

Q. To open the iron cover you must have put it into the off position and then uncovered it?—That is so. (To COURT: I did not touch the switch board. It was in the hands of the Police.)

Q. When you saw this it was on the on position but you did nothing to it?—Yes.

Q. You examined it at Mr. Ferguson's office on the 17th?—I did.

Q. Can you tell me what you did?—I first put the handle down on the left hand side and opened the cover.

40 Q. Were you able to pull the lever out with ordinary ease? Was there resistance in the pulling down of the lever?—There was resistance first but it came off later. What did it suggest?—It did not suggest anything. When I opened the case the blades still remained in their slots.

Q. Ordinarily when you put that lever in the off position does that bring the lever into the off position?—Yes.

It indicated that the lever was not turned out. It showed that the insulation between the clip and the bar which was probably mica or press pan had been burnt. I concluded that the resistance was due to the crushing

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of the insulation between the clip and the blades damaging or perishing the insulation. It could be made perishable by fire.

Q. Will you take the blades out (the witness does so).

Q. Are they still bright?—They are.

That indicates that they were in the slots all the time and so not exposed to the fire. The rest of the blades are scorched.

Q. Does that suggest to you conclusively the position that you found the blades in that it was in the on position?—In my opinion it was exposed to the fire in the position in which the blades are now.

(Evidence on page 29 (Record) read out to the witness.)

“ I found the blades in the contact clip. They had not got into the off position. . . . It had become soft and damaged.”

Q. Do you adhere to that opinion?—I do.

Q. Did you examine the tumbler switches?—I did.

Q. Some of them were in the on position indicating that the lights were on?—Some rubbish might have knocked them on.

Q. If a short circuit had occurred in one of the tumbler switches what would you have expected to find?—Fusing of the tongues—the metal parts. A short circuit would burn the tongues. That would be purely local within the case. I examined the switches. I did not notice that any of the tongues had fused.

In the Police Court I said none were fused but they were badly damaged.

I cannot say what the reason is for the damage I found in the porcelain switches. They too were badly damaged. The pipe was behind the switch board. They were bakelite covers, all of them.

Q. You say the main switch itself is encased in an iron cover?—I think it is called an iron clad switch.

Q. Is that flash proof?—The act of taking out the switch causes a spark in the interior of the case. When the switch contacts are pulled out a flash takes place between the switch contacts and the clip in which it is fixed. This case is to prevent damage to the operator caused by the spark. The iron clad case is spark proof.

(To COURT: Q. Would a spark in the sense that it would not unite with inflammable fire outside it?—I cannot say that.)

Q. Supposing a person were putting off a switch or on. That act produces a spark inside?—That occurs in every case.

Q. The purpose of the iron case is to prevent that spark igniting with anything outside that case?—It is essentially for protecting the operator from the spark.

Q. If a spark so produced was the cause of an explosion would that cause damage to the box itself?—It would be broken.

I could not say that it would be highly probable without testing it.

(Shown a switch). This is a switch of a similar type to the one in Court. That handle is kept closed. That is done intentionally. This is either on or off. There is no intermediate position. From off the on position is produced by one momentary action. (To COURT: When it is on it is actually off).

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I have been in the business for 30 years. I would not consider that type of switch as a safe main switch in a place where there was inflammable material. Special switches are made called gas tight switches. This is not one of them. The primary object of a switch is the protection of the person operating them. The voltage carried along the wires is 220 Direct Current.) In Colpetty the voltage is 230 Alternate Current.

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Q. That iron clad switch board is not absolutely flashproof?—It is not absolutely.

10 Q. Because you said so in answer to Mr. Ferguson in the Police Court. “The iron case is to protect anyone coming in contact with a wire. It is not absolutely flash proof.”

Q. Cases from outside can get in. If it was expected to be air tight there would have been pieces of rubber round it to prevent anything getting into the case.

Q. You cannot get a flash from any one of those tumbler switches?—A small one.

Q. Of the switch covers the minor subsidiary covers were fractured?—They were.

20 Q. Only one of the tumbler switch covers was on?—No that is a fuse. Those were bakelite covers.

Q. The actual fuse wires round these switches are non-existent?—No.

Q. All the subsidiary wire fuses are not existent?—Yes.

Q. With regard to the pipe conveying the lead cable wires from the basement to the ground floor how long were those pipes?—I could not be quite sure they may be about 2 feet or 18 inches. They may be 2 feet.

Q. That pipe was considerably longer than the depth of the floor. It is considerably longer.

Q. It was opened at the top end?—It was.

30 Q. And so far as you know it might have been opened at the bottom: It might have been opened.

Q. You cannot yourself vouch for the fact that the bottom was cemented?—No.

The purpose of the pipe between the floor and the switch board was to prevent damage to the lead covered cable. The lead cover pipe was close to the ground. As far as I can recollect it was 2 feet long.

Q. You stated the object of cementing the pipe was to prevent the passage of fire?—Yes. Coal gas is lighter than air.

40 Q. Coal gas if it happened to leak into the basement had the bottom not be cemented it would have come up into the basement? If it had not been given sufficient time. There were other openings for it to escape from. I understand that coal gas is used for sending up balloons. That is the lightest gas known. If the bottom was not cemented it would take a considerably long time because the cable was partly lead covered. The cables did not fill the pipe. By long time I cannot say how long it would take. What I meant is that it would not be quick. The diffusion of a gas

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is particularly slow. I should think it would take several minutes or so. It is only cemented at the bottom. There was a similar pipe on the other pillar as well. Those were the only two pipes.

Q. With regard to the tongues of the switches?—They were close fitting. Contact with the sides probably makes them bright. The other switches show signs of being subject to heat. The porcelain side had cracked. I did not look to see if the copper had also blue oxide on it. (Shown a fuse). It is slightly blue. The oxide is not all over it. That is because of the effect of the heat.

Q. Can you tell me when you saw this board at the Criminal Investi- 10
gating Department office for the first time?—I don't remember the date. I did not make a note of it. I saw it with Mr. Misso at the same date at the same time.

Q. If Mr. Misso had said it was about 10 days after the fire will you agree?—I think that would be correct.

RE-EXAMINED.

I remember the position of the switch board on the pillar. The highest of the bottom of the switch board from the ground floor level was about 2 feet but I could not be sure. The bottom of it was about 2 feet from the 20
ground floor level. The iron pipe came from below the ceiling through the ground floor up the ceiling and it went behind up to and behind the switch board but it stopped at the lower edge of the switch board. It actually went behind the switch board. The pipe on the other pillar is still there and this pipe is exactly similar to that and the length of it might be similar but I cannot remember.

Q. I referred you to a pipe which is still there on the corresponding pillar. That other pipe was of the same length?—I could not say at this period. Probably it was about the same. Probably it would be short. Probably one to the main switch board would be shorter. The board was 30
against the wall to allow for the connections. The pipe went up to 3 inches from the top of the board. The switch board is 2 feet from the floor level and went through the ceiling and was a couple of inches from the switch board. The floor was I think only 3 or 4 inches thick. I am not sure of the thickness of the floor. It might be 2½ inches. I have no idea of the height the board was fixed. You are obliged to protect the lead covered cable where it comes up from the floor to the switch board. The object is to prevent people kicking it. That is a professional requirement. It is also a professional requirement that the bottom of the pipe should be cemented. I have no reason to think that this was not done. This is an up to date building and the fittings were all high class. I have no independent recollection but whether 40
the bottom of the pipe was cemented or not I do not know but it is a professional requirement.

I presume it was done but I cannot swear to the fact that it was done. (Shown the photograph P50.) This is a photograph of the switch board taken shortly after the fire. The tumbler switches in the photograph present less damage than the switch board in Court. They have their covers on. If there had been an explosion in the vicinity of the switch board would

you expect the tumbler switches to be damaged than in this picture?—I would expect it to be, but I have no experience of an explosion of a switch. The damage was mostly to the covers. That is consistent with the covers being exposed to heat and having cracked in consequence. This switch is not gas proof. If sufficient time is allowed gas can find its way into it. If gas had found its way and the box were ignited by a flash by putting the switch on or off would you expect damage to the contents inside?—I would expect it. This does not appear to be damaged at all. If the gas had been ignited there by a flash there I would have expected damage to the structure inside the case and also to the iron case. The iron case is not effected.

10 *Q.* Is it correct that when you put the switch on or off there is a spark? That is correct.

Q. Supposing such a spark ignited some explosive mixture?—It could not explode a mixture outside the box.

Q. You say a tumbler switch put on or off produces a spark and it ignited the gas inside?—I would expect it to burst the switch if the gas was inside the case.

Q. If the gas was inside it might explode the gas inside the switch?—I do not know what would happen if it had exploded the switch.

20 *Q.* What damage would be caused to the tumbler switch itself?—I would expect it to be broken into pieces.

Q. Did you find evidence of such damage? They were somewhat damaged, but I could not say so.

(*To COURT: Q.* Was there a single tumbler switch without a cover?—No, I cannot remember.)

To THE FOREMAN OF THE JURY: Q. You know the fuse box was it fractured. That circular one. You call it a fuse box?—It was complete but now it was broken by Counsel.

Q. Would there be a fuse wire inside it?—There should.

30 *Q.* Can you show it (witness walks up to the switch board and examines it). On examination I find it is not a switch box.

To COURT: This is a junction box to join two wires together. It is not a question of its being a fuse there.

THE COURT ADJOURNS FOR LUNCH.

(AFTER LUNCH.)

K. HAJUDEEN. Affirmed.

I am a Police Sergeant attached to the Colpetty Police Station. On the 20th September last the day after the fire I got instructions from the Reserve Sergeant at Colpetty to go and seal the iron safe at Mr. Kennedy's bungalow at Monsoon Lodge. I received orders at 2.30 p.m. I reached
40 Monsoon Lodge at 3 p.m. I sealed the safe with the Police seal.

CROSS-EXAMINED.

I got there about 3 p.m.

RE-EXAMINED.

No questions.

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(sss) L. W.
G. A. Star-
buck.
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tion.

L. W. G. A. STARBUCK. Sworn.

I am an Engineer employed at Messrs. Walkers. I installed the switch board at the Times Building for the purpose of power. That was in the intake chamber. I had a separate switch board supplying the building with electricity. There was a separate switch board for light and fans. The buzbar of the power was connected to the buzbar of lighting. Those are heavy bars. This is a three wire system. Each board carried the current separately but the supply to the lighting board was taken from the power board. They were interconnected. The voltage I got on the power section was 440. The voltage for lighting and fans was 220. One portion of the gear used for the power section was in Kennedy's building. I know that Kennedy did not use electricity for power. I inspected the place after the fire. The whole of the switch board was more or less wrecked. The main circuit breaker had been broken. It was covered with debris. It was actually one jam—touching the circuit breaker. Some of them were broken and some intact. I did not examine the switches—only the circuit breaker. The circuit breaker had tripped. It would trip if there was a severe fault in the lighting section not for a minor one. I remember that the lighting switches were on a frame work on a wall separating the intake chamber from Kennedy's basement. That had been blown over with the wall and was near the gas meter. That could account for a circuit breaker tripping. It probably was the cause of the tripping. The circuit breaker which tripped was also in the intake chamber. 10

Q. If there had been any fault in the electrical apparatus inside the intake chamber such as would give rise to a flame or even a spark could that have affected any gases in Kennedy's basement?—It is unlikely as there was a wall between.

Q. Would you say it was impossible?—Yes it was. (To COURT : The intake chamber was separated by a brick wall).

Cross-exa-
mination.

CROSS-EXAMINED.

30

I am in charge of the electrical side of Walkers business.

Q. Do you remember being asked before the fire by Mr. Kennedy to transfer a private lift he had in the Times building into Colombo Stores?—Yes.

Q. You sent an estimate for that?—Yes.

Q. And you received a reply asking you to start work immediately? Yes.

Q. The fire in the meantime burnt up that lift? Yes. (To COURT : That meant structural alterations at Colombo Stores). We had a leasehold of Colombo Stores. Since the fire Mr. Kennedy is in occupation of the Colombo Stores. 40

A. PAUL. Sworn.

(ttt) A. Paul
Examina-
tion.

I am an electrician employed by the Times of Ceylon. I have to look after the electrical work there. I am in charge of the electrical gear, in the Times section. I know the intake chamber. It is also called the switch room. I remember the night before the fire. The 29th September. On the 29th I was working up to 4 p.m. My hours of duty are from 7.30 a.m.

to 4 p.m. and on the 29th September I worked till 4 p.m. When I left that evening I locked the metal door of the switch room. I locked it and left the key at the Times Store room. When I left the switch room there was nothing wrong with the apparatus. It appeared to be in order. I got no smell of coal gas. I know what coal gas smelling like. At 12.30 in the night I had a special call after the fire. I went into the basement with the Fire Brigade people. This is Times' part of the building. I could not approach the metal door. I had to pump the water out of the basement for the fire brigade people. Water had collected in the basement. I had to pump the water out to preserve the machinery and the paper. I cannot say how the water had collected. About half an hour later we were not allowed to go in. I was half an hour in the basement. After that the Police did not allow us to go in. On the following morning I went to the intake chamber at 7.30 a.m. I found the padlock on but the wall was broken. At that time I was in the company of a Police Constable. It is not my duty to attend to any electrical faults in Kennedy's section. I have no orders to go anywhere besides the Times. Before the fire I went twice to Kennedy's section of the building. That was three months before the fire on the ground floor. The circuit fuse was blown out. No one asked me to go but Kennedy's clerk complained to me and I went of my own accord. The clerk was Mr. Classen. He said a fan and a light was not working in the ground floor. I went there and inserted fuse. There was nothing wrong but the circuit fuse was blown out. That is a sub-fuse. He told me the fan and light was out of order. It depends on the wiring. If a light and fan were wired together and the circuit fuse blew out then the fan and lights would blow out. I replaced a fuse. There was nothing wrong. When I put the fuse it did not blow off. That was a small fault. I put a new fuse and it remained. I was not obliged to help Mr. Claessen but I went. I go to Ford, Rhode & Thornton. I am not paid for work I do there. If there was a short circuit and I put in a fuse it would not work, the fuse would blow out again. I cannot say it was due to short circuit. There was no short circuit. Sometimes there are different causes for a light going out. In this case the fuse was blown out. The fuse may have blown out owing to its being an old fuse or owing to an overload. If a fuse is deteriorated it would cause an overload. On the second occasion I went into the basement. That was about five weeks before the fire. Mr. Classen called me. He told me the lights in the basement were out of order. I went down and I found no fuse on the switch board in the basement. The fuses are on the ground floor. On the basement switch board there are switches. I put the switches off and examined the main switch board and I found the circuit fuse blown. That was the circuit which covered the basement. The workmen told me that all the lights were out of order. Only one fuse was blown out and I replaced it. If there had been a short circuit that fuse would have blown out again. On that occasion my attention was not drawn to a bulb which had dropped and broken on the floor. I was never told that a bulb had burst and dropped on the floor. A bulb can fuse, it can burst because of air getting in. My attention was never drawn to an occurrence of this kind.

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(*ttt*) A. Paul.
Examina-
tion—*con-
tinued.*

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Q. You told us you worked in the switch room. Do you remember the metal framework on which the 8 switches for the lights and fans were fixed?—
Yes.

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(ttt) A. Paul.
Examina-
tion—con-
tinued.

Cross-exa-
mination.

At this time I had been working at the Times' for 2 years. I used this room 1 year after the electricity was installed. I worked for 2 years before the fire. During the 2 years I had no occasion to put in any fuse. There was no trouble with the fuse. Those fuses would have been old. I never touched them. They never gave trouble. (TO COURT: I do not know how old the fuses were.)

CROSS-EXAMINED.

10

Fuses are of lead metal. We never use copper fuses. I only know of lead fuses. If a circuit is not loaded or if there is no short circuit a fuse might be used for years. The main ones are generally copper. I cannot say if two years in the life of a fuse is nothing. It depends on the lead.

I do not know that the Times building came in occupation in 1931. I came into service in August 1932. There was a power circuit for the lifts fans and lights at the same rate in the Times building. Usually the power circuit and lighting circuit is the same. Lighting and fans are rated on the same meter. I cannot say if there was an over load if a light and fan had blown out. The basement lights had gone out. There were only 5 switches. 20
I put off the switches and tested the fuse. I cannot remember which fuse I tested but it was one high up on the board.

RE-EXAMINED.

No questions.

(uuu) I. D.
Merry.
Examina-
tion.

I. D. MERRY. Sworn.

I am the Assistant Superintendent of Police Tangalle. In September last I was Assistant Superintendent of Police, Harbour. I assisted Mr. Ferguson who was then Deputy Inspector General of Police. I removed the switch board from the pillar to which it was attached. That was on the 2nd October. It was cut down from the pillar on the 2nd October. It was not 30
photographed before it was removed. It was photographed before it was removed from Times' building. P.C. Wakista photographed it. I had it tied on to a plank as it looked as if it might fall to pieces and plank was placed against the concrete and the photograph was taken of it. I then removed it to the Criminal Investigation Department office and I handed it to Mr. Ferguson, who was himself in the office, in the condition I took it from the pillar as far as I am aware. I produced it in the Police Court as also pieces of a soda bottle marked P27. I found them under some broken bricks about 4 from the corner where the lift shaft went up on the inside. It was actually on the premises. 40

(Shown P24.) I marked on this plan the spots—where I found the pieces of broken bottle. It was at spot "B." I also marked in the plan the position where the suitcase and the petrol tins were they were shown to me by the foreman of the fire brigade. I am not sure of that man's name. He was not Mr. Weerasinghe. I placed at that spot there. I believe he was

a burly man. That place is marked "S." The suit case was not there when I went. I produce the plans P23 and P24. There are tracings supplied to me by Mr. Small the architect. On P24 I have shown certain shadings in red pencil. They indicate portions of the floor which had actually collapsed. They were not absolutely accurate because they were crumpled up at the time but they represented the girders through which the cement had fallen. I also shows certain red lines in the verandah. They indicate positions of the verandah which had been pushed up. It does not represent the actual crack. I also marked on the plan the position on which the mobil oil tin was found
 10 on the spot pointed out to me. It was marked TT. Before the debris was removed it was possible to get down the stair case over the shop windows "G" which had been blown out and over the sill and by climbing over an iron railing and so on to the steps. I knew the wall "U" had collapsed over the staircase. I actually tried that from Duke Street but the wall was hanging over it but if one tried it there was a chance of one's bringing down the wall on himself. I was not able to go out that way. I was near the staircase. If you were on the staircase when I tried it I would say it was impossible to get out from the door "D."

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(uuu) I. D.
Merry.
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tion—con-
tinued.

CROSS-EXAMINED.

Cross-exa-
mination.

20 I am young. I have been going for athletics a good deal. I found it was extremely hard to get from the staircase to the Duke Street at D. The wall was over-hanging the iron railing at the top of the staircase. This attempt was made by me on a day when there was no smoke or fire. From the staircase it was difficult to get on to the door. It was difficult with the wall in that state. The easier way I could do it was by jumping over the window "G." I would not say it was the only feasible way. I can't say that the ledge of the window "G" was higher than the ledge of the other windows. I won't say it is extremely hard. It is not physically impossible. I don't remember that it was as much as 3'. I marked that K. There was masonry
 30 structure. The whole of the floor and the continuation which shuts out the entrance from the Duke Street had collapsed as marked on the plan.

Q. It was not possible to approach the staircase from the right door "A"?—At the time we got to the scene we were not.

Q. That was the morning of the 30th?—Yes. (To COURT: I remember the sketch that I made.

I made notes on every occasion I was on investigation in a book. I made a sketch plan. That plan was a rough plan. I made no index for the letters and figures on the plan. I had not intended to produce it but later I produced it. These letters would indicate the spot. I was asked to
 40 mark. This was made on the 5th October. We had one copy of the plan at that time from which I took a tracing. The red lines on the verandah are not entirely accurate. The shading is roughly accurate and represents the girders where the cement had fallen through. I made the red marks from the marks I had put on another blue plan I made on the 7th or 8th. On the plan I produced on the 14th April I did say that I put the marks on that morning but there was a blue plan from which I made my tracing in which you will find the pin marks. I have not that plan. I understand

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(*uuu*) I. D.
Merry.

Cross-exa-
mination—
continud.

that plan now. I find that there are certain distance there but I am not prepared to say that they are correct. If I see the plan I can remember. I cannot remember now as well as I could then. (Shown the plan). "A" on the blue plan, there is a pencil marks and there is where a constable stood. It is on this angle just below "T." A was the place where P.C. 1619 was standing and hold a tape.

There are hundreds of lines on this plan but I now cannot remember what they are at all.

(To COURT: I marked the collapsed portion in P24. The rough notes were made.)

I removed the switch board from Kennedy's building to the Criminal Investigation Department office at 5 p.m. on the 7th October I have made a note of it at the time in the file. In the meantime it was on the window sill lying flat as it is now adjacent to the entrance D or "B" on the window sill "G." I might add that there were two Police Constables standing on guard there the whole time. The photographs by Wakista were taken on the 2nd October in the afternoon. I took the switch board from the pillar on the 2nd. In the Police Court I said it was on the 1st but I made a mistake owing to the dates which appeared on the photographs. It was taken on the 2nd October.

Q. Did your observations show you that the line TT on the blue plan was a straight line and not a broken line?—That was almost a straight line.

Q. This plan shows a distinct angular bend?—I do not observe that.

"B" is approximately where I found the soda bottle. Pieces were scattered about but they were inside the wall, bricks had fallen on them. They were lying inside the wall. It was on the side of the wall for 2 or 3' where there was a little plaster and rubble. I cannot say when I saw the suit case. I think the first time I saw it was when it was at the analyst's office. I was on the scene on the Saturday morning at 8.35. I did not see the suit case and I did not look for it. So far as I can recollect it I did not see the suit case. The spots on the marks I marked are what the foreman indicated to me. The foreman was a large man.

Re-exa-
mination.

RE-EXAMINED.

I know the wall "U" which had fallen over the staircase. I cannot say at what time it fell over nor can I say at what time the floor gave way between that pillar "S" and the entrance to the chamber.

(*vvv*) Dr.
A. M. de
Silva.
Examina-
tion.

DR. A. M. DE SILVA. Sworn.

I am a fellow of the Royal College of Surgeons and the senior Surgeon at the General Hospital. I examined Mr. Kennedy on the 30th September, the day after the fire about 7.30 or quarter to 8 in the morning. He was under my treatment until he left Hospital. He was discharged on the 6th November. I treated him right up to the institution of this case. He had certain burns. The burns were on the face, the hands and ankles.

The burns on the face were diffused burns. The whole of the face was burnt including the fore head. The lower part were burns of 1, 2 and 3 degree and the upper part 1 and 2 degrees. A first degree burn is a

congestion of a vein. A second degree burn is a blister when the skin is lifted off the epidermis and a third degree burn is when the true skin is partly burnt and there is raw flesh exposed. If you remove the scalp you see the flesh.

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The back of the head was also slightly red and appeared to be a first degree burn. That was just at the place where you lie down. The back of his head was not singed. It was simply a slight congestion without singeing of the hair. His eye brows and eye lashes were singed.

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(To COURT: Extreme heat could cause first degree burns without
10 singeing—Singeing requires the actual application of a flame.)

(*vvv*) Dr.
A. M. de
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tion—*con-
tinued.*

There was singeing on the back of the head but the face, the eye-lashes and eye brows were slightly singed. His hands were also burnt. The burns on his hands were glove shape. The front of the hands, the sides of the fingers and up to the wrist joints and on the right side there was a linear burn extending to the back of the right fore-arm for 2 or 3". It tapered to a point. The burns on his hands were 1, 2 and 3 degree burns. The linear burn on his right hand was 1 and 2 degree burns.

20 He had burns also on his ankles. The linear burn on the top of his right hand was about $\frac{1}{2}$ " wide and then tapered to a point. It was half-way up the forearm. There were two triangular shaped burns one on the inside and one on the outside of his ankles. The area of the burns was about $1\frac{1}{2}$ " long and about the same in width. That was roughly about the area of the burns and they were 1, 2 and 3 degrees burns. On the left ankle there was one burn on the inner side near the inner ankle bone also about the same size and of the same degree.

So far as the hands were concerned the burns stopped at the left wrist and also at the right wrist except that there was a linear burn. The burns were unusual for both on the front and back and between the fingers.

30 What inference do you draw from that?—The flame must have surrounded the hands. It is consistent with the flame having come in contact with the hands.

I examined his clothes afterwards. The shirt he wore was a short-sleeve shirt. The burns I found on his hands were of a dripping character.

Q. You told us that the burns were burns on both hands both sides particularly in between the fingers and that is consistent with the hands having been in contact with the flame?—Yes.

40 Q. Are those burns also consistent with this position: that the hands had been wet or immersed with some inflammable stuff such as petrol and the petrol having burnt?—I have seen a large number of cases where people have been burnt with kerosine.

Q. If the inflammable liquid was on the hands of the accused and it caught fire or the accused immersed his hands in it?—It is consistent with that.

Q. You also told us that was consistent with the entire hands being exposed to the fire?—Yes.

Q. If that were so for burns to be present between the fingers would the fingers have to be held out like that?—(no answer).

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tion—con-
tinued.

28th Sept-
ember, 1934.

Q. Or if they were held more or less as one does do you get burns between the fingers. Is it consistent with the fingers being held in that form?

There were no burns on the coat. I saw the clothes later on. There were no burns on it. I had experience of patients who have burnt their hands and I have seen the clothes of such people and in the majority of cases in my experience the coat and sleeves have got burnt. That is if they were wearing a coat at the time. We do not make a note of the condition of the patients' clothes but we make notes on the bed head ticket for their treatment.

28th September 1934.

Q. Dr., you told us that there were burns on both ankles and that the 10
area of the burns on the right ankle were more. There were burns on both sides of the ankle triangular in shape?—There was only one burn on the inner side of the right ankle.

Q. (Shown P7.) This is a burn of the socks Mr. Kennedy is said to have worn on that day. There is one sock more burnt than the other?—Yes.

Q. Those tears you find on that sock do they correspond to the area of the burns that were found on the right foot?—Roughly they would correspond.

Q. The pair of shoes Mr. Kennedy wore has been produced and you find there were no burns on it. Would that be an unusual circumstance?—
(No answer).

Q. Ordinarily a person having burns let us say on one sock that would 20
be consistent with his having coming into contact with a flame?—It is consistent with that.

Q. Do you think it really possible that the flame may have come in contact with the sock and burnt that portion of the skin without burning that portion of the foot or shoe?—It is possible.

Q. May I put it to you in this form. If there were some inflammable liquid on his socks and none on the shoes would it be consistent with the burns being produced on the ankle and not on the shoe?—The burns may have been so caused.

Q. It is correct to say that Mr. Kennedy had burns at three different 30
positions of his body, the ankle, hands and face. If one stands erect those parts of the body are they really are at different levels?—Yes.

Q. From that circumstance can you say what Mr. Kennedy's position was like when he received the burns?—(No answer).

Q. You saw Mr. Kennedy the morning after the fire?—Yes.

Q. You observed his condition?—Yes.

Q. Do you think he would be in a fit condition for him to come up the spiral staircase?

Q. Have you seen the spiral staircase?—Yes. I cannot remember the 40
exact date I saw it. I cannot remember the exact date.

The debris had been removed partly. I went along with Mr. Ferguson. I saw that particular spiral staircase.

Q. Having regard to Mr. Kennedy's condition the morning after the fire can you say whether he would be in a fit condition to go up that staircase?—He might have been able.

Q. Having received the burns he might have gone up the staircase?—
It is possible.

(To COURT: He was not unconscious. If he was unconscious it might have been different).

As soon as he was admitted to the Hospital they rang me up. It was in the ward itself. The House Surgeon rang me up and I gave him full instructions what he was to do. The wound had only to be dressed. The House Surgeon is Dr. Ramanathan. I saw Mr. Kennedy at 7.30 or 8 a.m. the next morning. He was sprayed with tannic acid. The modern treatment of burns is to leave the burns exposed to the air.

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(vvv) Dr.
A. M. de
Silva.

Cross-exa-
mination.

CROSS-EXAMINED.

10 You did not see him at all till 8.30 a.m. the next morning?—Not till 7.30 or 7.45. By that time his hands had been sprayed with tannic acid more than once?—Yes.

There was a gelatinous appearance on his hands?—We coagulated the burnt area to show the tannic acid.

Q. When the Police begin to coquette with you?—I do not know what you mean.

Q. When did they first come and see you?—They did not come and see me but I was asked to report at the instance of the Police.

Q. When was that?—14th October.

20 Q. On the 14th October a board was appointed by the Director of Sanitary and Medical Services to examine Mr. Kennedy?—Yes.

Q. That was because of a report by Dr. Nair the Judicial Medical Officer?—I do not know the cause of why the board was appointed. I do not know the details about the board but I was told a board sat on him. I do not know the reason why the board was appointed.

Q. Are you aware that the Judicial Medical Officer reports that these were burns probably caused by an electrical explosion?—I heard of it.

Q. The Police were dissatisfied with that opinion?—I do not know. I was only asked to report.

30 Q. Were you asked to report independently of this board?—Yes.

Q. The board consisted Dr. Attygalle, Dr. Blaze, and Dr. Ratnavale? I believe so.

Q. Dr. Attygalle is an F.R.C.S.?—He is.

Q. He has written a bulletin on burns?—I am not aware of that.

Q. Are you aware that he has made a special study of burns in London?—He has made a special study of Gynnceology.

On his last visit he got his membership of Gynecology?—Yes. Are you aware that his monogram has been sent to various Hospitals? I am not aware of that.

40 Q. Dr. Blaze is an M.D.?—Yes.

Q. Are you aware that they reported that the burns on Mr. Kennedy were probably caused by an inflammable gas?—I don't know their report.

Q. That board examined the patient on the 14th October?—It may have been so but I don't know the exact date.

Q. Are you aware that they examined the patient and not the exact date?—Yes.

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Cross-exa-
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Q. When did you send in your report?—On the 14th October itself.

Q. When did any Police Officer see you?—It was long after that. I cannot remember the date.

Q. Long after the patient left the Hospital?—I believe so it was. It was probably after the 6th or 7th November.

Q. You think it was probably shortly after the patient was discharged from Hospital?—It is possible but I cannot remember the date.

Q. Surely you can remember the fact?—No answer.

Q. Who was the officer who came and saw you?—I was to come up for a conference at the Solicitor General's Office and I met Mr. Ferguson, Mr. Symons, and Mr. Illangakoon, and Mr. Ralph Deraniyagala. 10

Q. No Police Officer till then?—Yes.

Q. Can you say whether that was in 1933 or in 1934?—I believe it was in 1933.

Q. How long after the accused left the Hospital?—I could not say.

Q. When did you visit the scene?—After that.

Q. Before or after Christmas?—I cannot say. It was after the meeting with the Solicitor General.

Q. How long after?—I cannot remember.

Q. Might it have been shortly before this case started in the Police Court? It was not shortly before but over a month before the case started. (To COURT: I cannot remember the exact date when the case started in the Police Court.) 20

Q. You gave evidence on the 8th May?—You say about a month or 6 weeks before that?—It may be but I would not like to say that.

Q. You are not ordinarily called upon to confabulations with the Police, Solicitor General and others (No answer).

Q. This is very important because I want to know how long after this conference it was that you went there and saw the site?—I cannot say.

I went down the staircase. The staircase was very rickety. I noticed that two steps had come in contact with the iron edge. 30

Q. Mr. Ferguson accompanied you there?—Yes.

Q. By the time you got there all the debris at the head of the staircase had been cleared away?—But there was also some debris below.

Q. What the conditions were shortly after the explosion you do not know?—No.

Q. Nobody could have gone through the staircase if it was blocked?—Yes.

Q. The fact that you attended these conferences with the Police and Solicitor General would not prevent you continuing to treat Mr. Kennedy?—No. 40

Q. In fact you continued to treat him till the proceedings started in the Police Court?—Yes.

Q. You have been the family Doctor of Kennedy's for 20 years?—Yes.

Q. Your bills have all been regularly met?—Yes.

Q. And you were regularly paid after the fire to continue his treatment?—Yes.

Q. I asked you yesterday to produce all records you might have with regard to patients whose hands had been burnt by kerosine or petrol. Have you got them?—I have got some records here.

Q. How many cases have you got?—I was only able to lay my hands on a few. I had time to find one case of petrol burns.

Q. Whose is that?—That is a man by the name of Moses admitted to the Hospital on the 20th April, 1932. It was a case of petrol catching fire and burning the patient who was residing at Kandana injuries extensive 1, 2 and 3 degrees on face, both upper extremities and both lower extremities
10 and body.

Q. By the explosion of a petrol lamp?—Yes accidentally catching fire.

Q. Did it burst?—It must have caught fire when it burst.

The petrol lamp took fire and the man had burns on his whole arms body and face?—I mean that the man had burns from the shoulders to the tips of his fingers. That is what we mean by both upper extremities.

Q. He had burns of the 1st, 2nd and 3rd degree?—Yes.

Q. What evidence have you that the petrol on his body took fire? Have you any?—I have no evidence.

I have no evidence of the petrol on his person getting ignited. There is
20 no evidence as to how he was clad at the time the explosion took place.

Q. Was that a patient of the non-paying wards?—These are all patients of the non-paying sections.

Q. Ordinarily they would be treated by you?—They would. Now I have one day casualties for the week. Formerly I had more day.

Q. On the other 2 days of the week the House Surgeon has his day? The House Surgeon carries out the orders of the Visiting Surgeon. The Visiting Surgeon and the House Surgeon are responsible for the treatment.

Q. Had that man any blisters on him?—1, 2 and 3rd degrees.

Q. Are you speaking from recollection of things?—I am speaking so
30 from recollection of things and from these records.

Q. The skins had not come off?—No.

Q. Whether his body was burnt or not you cannot remember?—No.

Q. Whether he was burnt when he came in contact with the flame?—No.

Q. You have no evidence of petrol coming in contact with his body? No. I had no time to refer to those cases. I have cases of burns from kerosine oil. This is the record of a carbide lamp catching fire.

Q. A carbide lamp? This is the case of Madlin Silva of the 23rd May 1932 with burns of the 1st degree on face and forehead (2) burns of the 1st degree on left hand. There were no burns of anything more than 1st degree.
40 The burns were caused by her coming in contact with the flames.

There is another case of burns to Mungo Nona admitted to Hospital on the 25th January 1932 as the result of a bottle lamp upsetting on her and the oil falling on her. The injuries were caused to her face, forehead neck, right ear, chest and fore arm. I cannot remember the details of the accident. They were burns of the 1st and 2nd degrees. I had no time to look up the bed head tickets. Last years I find there were 18 cases of burns in two of my non-paying sections and these are for 1932.

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(vvv) Dr.
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(vv) Dr.
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mination—
continued.

Q. You have not been able to get a single case of a record where burns were caused by an inflammable fluid accidentally taking fire?—The bed head ticket does not show that.

In Mungo Nona's case the injuries were on the forehead, face, right fore-arm, neck, right ear, upper part of neck. I could not remember whether her jackets had caught fire. The burns might have been caused by her jacket having caught fire.

Her face might have got burnt if her jacket came in contact with the flame. It is possible that the oil fell on her face and caught fire. I have seen the result in such a case. In this particular case of Mr. Kennedy's the hands and lower parts of his face had burns of the 1st, 2nd and 3rd degrees. The upper parts had burns of the 1st 2nd and 3rd degrees. 10

Q. Do you suggest that Mr. Kennedy has washed his face in petrol and that the petrol caught fire?—I don't know.

Q. So that his face could have got burnt without having any petrol on it?—Yes. I would not say petrol, I would say an inflammable liquid.

Q. The burns on the upper part of the face were different to the burns on the lower parts?

Q. Do you suggest that the burns on the face were due to an inflammable fluid on his face catching fire?—No the burns on the lower part of his face were in a greater degree than the upper part. 20

Q. Is that a reason?—It is possible.

Q. Petrol if applied to the face by the laws of gravity would spread to one body, I would expect to find burns on the front of the neck. There were no burns in this case on the neck.

Q. The suggestion that a man immersed his face in petrol is ridiculous?—Yes.

Q. Do you remember the question put to you in the Police Court by Mr. Tenison whether Mr. Kennedy had petrol on his face?—Yes.

(TO COURT: There were burns on hands, sides of fingers and I would say it was consistent with his hands having come in contact with an inflammable liquid. All I can say is that the burns on his hands is entirely consistent with the hands having come in contact with an inflammable liquid. It would be a reason for the burns stopping short.) 30

Q. This dripping character that you referred to the petrol would only flow down his arm if he held it upwards?—Yes.

Q. If he was engaged in mixing petrol it would only flow downwards if he held it upwards?—Yes.

A liquid cannot flow upwards.

Q. To support your theory that it was petrol we must assume that Mr. Kennedy went up holding his hands upwards?—That is not absolutely essential. If he held his hands up and the inflammable liquid would flow downwards and if he put his hands down the petrol would still burn. I did not see Mr. Kennedy's clothes while he was in Hospital. I saw the clothes for the first time some months afterwards. The clothes had no burns on them except possibly for the socks. 40

I know that petrol is highly volatile. I could not say how long it would take for hands to dry when immersed in petrol. In a relatively short time they would be dry. They would not remain on the hands as long as water.

Q. I suppose you are aware that the solitary can that contained the petrol in this case was found on the ground floor not far away from the entrance?—Yes.

Q. So that Mr. Kennedy would have to sprinkle the petrol on the basement carry it to the ground floor wrap it in jute hessian put it in the bag and still have a sufficient quantity of petrol on his hands to catch fire? (To
10 COURT: I do not know that this was done).

Q. Do you think it was possible? For a man to have climbed up that having sprinkled petrol to have climbed up the spiral staircase to get to the ground floor wrap it up in jute hessian put it in the bag and to have gone back to the ground floor and still have the petrol on his hands to have them burnt in the way you saw them?—I cannot say.

Q. I suppose you are aware that Mr. Kennedy was in the area where the fire took place for appreciably a few minutes?—I read of it.

Q. That he did eventually fight his way out from that place somehow. A man fighting flames for life would not hesitate to tear at anything?—No.
20

Q. And if a man were fighting his way through flames with both hands you would expect both hands to be burnt?—Yes.

Q. If they were in flames they were bound to be in the condition you saw them?—Yes.

Q. And if there was fire the heat of which was coming upwards you would expect his face to be burnt as much?—Yes heat always rises.

Q. The injuries on Mr. Kennedy's face was most severe on the orifices of his ears and mouth?—It was more concentrated on the lower part of his face.

Q. Were the injuries more severe in the orifices in the nose, mouth and
30 the premincences?—I could not say that.

Q. And the burns involved the whole face from the hair margin of the scalp?—Yes.

Q. Down to just at the edge of the chin?—Yes.

Q. The anterior surface of both ears but not the posterior surfaces?
—Yes.

Q. The singeing of the hair along the temple or forehead were more marked on the right side than on the left?—I cannot agree with that in my opinion.

Q. The burning between the fingers was more marked in the left hand
40 than in the right hand?—There too I cannot agree. Both hands were burnt more or less equally. I do not agree with that.

Q. On the right hand on the inner side the burns extended higher than on the outer side except for the projecting portion?—On the inner side it was burnt about 1", to the ulnar bone. It was practically to the wrist going round in a circle. It was about 2" I do not agree with that.

Q. Were you asked to direct your attention to the aspect of it?—Once I was asked for a report I directed my attention to the medical aspect of it.

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(vvv) Dr.
A. M. de
Silva.

Cross-exa-
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continued.

Q. On the left hand the palmar . . . extended to the carpus?—Yes.
The hair on the fore-arm and on the edges of the forearm were singed?
—Yes.

The marks on the back of the hands were oblique?—It was slightly oblique.

Q. And running in a slightly outward direction?—It was upwards and backwards.

Q. Both the elbows had marks on them?—There were no marks on the elbows. There were no injuries on the elbows. I did not notice any injuries much less an injury the size of a ten cent. piece on the right elbow. 10
We looked for injuries all over. The treatment of a burn is different from the treatment of a wound. It is not possible that I failed to notice any burns. I looked carefully for injuries but I did not notice any. If injuries existed I would have seen them. If Dr. Ramanathan, Blaze and Attygalle say there were injuries on the left elbow and right elbow do you say they were inventing them?—I say it must have been caused by his resting his elbow on the bed. I do not suggest that Mr. Kennedy lying on his back could injure his knee. I saw no injuries on his knee. I saw no experiation of the left elbow of the size of a 10 cent. piece. Mr. Kennedy was in the paying ward. It depends on the position a patient is placed on the bed. 20
If a person is placed on any comfortable bed pressure sores may appear on one part of the body and not on the other parts. I did not notice any abrasion on the knee.

Q. Are you aware that when Mr. Kennedy was brought to Hospital his face and hands presented a raw red appearance? I could not say but it is possible. All the burns were red in colour. It depends on the type of the burns. If it is a 1st degree burn the burn will be red in colour. A second degree involves a blister. A burn of the 3rd degree is a burn of part of the true skin. It is not beneath the skin. It will be a fourth degree burn if it effects the true skin. 4th degree burn is caused when the whole tissue 30
goes. There was no such burn here. The raw appearance is due to the disappearance of the epidermis. One could not remove the dermis. You could not remove the true skin because it has got a scalp on. Probably the epidermis was hanging in festoons. On the palms it is fairly thick. Dr. Ramanathan actually treated Mr. Kennedy that night.

On the right ankle I found the right side and the left side of 1, 2 and 3rd degree. On the left ankles there were burns on the left side.

Q. If petrol had been poured on the ground or got splashed on the ground you would expect the socks to get set more in front than at the sides?—(No answer). 40

Q. One of these socks has got two quite small holes on the region of the ankle one rather behind it. No hole anywhere else?

Q. Now what are the dimensions of the burns you found on the left ankle? Roughly about 1½" on the side of the left ankle.

Q. If this were the sock on the left foot this hole is in the neighbourhood of the left ankle. This hole has not got a diameter of more than ½"?—Yes.

Q. The other hole is more to the back of the ankle?—Yes. The other hole is a tear.

The injuries on the right ankle were all practically of the same dimensions on the outer side as well as on the inner side. It is hardly any bigger than the injury. On the right outer side was larger than the left side. I don't think it as much as $3\frac{1}{2}$ ". It was all one continuous burn on the inner side.

Q. If this other sock were on the right foot, on the inner side there is a hole on the outer side. There is a fair big tear?—It is quite $2\frac{1}{2}$ " long?—Yes.

I did not agree that the injury on the right side was $\frac{3}{4}$ " \times $1\frac{1}{2}$ ".

Q. What is your opinion that Mr. Kennedy did have a coat on or did not have it?—I cannot say.

The sleeves of the shirt he was wearing were short sleeves.

Q. When did you see these socks for the first time?—I believe it was at the Solicitor General's office or in the Courts. I cannot remember where.

(To COURT: I had not the socks when I was writing my report on the 14th October.)

Q. The marks on the elbows are consistent with a backward fall?—I do not know to what you are referring (later). It is possible.

The injuries on the knees and elbows are due ordinarily to falls backwards.

Q. Was there any singeing on the back of the head?—No.

Q. There was a reddish colour? Yes.

Q. It might have been due to the head having come in contact with something? It was not a bruise. It was a redness if anything. It depends upon one's complexion. You get a grayish colour which alters from day to day. It was too diffused. There was no singeing. Probably it was due to the application of head to that part. Probably it was in a flame. If there was a direct flame the air would have got burnt. If there was a flame there would have been a singeing of the hair at the back of the head coming in contact with heat or warmth. If there was a flame the hair would have got burnt. It was hot enough to cause a burn of the 1st degree. It was a hot blast. It is possible a hot blast would have a burn of the 1st degree. The flame itself singes the hair. It is possible that a hot blast did cause a burn of the 1st degree if it was exposed for sometime such as sun burn for instance.

(To COURT: It depends on the heat for an momentary exposure to cause a burn of the 1st degree.)

The bursting of a blister would have left the tissue more or less transparent. I was asked for a report on his burns. It may have been for the purpose of knowing what the cause of the burns were. I was asked to report independently of the board.

RE-EXAMINED.

Q. My learned friend put before you the picture of Kennedy fighting his way through the flames and getting burnt on his face and hands. If that actually did happen if he passed through flames and his face and hands got burnt would you expect his clothes to be burnt?—I would.

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continued.

Re-exa-
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Q. You examined Kennedy on the morning after the fire for the first time and it is correct that you submitted a written report on the 14th October?—Yes.

Q. That written report was submitted to the Director of Medical and Sanitary Services and do you know that a report had been called for from the director?—Yes.

Q. Do you know that Dr. Nair the Judicial Medical officer had submitted an independent report?—I did not hear of it officially.

It was his duty to examine him and give a report as Judicial Medical officer and as Judicial Medical Officer he had sent it. 10

Q. Do you know that thereafter the Police asked for an expert opinion and that a board was then appointed?—I did not hear of it. I only heard the board was appointed.

Q. The board in those circumstances would consist of independent medical officers?—Yes.

Q. Not one who has been treated in the case as yourself?—Yes.

Dr. Attygalle is the visiting surgeon at the Lady Havelock Hospital.

Q. In your opinion could these burns have been caused by electrical sparks?—No.

Q. Any of these burns?—No. 20

Q. Do you know that it was the opinion of the board that the burns were caused by flames?—I have not seen the report.

Q. Do you know that it was their opinion it could not have been caused from electrical sparks?—I do not know that.

Q. You referred to the case of a woman called Mungo Nona who received burns?—Yes.

Q. Where some inflammable liquid had been on her person?—Yes.

Q. That is kerosine oil. Were the burns extensive?—Yes.

Q. Spread over a wide area?—Yes.

Q. And in that aspect similar to the burns found on Kennedy?—There 30 were.

Q. You have no recollection whether the clothes were burnt?—No.

Q. They were first and second degree burns?—Yes.

Q. Blisters had been caused?—Yes.

Q. The report which you submitted on the 14th October to the Director of Medical and Sanitary Services I take it was submitted by you as the surgeon in the case?—Yes.

Q. Thereafter Kennedy left Hospital and you continued as his private surgeon?—Yes.

Q. Having seen this case in the Hospital as the Senior Surgeon you 40 were obliged to attend that conference?—Yes.

(To COURT: Q. Suppose the accused had his burns on his hands and thereafter he had put on his coat there would not have been blood on his coat? That would not as a rule produce blood unless the wound has got rubbed.

Q. Assuming that he had his coat and then he had not got on his coat and then he put his coat on would you expect to find blood on the coat?—

I would expect to find an incision and then blood. The wounds did not bleed much.

G. H. FERGUSON—Sworn.

I was the acting Deputy Inspector General of Police Criminal Investigation Department last year when this fire occurred and I took charge of the investigation from that date onwards. I visited the scene of the fire on the night of fire itself. That was at 11.30 p.m. The fire was then raging and there was nothing I could do then by way of investigation. On the next morning I visited the scene again at 7.30 and I then took charge of the suit case and the petrol tins. When I took charge of them they were outside Kennedy's main door on the verandah in charge of Mr. Muller and Sub-Inspector Mussaffer was present. I took charge of them in Sub-Inspector Mussaffer's presence. Mr. Muller is now on leave in England. When I took charge of the suit case the petrol tins were inside the suit case I remember seeing a gunny but I cannot describe how it was. I did not see the water proof paper. Mr. Collins came there between 9 or 9.30. He took charge of the suit case and petrol tins from me I think about 9.30. Before Mr. Collins took the suit case I had a careful look and I left the tins in the condition I found them so that Mr. Collins could examine them. I did so advisedly. Mr. Bantock produced Mr. Kennedy's clothes including the pair of shoes. I do not remember the fact that there was a cardboard box. Mr. Collins took charge of the shoes and the box a little later. Mr. Bantock's evidence is that he got the box from the Colpetty Police Station. I have ascertained from whom that cardboard was given to Sub-Inspector Gibson who lives at the Colpetty Police Station Quarters. I examined a gas ring with Mr. Lornie, not the meter. It was just a gas ring in the Times' machine room in the basement. It was one of a gas rings such as one would find in a heating place. Mr. Lornie turned on the top but no gas came out. I authorized Mr. Lornie to cut off the gas tap in the Times Machine room in the basement and to cut the supply in the road outside Kennedy's shop to give the Times an outside supply. I examined the basement that day. I came with Mr. Lornie and Mr. Collins and Mr. Clements and Mr. Misso. We looked at the gas pipe and at the electrical gear. I know the expanding iron door leading to the intake Chamber from Kennedy's section. It was pad-locked. I know what was referred to as the bye pass cock in the intake chamber. That was pad-locked. I made a note of it at the time in my note book. It was pad-locked. I can't say on that day. My note regarding the detailed examinations of that I think is on the 2nd or 3rd on which date I made a note that it was pad-locked, I found that in that condition in the presence of Mr. Lornie. It was on the same day—the 2nd—that the switch board was removed from the pillar. I assisted it in preliminary removal. It was hanging by wires against the pillar. The main switch was in the same position as it was in my office. It was in the on position. I observed that again on the 30th. I made notes of the position of the switches on the 30th. That switch board was photographed on the 2nd and removed to my office later where it was in my

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custody till its examination on the 17th October by Mr. Misso and Mr. Wilson. I was present. So far as I know the iron clad switch was opened that day for the first time by Mr. Wilson not by Mr. Misso. Mr. Lornie carried a gas test with a manometer. The actual test is the manometer. That was done on the 3rd. As far as I remember it was the 3rd. That would be Monday. I was present when he carried out the test. I myself observed when the main pipe was tested at a certain pressure that the gauge remained. I made notes of exactly what happened. The meter remained stationery. I recorded Mr. Kennedy's statement at the General Hospital on the 7th October. I remember the evidence of W. S. Pieris the clerk at the Petrol company whose main office was at Galle Face that a man whose name had been variously given as Peelis or Pieris Appu purchased two tins of petrol and stated that the two tins of petrol were needed for a bus service from Anuradhapura to Colombo.

Q. Did you make endeavours to trace anybody by that name running any bus service on that route or connected with the bus service on that route? I had inquiries made at both ends Anuradhapura and Colombo for a person by the name of Peelis or Pieris Appu, but I made no personal inquiries for any person by the name of Peelis or Pieris.

I visited the scene with Dr. A. M. de Silva on the 2nd May, 1934, a few days before he gave his evidence in the Police Court. I have a note of that. The spiral stair case I saw with debris before it was removed with the wall collapsed over it. Before that debris was removed I went up and down the staircase. That is the route which we took over the wall "G" and the window. Most of us did it. From that side it was easy to get in. I took charge of the mobiloil tin and gave it to Mr. Collins along with the suit case and the petrol tins. I remember the expanding metal door of the chute entrance and also the wooden door. I examined them the day after the fire. It was still locked at the time. The other door "C" near the door "U" leading from the chute portion leading to the spiral staircase chamber had been locked. The bolt of the lock was bent as it had been forced open by falling blocking it with brick and concrete I know the Duke Street door. The door was in that position when I saw it. The door was found at Duke Street further out. It may have been pulled out by one of the firemen. The firemen's hose were put down the chute. I have gone over my notes carefully. Hossen did not tell me that accused asked him to get his petrol order book.

Cross-exa-
mination.

CROSS-EXAMINED.

Q. Are you sure that before the 2nd May you did not see Dr. A. M. de Silva?—I did not say so.

Q. When did you see him first?—I think in November or December 1933.

Q. You have no note of it?—No.

Q. At his bungalow or at the Hospital?—At the Solicitor General's Office.

10

20

30

40

Q. I thought you said in answer to my friend that you went with him to the Deputy Solicitor General on the 2nd May. I went with him to the basement down the spiral staircase on the 2nd May.

Q. It was 7 or 8 months after the incident?—Yes.

Q. The first visit to the Deputy Solicitor General was on the 1st or 2nd April?—I think so.

Q. Dr. A. M. de Silva was then away at Nuwera Eliya?—I am afraid I do not know.

10 Q. He gave evidence on the 8th May and before he gave his evidence you took him down to the scene?—Yes.

Q. He has already forgotten about these dates?—Yes.

Q. It is not surprising that Hossen and others have made mistakes with regard to the dates. Hossen said it was somewhere about July and S. A. Perera said it was about July that he got the petrol tins?—The statements of S. A. Perera and Hossen were recorded shortly after the events and Dr. A. M. de Silva's statement was recorded 5 months later.

Q. In the Police Court you said that the switch board was brought to you by Mr. Merry on the 3rd October?—That was a mistake. I had no record of it.

20 Q. It would be impossible for me to remember everything that I did every day.

Q. You found the suitcase near the door of the verandah?—Near Kennedy's main entrance door on the verandah.

Q. That is the door marked "E" on the plan?—The big plate glass window.

30 Q. Prins' record of it was that he placed a Police Constable on guard over the suitcase which has been shown as the verandah of Mr. Kennedy. You know that Prins gave over charge to Mussaffer and you were in Court when Musaffer said that he gave over charge to you?—Yes. I think Mussaffer said that he did not move the position of the suitcase. He said that he first said that he saw it here and he left it there. It was left near the lift for the purpose of describing the position. When he first saw it it was in the verandah. I think he said he did not know who had shifted it from there to the verandah I do not remember his saying that it was no time in the verandah. He may have said that but I do not remember that. The switch board was photographed by Police Constable Wakista on the 2nd October. Between the 30th morning and the photographing of the switch board there were a number of Police officers in charge of the switch board. The whole building was in charge of Police officers with a sergeant in charge. During
40 some of the periods Inspector Merry was in charge of the basement. In some cases there was a sub-inspector as well. I do not remember how many times. The buildings were under guard until the whole of the debris was removed. At one period a corrugated iron fence was put round when the guard was reduced but the guard was still left during the first few days. A sub-inspector was left in charge.

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(THE COURT ADJOURNS FOR LUNCH.)

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(AFTER LUNCH.)

I sent a Criminal Investigation Department man in Colombo and also the Inspector of Police Anuradhapura with instructions to look for a man called Peelis.

Q. When was that done?—About the 6th or 7th October.

Q. Last year?—Yes.

Q. The evidence of either of them was led in the Police Court?—No.

Q. As a matter of fact the two petrol cans produced were according to the evidence of Mr. Batie made in two different years?—(No answer).

Q. Is Mr. Lloyd also out of the Island?—Yes.

Q. I suppose you remember that Mr. Batie said on the point that these cans were made in 1930 and 1931 respectively?—Yes. I do remember his making a same statement to that effect in the Police Court.

Q. Search of S. A. Perera's premises was I believe made by the crime police?—Yes.

Q. Were you working together in the case or did they take it over?—We were working together.

Q. You got a statement from Mr. Kennedy. On what date was it?—It was on the 7th October.

Q. Mr. Steuart searched S. A. Perera's premises on that same day?—Yes. 20

Q. He found two petrol cans one in the garage and one in the car?—He found two new cans apart from the others.

Q. When was Hossen's statement recorded in the first instance?—On the morning after the fire at Fort Police Station.

Q. Was that by somebody at the Fort Police?—Yes.

Q. When was his statement recorded by you?—On different dates he was questioned by me on different points. I questioned him and re-questioned him. On the 5th October he made a reference to the petrol cans. That was for the first time.

Q. He has obviously made a mistake with regard to the time? According to Fernando he is wrong according to the time?—Yes. 12.30 p.m. 30

Q. You remember Hossen distinctly told you at one stage of the proceedings that he had gone there at 9.30?—I do not remember his saying so. He told me he went there at 12.30. At 12.30. It was about 12.30 when he asked for the time (witness reads from the extract).

I have got the statement in my file. I have it in front of me. There is no reference to the time as 9.30.

“When I went to Walkers for the petrol tins . . . It was about 12.30 . . . ”

There is no reference to 9.30 in any statement recorded by me. I have no reference to 9.30 in any of these statements. 12.30 is the time I have recorded. 40

Q. You stated that you went several times up and down the stairway. You heard Mr. Merry in his evidence say that he had to get over the railing?—That is so.

Q. The protecting rail?—Yes.

Q. Was that because the actual opening was blocked by the wall that had come down?—Yes. He emerged by getting over the rail and on to the sill. My impression is that the other sill is of the same level. The sill of the window by Main Street may have been about 1' over the verandah level. The sill closest to the spiral stairway may have been considerably higher than the main street window. I went over that several times. A 2" plank was placed against the side of the sill to allow a person to get up.

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Q. You will admit that when the wall was up against the entrance to the stairway one had to get out over the sill?—Yes.

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mination—
continued.

10 Q. If Mr. Kennedy was in that basement and was seen by Zain Mahat jumping out of the door at the head of the chute he must have done some rather incredible feat?—Not necessarily.

Q. Not absolutely impossible?—We do not know at what time that wall fell. The wall may have cracked and fallen at a later stage. If it had got in the way of the blast and been blown down for the explosion. Mr. Kennedy could not have got out from there. The exit from the stairway was to the verandah through window "G."

RE-EXAMINED—No questions.

(This Witness was recalled see page 519).

20 The Acting Deputy Solicitor General moves to read in evidence the deposition of Mr. Batie on page 18 (Record) as the witness is said to have left the Island and he calls:—

G. GALL. Sworn.

(xxx) G.
Gall.
Examina-
tion.

I work at the Shell Company's installation at Kolonnawa. Mr. Batie works there himself. He was installation manager. Mr. Batie is not in the Island. He is in England. He left for England on the 23rd May and he should be back on the 23rd May not before that.

CROSS-EXAMINED.

No questions.

30 There being no objection to the deposition being read this is allowed and read. The statement P18 is also read.

Mr. Obeyesekere also moves to read the deposition of Mr. Lloyd on page 32 (Record) as he is out of the Island and calls:—

P. JAMES PERERA. Sworn.

(yyy) P.
James
Perera.
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tion.

Harbour Police. I knew Mr. Lloyd. He was the Assistant Superintendent Police Crimes Colombo. He left Colombo on the 22nd August per S. S. Carthage. I saw him off. He has gone on 8½ months leave.

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CROSS-EXAMINED.

No questions.

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* Page nos.
refer to
pages in
document
used in
Courts
below which
it is not
possible to
identify.

There being no objection the deposition is read also the statement of accused at pages *203 and *205 and the Acting Deputy Solicitor General closes the case for the prosecution. He also tenders K. M. Abubacker B. P. Jayakoddy, D. R. Perera and Stephen Wickremesinghe for cross-examination. Mr. Pereira does not want them called.

No. 9.

Evidence for Defence.

RESUMED—1st October, 1934.

10

No. 9.
Evidence for
Defence.

PEREIRA calls :

ALEXANDER KENNEDY. Sworn.

(a)
Alexander
Kennedy.
Examina-
tion.
1st October,
1934.

EXAMINED.

I am the accused in this case. I have been familiar with the shoe trade from my boyhood upwards. My parents were interested in the shoe trade, and I myself of my own desire left school at the age of 12 and joined a factory and I have been through the whole gamut of it from the initial stages of manufacture of shoes to the final preparation of shoes for the market. My early training was in Scotland. I came to London about the age of 20 and was in London for some time in a shoe warehouse. I came out to Ceylon 1909, originally as an Assistant in the firm of Whiteaway Laidlaw & Co. I severed my relations with them after 3 years. Thereafter I put a proposition to the Apothecaries Co. that we should open up a department to deal with ladies and gentlemen's shoes altogether, take the department from the hands of the controlling Manager and put it under my control. The establishment was in Baillie Street—it was Smith Campbell & Co. owned by Apothecaries Ltd. Afterwards it was run in the ground floor of Lloyds Building for about 8 years. I got married just before I joined Smith Campbell & Co. My wife also had been in the shoe trade. She is from England. I met her in London. She had worked at a London Warehouse for some time, so that both of us understood the business thoroughly. In 1920 I severed my relations with Smith Campbell and decided in starting on my own. I should have done so previously but for the war intervening. The times were inauspicious for opening a new business. I was interest in the skin business of my own in a private capacity even when I was in Smith Campbells, and I had been sending skins to England, quite a number of them, and I had accumulated about £.1,000 by 1920. Just before I started business of my own I came in touch with a London firm called Julian Steven Ltd., who has since joined Campbell Bros. Carter & Co. Ltd. through the instrumentality of Mr.

Hunter of Hunter & Co., who was a good friend of mine. I put a business proposition to them. They were very glad to accept it because they could see the possibility of making good money. This firm of Julian Stevens Ltd. allowed to chose my own stock and I started with a stock of about £.10,000. I told them that there was only one way of doing business here successfully, that is by doing it in a large scale and not in a small way. Those people were not particular to do business in a small way. I made arrangements to pay them in skins, not in actual cash. I realised that when I started the work it would take some time to realise cash and I arranged to

10 pay in skins. I paid them entirely in skins. I had £.1,000 for purchasing skins; in 1920 I had a stock of skins—a few not very many—independent of the £.1,000. This principle I adopted of paying in skins was a very advantageous one—there was no Bank charges to cripple the business and it left me in a position of being free apart from any anxiety. I made a profit on shoes at this end and I made a very good profit on skins at that end. I was making double profit. I started originally in Bristol Building. I worked there for just over 3½ years. I then shifted to the old “Times” building. In shifting over I employed just the labourers to carry the bundles. I had

20 to employ extra hands to carry the bundles, altogether about 10 coolies and I put in charge an assistant of mine. It was not much of a distance to travel. I took them down and put them in heaps of about 12 boxes just sufficient for one man to carry. I shifted then from the old “Times” building to the New “Times” building. The same method was employed by me then; that was about 1931. I had been looking out for larger premises than the “Times” building for some time past. When I went to the new “Times” building they held a promise of continuing their building work—I was going to the corner premises and I found myself cramped for space in the new “Times” building, there was no room at all and we depended

30 entirely on the lifts for the ladies department. It would be advantageous to be on the ground floor—people objected to the use of the lifts. The “Times” put off extending their premises and I was on the look out for suitable premises. At one time I wanted to go to Lloyds building but we had to give it up. When I was at Home I heard about the Colombo Stores and I made arrangements about it originally in London, the actual negotiations took place when I came back I think in July. The terms had been fixed up before this fire. They had to cable Home for permission from Walkers Ltd. Messrs. Julius & Creasy had been given instructions to draft the lease. When I was in Hospital they asked me to sign it but I could not

40 sign it because my hand was bad. I was going to take it for a period of 32 years. (To COURT: It was not brought to Hospital—Mr. Hill said there was plenty of time when I was fit for it.) That was the balance period of a lease of 65 years which they held for the site in which the building was put up. That lease would expire in 1965 and my lease was also for 1965. For the first two years it provided a rental of Rs. 1760 a month, and the following 2 years Rs. 2250, and thereafter Rs. 2750/-. (To COURT: I was paying for the “Times” building Rs. 1100/-.) The “Times” building was relatively more costly, and we paid for the fans. It worked out at about 30 cents a

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foot and the Colombo Stores worked out at about 6½ cents a foot. Each floor of the Colombo Stores was more extensive than the whole of "Times," about double the size. I contemplated subletting the 1st and 2nd floor and the right was specifically reserved for me in the lease. I wanted the ground floor and the basement for my requirements. The ground floor alone is about double the space I occupied in the "Times" building apart from the basement. That lease has not been signed up to date owing to this fire, but I continued on the terms set out in the lease. I had given notice to the "Times" people and the Insurance people of my intention to change over. The insurance was in respect of the stock at the "Times" building. During the 10 years that I have been carrying on business, the business prospered all along till 1930, till the depression set in and there was a set back. I took on various assistants in the course of the business. Mr. Ogle joined about 10 years ago. Shortly after I started, about a year after, my sister also came and joined me. I engaged Macdermott & Co. from the very outset to keep my accounts, later they were amalgamated to Messrs. Duncum, Watkins, Ford & Co. and they had kept the accounts for me right down to the time of fire. Having begun with a stock of about £.10,000 by the end of the year 1932 my general stock was worth about my capital account, as at 31st December 1932, was Rs. 249,392 cents 62. On the assets side my stock in trade is Rs. 446,450/48. 20 Skins in Colombo Rs. 52,979/-. My stock in trade gradually rose from 1920 to 1932 to that value—all profits were put into the business. By reason of my local experience I had a pull over my competitors in the shoe business considerably. Having a knowledge of the footwear I knew what to import to suit this clime. The shoes that I sold were specially built for me, the whole of the stocks were made out according to my specifications although the manufacturers' name was on it. A good shoe has to be kept in stock for about a year, before it is put in the markets. For the purpose of drying and toughening the leather of the heel for about a year will fit it for hard wear. It was my invariable practice to stock shoes in advance, especially 30 men's shoes: they were specially built for my specifications, everything has got to be stated, even the nails and paste, otherwise you will find things on the wrong side, with the result I was able to keep them without deteriorating. Of course, you got to differentiate between men's and ladies' shoes where the fashions get changed, which would come to about 8 or 10% of my stock. I had nothing more than that variety of articles that kept on changing in the matter of fashion. Latterly I had an amount of gentlemen's wear, shirts, etc. I started it about 3 years ago about Rs. 60,000/- worth of stock of gents' general outfitting, not tailoring. Since 1931 there has been no profit. In 1931 there was loss of about Rs. 5,400. It was just due to the 40 general depression. I did not make any reduction in the salaries of the staff or do anything to reduce the overhead charges. That was just the time to keep them satisfied to get the best service. Many of the Fort Firms dealing in Gentlemen's and Ladies' clothes were working at a loss during the last 2 or 3 years—the published balance sheets showed that. My profit and loss account for 1932 was something like Rs. 28,957/- loss, due to the primary causes. Even so my assets exceeded my liabilities by Rs. 193,336/65. (To

COURT: My business was very much solid though my income was less.) Apart from the skins shown in the balance sheet valued at Rs. 52,779/00 I had a stock of skins. I started in it 1920—I had always the idea of doing a large skin business—it was a continuing balance. That stock kept on increasing. I accumulated that. When I went home I took samples to different shoe manufacturers because I saw the possibility of doing a large business. I started in a private capacity, I put all my savings into the skins. I had no stocks and shares. I had no bank account. I had no shares of property of lands of any kind. Right down to 1931 my business was run at a profit. I put the £.1,000 that I had saved into the skin business originally, and when I made money out of the skins I put it back into the skin business. There is an item of salary—when my sister came out in 1921 she was paid Rs. 250 to Rs. 300 a month and that put into the skin business. She helped there and the money she should have drawn she put it into the skin business. She was living with me. I drew myself from time to time over Rs. 18,000 a year, although the management charges was Rs. 10,000/-. She also put £.300 into the business when she came in. I did not require all that money for my house expenses. Part of the rent was charged to the business and also part of the car. I think you will find it in the store room rent. The rent is shown in the balance sheet for 1932 at Rs. 15,190. The actual rent I paid to the Times is Rs. 1100/- and there was another charge for the rental of fans and part of the bungalow is also charged to that. (To COURT: About half the portion of the bungalow rent. I carried stock there—stock as well as skins together.) I had a separate Insurance policy running for the other bungalows; one reason is that the general stock is kept in the bungalow because of the limited accommodation at the “Times.” These stocks of skin were originally at my bungalow at and at “Delta” Bagatelle Road, and finally I came to “Monsoon Lodge” in 1931, the same time I moved into the “Times” building. The replacement value of my private stock of skins as at the date of the fire is in the neighbourhood of Rs. 94,000 or something like that (Shown P31). The value of my private stock of skins was Rs. 98,454/- : that was not what it actually cost me, that was the replacement value. They had actually cost me I should think about half that. I bought my private stock at very advantages rates. The value of skins has gone up since I bought them. I had been buying that stock from a good number of dealers. I had not paid anything like the value I could get for them in London. Prior to 1932 there was a large number of dealers in Colombo. There was restriction at that time regarding the exportation of “Talagoyas.” As from the end of that year there was a prohibition of the exportation of “Talagoyas” and they (the dealers) disappeared and went to India—they were mostly Indians. Some of them brought them in a raw condition from small tanneries. It did not require much equipment or lathe machineries for tanning them—only a couple of tubs, essentially a home industry. I had been buying mostly in small number and accumulating the stuff. When I put Rs. 3000 a year average for 12 years it would be about Rs. 36,000/- and with the original amount I put it would bring it to Rs. 50,000/-. I only bought the skins when I thought the price

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was right, really low prices. My skin business was my own. There was also the skin business being financed by the National Bank—the No. 2 account—called Kennedy & Co.; Kennedy & Co. consisted really of myself, I was the sole proprietor. The No. 2 account at the end of 1932 beginning of *1932 was Rs. 60,118/-. Everybody was hoping the depression would lift and trade resume. At the end of 1932 I decided it was up to me to improve my business. I thought of doing so by the skin business. To develop the skin business, I went to London to see my Agents there, Campbell Bros. & Carter & Co. and put a proposition for developing a larger skin business—I suggested to them to increase the business. We have to go further afield for my skins. 10
owing to restriction in Ceylon. And I succeeded in getting them to open a credit account in Ceylon at the National Bank for £10,000/- to April 1933. That was done when I was in England. I saw Mr. Lawrence, the General Manager in London of the National Bank. He had been here for many years before and he went to assume duties in London, and he had been a particular friend of mine and well known to me.

Q. Before your departure from Ceylon Mr. Graham had told you that you should reduce your overdraft to Rs. 50,000/-?—A. It was practically a suggestion of mine. (To COURT: Mr. Graham wanted me to reduce my No. 1 account to Rs. 50,000/- immediately. When I got to London I dis- 20
cussed that matter with Mr. Lawrence and I pressed for a higher overdraft and I got a lakh.) Mr. Lawrence allowed me a lakh on the No. 1 account and that was cabled out to Ceylon. That was to be reduced by the end of the year to Rs. 50,000/-. The suggestion that it should be reduced to Rs. 50,000 was made by myself, that was not a term imposed by Mr. Lawrence. I undertook to do it but there was nothing binding in the matter. As a result of Campbell Bros. and Carter wiring out a letter of credit for £10,000, the National Bank agreed to give me a further overdraft. We were to draw on Campbell Bros. 80% which the Bank would pay themselves. 30
That was all I did in London as far as the financing was concerned, but to develop the trade I sought extra business. I went round to solicit further business. I went to factories and got them interested in the reptile skin business and got them linked up with the leather people and was able to get quite a large number of orders that way—that was in England. I travelled in the continent as well. I went to France—Paris, Vienna. I got more orders than I could cope with in England. I also got orders from Paris and Vienna. When I came back I was in a fair way to doing a large skin business. When I came back here I saw Mr. Graham, I wanted him to give me facilities to buy skins from Java. He was not keen on the Java business. (To COURT: I mentioned Java to him). They had no branches 40
in Java; that being so I went across to the Chartered Bank. I do not quite remember when I first went to them. It was somewhere in August. I went to the Chartered Bank because I knew that they had branches in Java, Sumatra and Borneo. I wired to Campbell Bros. and Carter wanting letter of credit opened and I succeeded in getting them. The Chartered Bank opened out an account with me for Rs. 10,000/-. I was able to put through a large business with Java despite all this fire and my illness—

just about half of what I would have done. I put through Rs. 189,000/- worth of business about the time. Mr. ——— gave evidence, mostly from Java, just a little from here because I was buying from Chaudry and S.A. Perera. That was the biggest business I put through. I remember writing this letter (P64) on the 5th September to the Chartered Bank. At the time I proposed business to the Chartered Bank I intended having a large number of skins tanned in Ceylon; eventually the bulk of the skins that came from Java were tanned in England, only a small proportion here—about 500 skins here. (Reads letter P64, sentence by sentence.)

10 That is an accurate statement of fact. I have been doing that in a small way. “Fair amount of machinery in store” refers to Perera’s tannery. Perera’s tannery was under my control because I told him what machinery to have and I bought the bulk of his skins. I told him the trend of the business. I had to look ahead and give him directions. Practically my only competitor was the Eastern River Tanneries—they went into liquidation a few years back, I do not remember the year, and since then I have been buying the bulk of the output through Chaudry. I had not gone into it fully with him—I had mentioned it to him. When I was at home I had gone to the tanneries. I had given an order for Rs. 50,000 and asked

20 him (Perera) to extend his tanneries. If I had succeeded in getting my skins from Java he would not have been able to deal with them. I knew that extensions were necessary and Perera was looking very pleased to have adopted my suggestion so long as he could make a big profit. I have my London Agents—Campbell Bros and Carter. By “Agents” I mean Campbell Bros. and Carter. I buy through them, sell through them. Skins to the value of Rs. 98,000/- are my private stock. The National Bank had a lien on skins bought out of the money which they had advanced on No. 3 account. I had reduced the No. 2 account and there was still due to them some Rs. 19,000. There was no need for him to inform

30 the Chartered Bank that I had this stock of skins. These skins had to be tanned—coloured. Rs. 98,000/- worth of skins had to be coloured. (To COURT: They had been rough tanned and they had to be dressed. That is to be dyed.) I saw possibilities when I was in Europe of tanning this stock over and of getting the right shade. I got that shade from Europe, from London. I brought samples of that particular shade from London. I had showed that particular shade to the continental dealers and they were quite a favourite colour at the time and there was good prospect I thought of that particular shade being suitable for winning trade, and when I came here I gave some samples to S. A. Perera—about a dozen skins—for the

40 purpose of securing the right colour. At the time of the fire he had made several attempts but he had not quite succeeded in getting the right shade. It was possible that he might have got the right shade. There was no one to give him advice here. I intended bringing my private stock of skins also into the general business because of the lean years that I had, to prove my position to the Bank, and also I had an intention of extending my business as well. I wrote to Campbell Bros & Carter on 6th September (Reads P65). All my papers were removed by the Police and I have not seen them since.

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Mr. Graham is the Manager of the National Bank. I heard him giving evidence in the box. He may have forgotten that I mentioned Java to him. He is a man of business, I think it had escaped Mr. Graham's memory—he is a very busy man and does not remember every detail of his business. The Chartered Bank increased the overdraft they gave me after the fire. (To COURT: The last paragraph refers to the Java business.) and local business as well—local shipments and general business we were dealing with the skins as a whole. (Shown P85, letter dated 13th September—reads P85—13, P85—11, P85—10, P85—9.) Some of them credited to No. 2 account and some of them to No. 3 account. I was going to bring my private stock of skins also in. P39 is a document which was my skin file. That was the skin file I kept of all the skins which was in my possession. That was not the only file or stock book that I had. Up to this (shows) it is my private stock of skins. On page 4 at the foot of it is the No. 3 account and at the end of the file I have skins despatched as from July there were several parcels of skins despatched. This represents the entire stock. P39 shows the amalgamated stock of private skins and Kennedy & Co.'s stock. On page 2 the total of the 3 items comes to about Rs. 19,000/-. No. 2 account commences in page 1. Up to that it is private; all those that are marked T/C. are private. After those three items in page 2, until you come to B/5 on page 3 are private. B/5 is not private stock, it is regular stock. The items are private until T/C. A/4. After that I was just buying against general skin account. On page 4, the first 5 items are regular skin stocks—Kennedy & Co. On page 4 all are Kennedy & Co. On page 3 all but the last one are private. B/5 is regular skin stock, that is Kennedy & Co. Q. Did you have any other stock book of skins than this? A. Yes, regular, small size ledger: that was burned in the fire.

Q. How did this book come to be preserved?—A. I carried this book P39 about with me in case of orders coming through at night: I usually carry it in my bag—attache case—that one on that bench (shown) along with Code books. In most cases we get cable orders at night or early in the morning—the bulk of my orders are telegraphic orders. Some time we cable to Java and get the reply the same night. Sometimes as a result of a cable from London we cable to Java and get the reply the same night—we have to do things expeditiously and therefore I carry the stock book and the code books with me. The bulk of my telegraphs are not only received but despatched at night from my bungalow. Some of my skin stock were in my bungalow—“Monsoon Lodge”: that is the private stock and some of Kennedy & Co.'s. That is where my wife, my sister, and my brother-in-law, Mr. Ogle live.

Q. What made you to transport the goods to the basement?—A. I found that they were not keeping very well during the monsoon weather. I had previously been living in bungalow fairly away from sea-beach; “Monsoon Lodge” is fairly close to the sea-beach and there is nothing intervening. I was away and returned on the 12th July; when I returned I found that as a result of the monsoon, lot of the skins had been damaged—slightly damaged—discoloured, and when I returned I decided to transfer

them to the basement. I wanted to get the particular shade of tan on these skins and I would have to give them over to S. A. Perera for the purpose. Before I handed them to him I had a list made. (To COURT : I NEVER handed them to him. I only handed him about a dozen. They were never handed to Perera : they would have been if he had succeeded in getting the correct shade.) I got Perera to get a list made of the skins that I intended to hand over to him, that is the list P32. That is the list of skins that I intended to give him.

Q. What are those skins?—A. Those are the private skins. In the 1st page are the stock of private skins. In page 2 is also private stock page is a continuation of the same private stock.

Q. On page 11, what are the three lots of skins?—A. That is the balance of No. 2 account. They are just getting brushed up before being shipped—that is a very slight operation, nothing much.

This (P56) is letter dated 19th August written by me to the National Bank of India giving the number of skins to be shipped. The three items set out there in my letter are the identical items on page 11 of P32 and Page 2 of P39. There is a little difference in the prices appearing in P56 and P39. The total of P39 is Rs. 20,096/47. P56 is approximate. 20 Rs. 18636/-. I made the valuation that appears on page 39. I did not want to put the value too high as I was shipping them Home. I re-valued it at 18,636/-, as the proper value. Rs. 18,836 is the price that I expected to get. (Reads P56). I wrote that letter to the National Bank of India. "The bulk of the offer referred to" means that I had given them to S. A. Perera to brush up. The skin supplier were Perera. We take from him by deducting from the accounts. (To COURT : These three lots were ready to go. In page 1 and 2 of P32 were my private stocks.) The sentence "Stock with Kennedy's against possible sales, etc., etc." means it had gone into the basement ; once it went into the building I considered it part of Kennedy & 30 Co.'s stock. I did not intend to signify thereby that it was S. A. Perera's stock with me. I never stated so to anybody. I never stated to Mr. Ross that they were S. A. Perera's stock. I did not mean that they were somebody else's stock with me. In sending wires to Perera I forget the name. I got a number of names, so I asked Perera to put down the name "Wawalduwa Tanneries" on the cover. The stock was going to be tanned when we got the right shade by Perera. When I gave him to be tanned I should have made a book entry and I would have entered them to Perera as if they were going out of the store and I would have invoiced them and when I got them back I make an entry that they are back after re-tanning.

40 There is no foundation whatever for the suggestion that I intended to make them out to be Perera's skins with me. P39 was handed by Mrs. Kennedy to Mr. Watkins early in October. P32 was removed by Mr. Koelmeyer and Mr. Ross I believe somewhere in October—I was not there, I was in Hospital. P32 was left in the safe. P39 was in my attache case : it always went up and down with me. In the night of the fire it was in my attache case, in the iron safe in the bungalow as were the Insurance Policies. After the fire Mrs. Kennedy took the Insurance Policies to the Bank at the

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request of the Bank and the Bank gave her the necessary advice to notify the Insurance Companies. That was before the Police came and sealed up my safe, and P39 was also removed by Mrs. Kennedy before the Police sealed, and she handed it to Mr. Watkins at his request (on 4th October). If P32 was in any way a compromising document it could have been very easily removed by her before the safe was sealed by the Police. On 23rd August on my return from Europe I found some of my skins in the bungalow damaged. I had been using petrol before for cleaning skins that were partly discoloured. (To COURT: Lightly) I sent Hossen for two cans of petrol about 23rd April—I did not take particular notice of the date. That petrol was for cleaning some of the skins that had been damaged during the monsoon. I had done that before. Rs. 98,000 worth of skins means a fairly large amount and I wanted 4 gallons. These skins that I wanted to clean I had left behind. There was no secrecy whatever about the purchase of the petrol. The suggestion that I sent cash when I had an account with Walkers because I had ulterior motive is not true. I never paid for the petrol. I sent Hossen for the petrol book and he came and said that the driver was not there, the car was not there either: it was at the Fort. I gave him Rs. 15/- because I was not sure of what the price of the tins was, therefore, I gave him Rs. 15. Hossen had come there to get leave; he was complaining of about being feverish. Mr. Ogle is rather strict in the matter of giving leave. That is correct. Hossen returned with the cans of petrol. Hossen came, I think in the morning, before I went. Very often I got to wait and send cables. Ordinarily I was the last to leave in the evening, but Mr. Ogle opened the shop in the morning generally. In the morning I go between 9 and 10. Hossen came and asked for leave, and I asked him to bring 2 tins of petrol; he brought the petrol at about 1 o'clock. I am not quite sure if he came and saw me in the interval; I have a sort of recollection that he came and told me that he had to give a deposit. It is probably correct that I told him if it is Walkers it is safe to deposit and he brought the two cans. Before S. A. Perera came I had not used the petrol. I think he came about 3 o'clock that very day. (To COURT: S. A. Perera came that afternoon that very day that the petrol was brought. He came to the bungalow.) 1.30 p.m.—Adjourned for lunch.

1st October 1934.

Accused present.

Counsel as before.

ALEXANDER KENNEDY. Sworn.

Q. Did you ask him whether petrol was a safe means of removing stains on skins?—A. He told me what he was about to do.

Q. What did he tell you?—A. He thought there was a better way than using petrol, by using something in the tannery. He thought petrol made skins hard. Perera knows more about tanning side of the business. I know nothing much about tanning. He knows all about getting a particular

shade. I told him that I had bought petrol for that purpose and he suggested taking the skins into the tannery and doing them for me and he cast covetous eyes on the tins and he said he would like to have them and he asked me what was I going to do with the tins and I told him he could take them away. I was aware that he had opened out a tannery in connection with the curing of skins. I had given him certain metal expanding frames at "Delta." That was in addition to the tannery. "Delta" had expanding metal windows. They were screwed into the window frames. He removed those things. When I moved into Monsoon Lodge they were lying in the garage. I gave those things to Perera, too. Thereafter I did not think anything more about the petrol tins. I swear that the tins I got from Walker's were handed by me to Perera.

Q. With reference to the Times bill there was a bill for rent and one for advertising?—A. Yes.

Q. Had your rent bill been paid regularly from month to month?—A. Yes.

Q. Excepting the last month?—A. Yes.

Q. September's rent was not paid till when?—A. December.

Q. Previous to that you had been paying the rent regularly?—A. Yes.

20 Q. In respect of the advertising and rent you had been paying out a large sum to the "Times"?—A. Yes.

We used to advertise heavily on contract. In September 1933 I was written to by the Times stating that the amount due by me was Rs. 149,000/- for advertising. There may also have been something due for stationery, the printing of a few circulars. It was not for rent. That was in August, Times wrote to me by letter marked P70. I replied to that letter by P71. P70 is a letter sent us by the Times and wanting to know definitely when I intended liquidating my accounts. I wrote back by P71 saying that I would settle that amount by equal instalments in September, October and 30 November. I sent them 2 instalments making Rs. 2250 in September itself. (To COURT: The other rents had been paid in due course but after the fire I was in Hospital and September's rent was the only rent outstanding.)

P66 was a telegram I despatched to Campbell Bros. & Carter in London. The statement "We have stocks of skins from suppliers not financed by us" refers to the Java shipments. I say that we hold stocks from suppliers and controlled by us but not financed by us. That refers to the private stocks of skins. They were bought on credits opened by Campbell Carter Bros. I was offering 5847 skins to Campbell Carter Bros. which was part of the skins Mr. Ross was satisfied I had in stock that he could not trace them. 40 Those goods appear in P39 as well. They come under the heading T/C. (To COURT: T/C. A/1 is the first item. That is the last item on page 2.)

The next item is T/C. A/2 bark unpolished 1603 pythons which appears as the last item on page 2. The next item is on the top of page 3 1856 fawn polished rings. These three items are valued by me in P39. I was offering goods to the value of Rs. 45,000 to Campbell Carter Bros. on the 25th August. I go on in the telegram to say "Usual selections, keep offer open till the middle of October, best prices." "Regarding lease no extended

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Supreme
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Ceylon.*

No. 9.
Evidence for
Defence.

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facilities expected." I meant by that statement to inform them that I did not require any extra finance. I was referring to my going into Colombo Stores. I did not want any extra money. There is no promise in this telegram of the sale of £8000 sterling worth of skins to Campbell Carter Bros. I merely expressed an opinion that it would be possible for me to reduce the stocks by £8000 sterling in September, October and November.

I asked them to keep the offer open till the middle of October as this is the time the winter trade begins and people begin to start buying and they would fetch better prices.

I was in the habit of attending the agricultural show where skins were exhibited at the agricultural show in London. It starts in October. The buyers generally come from all parts of Great Britain and from the continent. Bridge O Weir were skin dealers independent of Campbell Carter Bros. That was their trade name. They were tanners. 10

My sales at the end of the year were much more than at the beginning of the year. The statement of "£8000 sterling" is a reference to the stocks and not to the skins. The second part of the paragraph in P66 is a reference to the general stock apart from the skins. I was letting Campbell Carter Bros. know regarding the state of the finance. It is usual to have a renewal sale when one goes into new premises. That is for the purpose of getting clients accustomed to new premises. The floor space at Colombo Stores was considerably larger than the floor space in the Times building and it was better adapted for display. 20

The months of October, November and December are the months in which I had much bigger sales than in the other parts of the year. Those were the best months of the year—the last three months.

I have seen the statement XA. (TO COURT: December is the best month of all. We have always had large stocks of shoes sold at Christmas than in other months.)

I heard Mr. Ross's evidence regarding the turn overs in the balance sheets. He didn't think I could have sold more than £8000 worth of stock. He has no knowledge of what could be done here. He has no experience of the shoe business and local conditions. He is not competent to make a statement of that sort. In 1931 I had sold 47,800/- worth of goods and in 1932 Rs. 46,000 worth of goods. With a special December sale we intended to have sold double that amount. I could have sold £10,000 worth of stock. We have had cheap sales usually in the month of December since we started. The only disadvantage in our not having bigger sales was lack of space. 30

On the 29th September, I attended office and for the best part of the day I was in the Colombo Stores premises supervising new fixtures which came from Walker's trying to make arrangements for the stocks. We had not given sufficient time to Walker's and they were working over time. I was up the greater part of the day at the Mutwal works to see that they were getting on with the work. Mr. Steele was in charge there. Mr. Ogle was superintending the laying down of the rubber flooring. Walker's had nothing to do with that. We had taken the show cases but not the stocks 40

into Colombo Stores. Towards evening about 6 p.m. as far as I remember I came to the Times building. I think I was out for an hour for lunch. At 6 p.m. I came to the Times building to get a few letters out. John types my letters. (To COURT: I think we had a temporary table.) I finished dictating my letters to John my typist about 6.45. Thereafter I went back again to the Colombo Stores. John did the typing and brought the letters there for signing. At that time I think Mr. Ogle and Mr. Claessen were working at the Colombo Stores and Mr. Steel was there. My sister Miss Kennedy was also there. There were just 1 or 2 putting on the flooring.

10 Mrs. Kennedy left for home I think about 6 p.m. I went home about 8 p.m. Myself and Mrs. Kennedy dined and we came back to relieve Mr. Ogle and Miss Kennedy. I went back to the Colombo Stores at 8.45 p.m. I remained at the Colombo Stores and my wife went over to the Times building. She was supervising the putting down of the stocks from the fixtures. Mr. Ogle left when I returned. He left with Miss Kennedy. Mr. Claessen left with them. I went to the Times building about 10.25 p.m. Work was still going on at Colombo Stores when I got to the Times building. Mrs. Kennedy thought that the labourers had had a long enough day and the labourers had almost finished and were sitting about. They had a

20 number of fixtures to unload still. They were sitting on the ground floor. I agreed with that and I told the labourers to go and I had instructed two labourers to go to the Colombo Stores and pull the gates together not to close them but to make it easy to pull them together. It had been painted and they were stiff. I was going to do the closing. I was going to keep the key that night. I accompanied the coolies there. They did that, and I went into the building and I tried to hurry Walker's people up. We closed up for the day about 10.40 and thereafter I locked up the place myself and went to the Times building about 10.50. When I got back I observed that they hadn't left space for the customers who would be coming

30 in the morning. In the morning they would have had difficulty in entering and I asked them to make room. I asked Hossen to move a couple of chairs. Then I sent Hossen for a bottle of soda water as I was feeling thirsty. The soda was brought. My wife was there too when the soda was brought. Zain Mahat was there too. He was waiting to lock up the outside door. (To COURT: I was only waiting for the soda water bottle.)

I told the watcher I would not be long and I would be locking up immediately I had the soda. Hossen brought the soda while the man was still there. I was talking to Zain Mahat in the vestibule. My door was opened at the time. The door was of wood and closed together. It had

40 two bolts one at the top and one at the bottom. Hossen came up with the soda and it was poured out and I drank it. I gave the glass back to Hossen in the vestibule which is in the corner of the door way. I think Hossen put the bottle on the ledge on the edge of the fixture which is outside the corner by the door. The door opened into the store. The bottle was kept within the room. I told Hossen to get home and to be prompt in the morning, as I was expecting to have a heavy day. He went off at once. I went in to get the key of the door. The key of the door was left in my

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desk and I got the key and put it in the lock and then went to put off the lights. I had brought the doors together. That is my usual practice. One half was bolted. Only the locking had to be done. I went to switch off the lights. Up to the moment when I went to the switch board I had not been to the basement that afternoon or during that day. I had been to the basement the day previous. When I went to the switch board I put the tumbler switches off with my left hand and had my right hand on the main switch. I ordinarily put the tumbler switches off before switching off the main switch because in the morning when the switch is put on the fans in the basement would work. As I put the switch out a blinding flash came into my face. I remember putting out my hands to save myself. (To COURT: I could not say whether the flash came from the main switch board.)

I put up my hands and the next recollection I have got is my socks were burning. My mind is blurred with regard to the other incidents. My socks were alight I found my ankles burning. I was lying down when the socks were burning but I cannot remember whether I was on my back or with my face down. I remember my ankles burning. At that time I was not conscious, and I did not realise that my hands were burnt. I kicked one heel against my other ankle. The next thing I remember seemed to me that I was fighting through. I remember somebody calling out my name. It sounded a long distance off. The next thing is I have a faint recollection I was trying to get through where there were flames. I was not then conscious that my hands and arms and face were burnt. The next thing I remember was seeing Owen. As far as I can remember it seemed just in front of our corner of our building on Main Street. I was with Mr. Owen at that point on Main Street near my building. (To COURT: I cannot say whether I jumped through the Duke Street door or through one of the broken fronts). I know now what Mr. Ferry and Mr. Ferguson have said I cannot remember whether I did get out. I have got a sort of idea that I did see Zain Mahat after the explosion I was then taken into a car. I recall that I was taken across to Walkers side of Main Street. I walked across the road and then got into the car. I do not remember getting into a car but I remember being taken to Hospital. I must have been taken in a car. I remember speaking to Mr. Owen. I do not remember speaking to Mr. Owen in the building. I remained in the Hospital till the 6th November. On the 28th October I left Hospital temporarily to see Mr. Ross. Mr Ross had valued the general stock at Rs. 450,000/-; general stock and fitting and other things and there was a dispute with regard to the amount of the skins in stock. I claimed for something like Rs. 124,000 worth of skins. Mr. Ross was not satisfied with the evidence of the presence of skins to the value of anything more than Rs. 14,000/-. He was guided to a great extent by the balance sheets and he had an idea he could not trace the skins owing to the fire. He could not trace the skins in the fire and he did not know the size of the skins. Mr. Ross told me that if I insisted on my whole claim it would hang up the whole claim in respect of goods which they themselves were satisfied. The repudiation

of the claim on the skin stock would also result in the repudiation of the general stock as well. I asked his advice in the matter and he said I ought to go by his figures of what he could trace. I heard Mr. Ross's evidence. He pressed me strongly to accept his figures and he told me what the alternative would be. He gave the assurance that there would be a speedy settlement if I accepted his figures. I was not quite myself at the time and the prospect of lengthy litigation did not seem pleasant. Mr. Ross eventually accepted the claim of Rs. 468,646/- and recommended it to the Insurance companies as being well founded. He deducted Rs. 173/- and 10 Rs. 28/-. At that time I consulted Mr. Cooke, I was told that litigation would run into several years. In the meantime the business would go to pieces. Litigation is an expensive luxury. I have found that out. Litigation is costly. I have had no previous experience of it. I thought I would take a long view of it. I heard the suggestion of the Crown that I was responsible for setting fire to the building with petrol. I did not carry any petrol into Times building. I saw the cans P9 and P10 and the suitcase. I did not take the suitcase or the petrol cans or any other cans into that building. (To COURT: I own cars for many years.)

I have never taken petrol out of the tanks. I am afraid I do not know 20 much about cars. Things are left by customers at my shop. When I was at Smith Campbells I had that experience too. When I was at Whiteaways too. It is done forgetfully. Customers must have forgotten to come back for them when left behind there and things left behind and not called for I would say they had forgotten to remove them. I heard Claessen's evidence on the point that he had attached slips on the suitcase, etc., left by customers. In this case after the discovery of the bag and the petrol tins I started making inquiries as to who had left them there. One of my assistants Manan remembered a customer who had left behind a bag. He 30 ordinarily works in the ladies' department. Neither Manan or anyone else knows about what was in the suitcase nor is anyone able to say that this particular suitcase was that suitcase. After the fire one Mr. Blackburn claimed an attache case left at the shop. I think he wrote to the Police. He was a commercial traveller. The day before the fire he had come to the Times building. He told us he had written to the C.I.D. about the bag. I cannot say anything more about the suitcase. Petrol is a quickly igniting material. The Times watcher was at the entrance. I could not have set fire to the building even if I had dared. It was impossible even if I was so minded.

(Shewn A5.) This is a cash sales book of my firm of the gentlemen's 40 department on the ground floor. Ordinarily Manan would not make entries in this book. He would be in the ladies' department. Each page of the book is machine numbered. There is an original and a carbon copy. I was asked about stock books that I kept. I had stock books for my general stocks from the beginning. It is impossible otherwise to carry on business. These books were never sent to the auditors. The stock sheets were sent to them. That is a check of the stocks. I produce A2 a book which I had printed myself giving the details of the size etc. of the stocks. I had it

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printed at the Examiner Press about 1929. That was a new series. We have several of these books. One for the gentlemen's department and shoes and outfittings and one for hosiery. That was a different book. They are entered into the books and is the first thing done when the stocks come in. A5 refers to the stocks relating to children's shoes.

I produce a proof, copy of the photograph of A3 the printed proof and another view of the shop of the ground floor and also A6.

In P39 I have several items of my old stocks labelled T/C. That means Tanner colouring. The letters T/C are in ink. These were given for special colouring. They are different shades of tanning. They had no particular shade on them. They were waiting for a shade to be introduced on them. They were to be recoloured. The bulk of the receipts I had for these skins were burnt in the fire. 10

I had a large filing cabinet by the spiral staircase. There were about 9 draws in it I think. It was just at the entrance. I think Mr. Ferguson saw it.

I would have a few receipts in the bungalow. Those were all I was able to submit to Mr. Watkins or Mr. Ross. Those were receipts from Chaudary and S. A. Perera. We did not accept receipts from everybody. When other dealers brought any stocks we took the stocks and gave them money. We had a number of receipts from other places as well. I had the receipts of Chaudary and Perera in my bungalow for the purpose of checking the stocks. 20

If I could have afforded to wait I would have pressed my claim.

To COURT: "We control stocks from suppliers not financed by us."

The statement "not financed by us" refers to Campbell Carter Bros. It was a mutual agreement. That is what I intended to convey. By us I meant Campbell Carter Bros. and myself as far as the mutual credit were concerned.

"Suppliers" would be myself personally. I treated myself in the telegram as an outside buyer. 30

"Weweladuwa Tanneries consignment with Kennedy and Company against possible sale." It was my way of putting it. It might have been put in a more accurate way. It meant my personal stock and not stocks of Kennedy & Co. I meant that it was available for sale by Kennedy & Co. This particular lot was to go to the tanneries for colouring.

I wanted Perera to get familiar with the goods and so I asked him to write up P39. I told him to write down like that.

Cross-exa-
mination.

CROSS-EXAMINED.

- Q. Mr. Kennedy, you told us you came out to Ceylon in 1909?—A. Yes. 40
Q. How old were you then?—A. 22.
Q. You came out as an assistant to Whiteaway's?—A. Yes.
Q. In charge of which Department?—A. The shoe department.
Q. What salary did you receive?—A. A small salary as far as I remember Rs. 175/-.

Q. You lived on that salary till 1922?—A. Yes.

Q. What did you draw when you left them in 1912?—A. It would not have been very much. It would be Rs. 75/- or Rs. 100/- more.

Q. You say it would be about Rs. 250/-?—A. Yes.

Q. You were then unmarried?—A. Yes.

Q. You joined Smith Campbell's at the end of that period?—A. I went back to England and I returned to Smith Campbell in 1913 as a salaried assistant. I think I got Rs. 450/- from them. I continued with them for 8 years still receiving a salary. When I left them I was drawing a salary in the neighbourhood of Rs. 600/-. In the interval I had been to Australia on leave. I have one child. It would not be correct to say that when I came to Ceylon I had no capital. I had a capital of £500/- savings. I was earning more money in England before I came out. I was first in the shoe business when I was a boy of 12 and then I came to a general store in London as a salesman. I got £5/- a week and also commission. I also had money given to me by my people. I do not quite remember how much I got from my people. I got that money from time to time. My father was in business. He was in the shoe business. He was in a factory. He was in charge of a department in a factory. We were a large family of eight children. The
20 £500/- which I had when I came out represented partly savings and partly money given me by my parents. I did not bring it out with me when I left. It was left with my people. I got £500/- when I was at home at different times. I did not spend it. I got it out and I did not spend it all the time. I got it in appreciable amounts about £200/- and £300/- on the next occasion. I did not spend the money at the time but I spent it later. At the end of 1920 when I left Smith Campbells and I started on my own I had £1000/- saved. I had spent part of that £500/-. About £300/- had been spent out of that £700 of this amount were my savings in Ceylon and money earned on skin investments. I started the skin business in 1913 with Rs. 3,000/- or
30 Rs. 4,000/-. I got that from my savings. It was part of the £500/-. I did quite a nice business in skins. I can not say what my average profit was. I could not give any details. The £1000/- I had in 1920 represented my savings partly from my salary and partly from what I got from home. From 1913 I had a wife and a child and I kept house in Colombo. In 1920 when I started business on my own the £1000/- was the only capital I had. The whole of that £1000/- was contained in the skin business. The shoe business was then financed by Julian Stevens.

My wife brought some money into the business. When we married she had a few hundred pounds. That went into the skin business. That
40 would be over and above the £1,000/-. When I started the business of my own in 1930 under the name of Kennedy & Co., I got out stock to the amount of £10,000/- and I made payment by exporting skins.

In adjusting accounts on my general business those payments appearing in the statement to our London Office were shown as skin payments. For this business when I was exporting skins for these amounts with the takings I was purchasing skins. We had private skins. When I sent those skins home I had a buyer on the other side and I sent him the invoice and

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the money was paid to our account. The skins business which started in 1913 was confined to purchasing local skins sometimes and sometimes tanned skins and I stored them. Sometimes I sold them locally to passengers going through. I began to export first in 1920. 1921 was a early year for the business. My sister came out in 1921 as far as I remember. She came to stay with me and to help me. She had a capital of her own about £300. She is still in Ceylon. So far as I know she is not giving evidence. She was paid a salary of Rs. 250 to Rs. 300 a month. I do not remember exactly that this amount is shown in the general item of wages. She worked right up to the time of the fire. She was in the gentlemen's section and also in the ladies' section and in different places where she was wanted. She was to give a hand generally. She had a little experience in business. From 1921 she paid out her Rs. 250 to be invested by me in the skin business except what she took out for her clothing and house expenses. It was not necessary to keep an account for her of what monies of hers as it was going into the business. I had an account but I am not sure where it is. It was a private matter between ourselves. We were dealing with a family concern and it was a matter of family fellowship. It was not a private business. She was going to put in her monies and she knew it was going to be safe. It was not a question of allowing it to accumulate. I was not settled on what basis the Rs. 250 was going to be brought into the business. Between 1921 and now she has been to England I think once or twice. She went to Australia once and once to England. The money for her passage came out of the business and it appears in the passage accounts. Her expenses were paid for here. That would appear in the passage account. During those periods she received a salary. It was not a question of basis at all. A remittance was sent to her from my private bank account. All my money was in the store and in the business and I could draw it from the business. All drawings would come from the capital of the business. I cannot remember in what year she went to England. She went after 1929. I could not quite say when she went to Australia. It was before that. She has not been out of Ceylon for about 4 or 5 years I think.

The private stock of skins was purchased first out of the 1000/- I had saved and secondly out of the Miss Kennedy's salary made to me. That was not all. Also from my drawings. I think that it was made clear. What I drew in excess of my drawings for expenses. That would appear in the balance sheets. My books of account represent a true state of the business. The actual profits were shown.

Q. What would you understand by excess profits?—*A.* We were making more than usual profits. I never used that expression in connection with the shoe business.

Q. Profits whether unusual or not so far as they came in the shoe business appear in the balance sheets and in the accounts?—*A.* Yes.

Q. And they went back into that business or you took it out of the shoe business or are the drawings against you personally?—*A.* Yes.

Q. You have heard Mr. Ross' evidence as to how you accumulated the private stocks of skins. (Mr. Ross' evidence is read to the witness). "The accused told me that a considerable quantity of skins had been purchased in previous years. The profits were good with what he called excess profits and he looked on these purchases as a sort of investment."

Q. Did you tell Mr. Ross that that you purchased this private stock of skins from what you called excess stocks of skins?—A. From skins.

Q. You remember the cross-examination of Mr. Watkins?—A. Yes.

I took the profits from the drawings. I may have told Mr. Ross that a good portion of the skins were purchased from my sister's money. I was not in a fit state to go into details. I was not a fit man. I do not think he was particularly keen to find out about it. I told him a good proportion of the skins were bought from my sister's money. Mr. Ross may have forgotten to recall what I told him. As far as I remember it was rough notes that Mr. Ross made. I must have told him that it represented skins purchased out of my sister's money. Mr. Ross did not question my sister. I expect I did tell him I had £1000/- in the skin business. I told him I started the business from a very early date. He said it was quite possible that we had stocks but he wanted proof of it.

Q. I suggest to you that you did not give Mr. Ross the present explanation as to how you came to accumulate the stocks?—A. I did.

(Evidence on page 40 (Record) read out to the witness.) "He told me when trade was good he did not wish to show profits too high. We were dealing with skins. We were accumulating it from skins. If my drawings were high it would come into the business.

2nd October, 1934.

Accused present—Counsel as before.

ALEXANDER KENNEDY. Sworn.

CROSS-EXAMINATION—(continued).

Q. The accused told me that a considerable quantity of skins had been purchased the previous year. The profits were good with what he called excess profits and he looked on these as a form of investment?—A. (—).

Q. Mr. Kennedy the firm of Kennedy & Co. was your sole business. You were the sole proprietor?—A. Yes.

Q. Kennedy & Co. was merely a business name?—A. Yes.

Q. It was not a partnership or a joint stock Company?—A. No.

Q. I suggest to you that therefore the difference between Mr. Kennedy and Kennedy & Co. would be more artificial than real?—A. Yes.

Q. What reason was there then for you to deal with what you called private skins, apart from the business of Kennedy & Co.?—A. At what time do you mean.

Q. After 1920?—A. In order to work up the skin business to any great extent. The stocks were of great value. We were dealing in skins and in cocoanuts. The animals have got to be killed and the skins tanned. The real position is that if these things appeared in the balance sheets I would

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have been over estimating their value. I preferred to keep the stocks of skins separate as a backing for the business all through.

Q. Campbell Bros. Carters, your agents, were they aware you were doing a separate business in skins?—A. Yes.

Q. Right through and in the early stages of your shoe business, in all events you paid them by skins?—A. Yes.

Q. The only reason I suggest to you to keep them apart was to keep them from the knowledge of your agents?—A. I wanted to keep them more as a support, by keeping it out I wanted to keep my skins more as a support to the business.

Q. In 1931 you opened the No. 3 account with the National Bank for skins?—A. Yes. The skins which I sold came into Campbell Bros. Carters account. The purchases would come into Kennedy & Co.'s accounts. I started Kennedy & Co. in 1930 but I was dealing in skins before that. From 1920 and until I opened a separate skin account I had a separate personal account as well. I was buying the skins with Kennedy & Co.'s money and I had to replace it in the accounts by replacing the stocks again with skins I got from the tannery. We do not get much out by draft but by T.T. I would credit my stock account with the equivalent value of skins.

Q. You say that if a particular parcel of skins from your private stock was sold the proceeds would go in the first instance to the credit of Kennedy & Co.?—A. Yes.

Q. Do I understand you to say that you adjusted your accounts by putting skins into your private stock of skins?—A. —.

Q. Would your books show that you had been buying skins with the company's monies to replace your private stock?—A. My rough books will. My books which I kept for dealing with dealers.

Q. That £100 goes out to replace stocks of private skins. Would there be anything in Kennedy's books to show that £100 stock of skins?—
A. I looked upon them as a reserve stock.

Q. In 1920 you started the business of Kennedy & Co., and the business was that of shoe dealers?—A. Yes.

Q. You also said that you had a private stock of skins which you had accumulated as a private part of your business?—A. Yes.

Q. During that period the only extent to which Kennedy & Co. dealt in skins was to purchase skins to pay Campbell Bros.?—A. Not altogether.

Q. Who was financing you?—A. We were buying and selling. There was no separate account opened for the skins. Those dealings appear in my books.

Q. In 1931 you opened a separate account for skins?—A. Yes.

Q. The bank gave you a special over draft for the purpose of your skin business?—A. That was a consignment stock really.

Q. That is to say you got money from them to purchase skins?—
A. Yes.

Q. In 1930 was what you stock of private skins roughly about?—
A. It was very much like what it is today.

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- Q. You had about 98,600/- worth of skins?—A. 85,000/- of skins.
- Q. There are different types of skins. You might have been full up with one tannage and doing no business in it?—A. There was no demand for the whole of the 98,000/- stock of skins in 1931. We opened up the No. 2 account for the different types of skins and a different class of business.
- Q. You say that the skins which were financed by the 2nd account were despatched on consignment?—A. Yes.
- 10 Q. What was there to prevent your skins being despatched in the same way?—A. —
- Q. The only reason why you require this new credit was that there was no demand for the type of tannage in your business?—A. Yes.
- Q. (Shown the balance sheet for 1931.) The over draft on 2 account at the end of the year was 39,729/-. Is that right?—A. Yes.
- Q. Then turning to the skin account the stock of skins which you carried forward that year was only 27535?—A. Yes.
- Q. So that your overdraft on skins was not covered by actual skins in stock at the end of that year?—A. I may have written down the stuff at the time. Very often things are unsaleable.
- 20 Q. That would be the value of the stock at the end of the year. If against that stock you owed the bank 39,000/- it would be correct to say that your overdraft was not covered by the stock of skins. Is that right?—A. According to the figures they are right.
- Q. Turning to the year 1932 your overdraft at the end of the year was Rs. 60,118/-?—A. Yes.
- Q. The amount which you carried forward in the way of skins stock at the end of the year was Rs. 52,979/-?—A. Yes.
- Q. There again your overdraft is not covered by the stock of skins?—A. Yes.
- 30 Q. During that period you say that you had a private stock of skins?—A. Yes.
- Q. Did you not consider the necessity of bringing into Kennedy & Co.'s business any portion of the skins to cover the deficit?—A. I thought I would do it at any time.
- Q. In 1931 and 1932 at all events you were doing a separate skin business which was shown separately in Kennedy & Co.'s accounts?—A. Yes. We had this account on the consignment basis. I really looked upon it as one.
- Q. Did you have any profits in these two years on your skin business?—A. Yes.
- 40 Q. Look at your skin trading account. For 1931 was it a profit?—A. There was a gross profit there of 44,000/-.
- Q. Did you use any of those profits to buy skins?—A. It is difficult to say. It went into the general business. It was all taken as one.
- Q. And that going into the general business created a loss of Rs. 5000/-?—A. Yes.

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Q. You had no profits in 1931 to purchase skins with?—A. We were dealing in skins and shoes and they go hand in hand.

Q. Now look at 1932. Look at your skin trading account?—A. There was a profit of 7259/-.

Q. That again was carried into the general profit and loss account and there was a loss that year of Rs. 28,000/-?—A. Yes.

Q. So that here too you had no profits to purchase skins with?—A. No.

Q. I understand you to say that at the end of 1930 you had a private stock of skins?—A. There was no demand for that type of skins.

Q. In that state would that stock just remain with you?—A. Yes.

Q. You did no business?—A. No. It remained with me up to the time of the fire.

Q. That is the stock you laid in before 1930?—A. It has been accumulated. It is not the same stock which appeared year after year.

Q. Do skins deteriorate?—A. Not if they are properly tanned.

Q. No deterioration at all?—A. No.

Q. How long does it take for fashions to change?—A. We might make more in one month than we might do for years.

Q. I think the evidence is that before 1930 the whole business showed a profit?—A. Yes.

Q. Did you utilize any portion of those profits to purchase private skins?—A. Yes. As much out of my drawings.

Q. You did not utilize any portion of the profits other than drawing to purchase skins for the Kennedy & Co's. Business?—A. No.

Q. Then you by some means or other show actual profits than you had?—A. I do not follow you.

Q. There has been suggestion that you showed less profits than you had and spent those in the purchase of skins?—A. . . .

Q. Did you say that by writing down stocks you showed less profits than you actually had?—A. Yes.

Q. That money you utilized in the purchase of skins?—A. It is difficult to say.

Q. You say that by writing down stocks you showed less profits than you actually had?—A. Yes.

Q. That enabled you to increase your private stock of skins?—A. Yes.

Q. What actual cash came into your hands as a result of that?—A. Not cash we were dealing in skins. I reduced the value of the cost of skins. We took some of the skins that were in Kennedy & Co's. account and put it into reserve and that was rendered possible by marking down my stocks.

Q. At that time were the skin stocks kept entirely in your house?—A. They were kept in our shop and a few in the house. I made a note of it in the skin ledger which has been lost in the fire.

Q. What were your average expenses, your personal expenses, let us take the years 1920—1930 when you were doing your private business?—A. That was inside Rs. 1000/- a month.

Q. Such demands from your sister as you had to meet?—A. I do not understand.

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Q. You said your sister lived at your house and her expenses were drawn out from the business?—A. Rs. 1000/- was the average spent by me. I could not give the figures. I could not trust my memory for that. At the date of the fire I possessed two cars; one a Mercedes Benz and the other a Langonda. I purchased the Mercedes Benz on the firm's account and the other car was purchased out of my personal funds. I bought that car about 10 years ago, I suppose. I do not remember what I paid. I paid about Rs. 3 to 4000/-. Not very much. It has done about 100,000 miles. I have a son who is in Scotland, being educated there. He was up in India before that. I had to meet his expenses too from drawings. For the last 2 years he has not cost me anything. Before that he cost me about £100 a year at the outside limit. I went to England in January 1933. Before I left for England I saw Mr. Graham. I discussed my general financial position at the time with him. Mr. Graham wanted me to reduce my No. 1 account to $\frac{1}{2}$ a lakh. I accept Mr. Graham's evidence on that point. He thought that $\frac{1}{2}$ a lakh was a sufficient risk for this line of business. I also undertook to liquidate the No. 2 account which then stood at about 60,000 by the sale of skins then in England.

Q. Mr. Graham says that you gave him definitely the impression that you had in England skins to cover that overdraft. Do you agree?—A. I was not certain whether I had skins to cover that overdraft quite distinct from the skins privately purchased by me.

(Shewn P20 (4) letter of the 5th April.) This letter draw attention to the state of your No. 1 account which stood at 94,000 and your No. 2 account which stood at 57,000?—A. I was in England at this time. The reply is letter P85 (1) in which Kennedy & Co. say Have cabled Mr. Kennedy regarding same I remember receiving that cable. I think I had seen Mr. Lawrence several times before that. Mr. Lawrence's position was that he was prepared to let me have a lakh but that was not based on the condition that it would be reduced to $\frac{1}{2}$ a lakh, by the end of the year.

Q. That increase of credit to a lakh did not represent very much to you because you had really drawn to the extent of Rs. 94,000?—A. It was all I asked.

Q. Then shortly after that there was the credit of Campbell Bros. That is to say they opened a credit of 10,000 for you. The effect of that credit merely amounts to this that they agreed to let you export skins to the value of 10,000/- and to allow you to draw to 80% of their value?—A. Yes.

Q. The only buying advantage was the collateral No. 3 account?—A. That was opened in conjunction.

Q. The No. 3 account was a facility given you by the National Bank and not by Campbell Bros.?—A. It was on Campbell Bros. agreeing with the bank. They acted jointly with the bank in these things. Campbell Bros. may have guaranteed the amount. I do not know. They may have guaranteed the bank for the temporary overdraft for the skins. The overdraft was 10,000/-.

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No. 9.
Evidence for
Defence.

(a)
Alexander
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Cross-exa-
mination—
continued.

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No. 9.
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(a)
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Cross-exa-
mination—
continued.

Q. Suppose at a certain date your account stood at Rs. 6000/-. You exported Rs. 10,000/- worth of skins and the 80% came to Rs. 10,000/- they would only pay you a difference of Rs. 4000/-?—A. They credited me with the actual amount I shipped. They credited the 80% to the No. 3 account the 80% goes in reduction of the overdraft and I drew again.

Q. The value of that credit opened by Campbell Bros. depends entirely on your having skins to export?—A. I had to buy skins. The money was advanced to buy them. If I did not buy skins I was not keeping trust.

I had to get fresh capital or turn my stock out. To get fresh capital would have meant incurring another liability. I was not allowed to draw over $\frac{1}{2}$ a lakh. 10

Q. Their letters suggest that they would not allow you to draw over one lakh in any circumstances. Let us suppose they mean what they say?—A. If I wanted to get much more out of that it was a question of reducing my stock.

Q. As a matter of fact you had bills maturing shortly after that with Campbell Bros?—A. Yes. I got extensions for those bills which I made over to them.

Q. If you met those bills it would not have necessarily meant an increase on the lakh?—A. No. I would have a cheap sale and get money. 20

Q. I suggest to you that you were not able to meet their bills and you got them extended till December?—A. I could have made other arrangements as I was at home.

Q. Arrangements with Campbell Bros. or with the Bank?—A. With Campbell Bros.

(The witness is handed K1). (Shown the telegram K1 (6)). This is a telegram sent to Campbell Bros. on the 2nd September. I had bills drawn too close together.

Q. They replied by letter K1 (4). You received that letter?—A. Yes.

That letter reads . . . We thank you for your cable of the 2nd September . . . as far as you have been able to map this out in advance . . . 30

Q. That letter I suggest showed that your agents were surprised that you should have wanted these bills extended. Is that correct. Further they were not prepared to accept any indents until they knew what your future program was. That is correct?—A. Until we met these things.

Q. That letter of the 5th September must have reached you about the 22nd?—A. I suppose so. I replied to that letter by letter P85 (7) of the 7th July.

I must have replied to K1 (4) I have not seen these papers. I do not know what is in them. I had arrangements with them regarding the indents. That letter dated the 5th September must have been received by me on the 23rd September (Shown P20 (15)). This is dated the 11th July. I was in the Island then. The first paragraph refers to my promise to reduce the overdraft on the No. 1 account to Rs. 50,000/- by the end of September. I must have called on him I expect. There is no reply here. I must have called on him. I cannot remember whether I replied by 40

letter. I did not reply to P20 (15) on receipt of it. I received P20 (16) on the 15th July.

Q. Look at P84 (8). That is a letter of the same date in which they say "We shall be glad if you will send us a statement of skins in England." Practically the same thing?—A. Yes. I did not reply to that but I called on the 18th P41 (1) is another letter of the 18th August from the Bank "With reference to your call to-day we note that the overdraft on the No. 2 account would be liquidated by the middle of next month . . ."

10 Q. It was on the 18th August that you chose to inform Mr. Graham that part of the skins were still here?—A. I do not know whether he misunderstood me before I went home.

Q. More than a month after you returned from England you allowed Mr. Graham to be under this wrong impression corrected on the 18th August because his letter indicated clearly that he was under the impression?—A. I have looked at the letter of the 15th August. In that letter he calls for a statement of skins in Britain for realisation?

It is very difficult to say. We had to wait and see what things were sold in England. There were skins sold when I was leaving.

20 Q. For more than a month you did not correct Mr. Graham's wrong impression and you did that by calling on the 18th August. I suggest to you that you deliberately did not reply to his letter but you chose to go and see him personally?—A. I think conversations clear up matters better than writing.

Q. Categorical correction of a wrong impression I put it to you that Mr. Graham did not take the precaution of writing on the 18th August? He had rung me on the telephone and asked me to come and see him on business. I think I must have waited for the mails for particulars. I had not the full particulars. I knew how much had been sent. I did not know how much had been realised.

30 Q. He wanted a statement of skins in England and quite apart from sales waiting realisation? (No answer).

Q. I suggest to you Mr. Kennedy that you deliberately misled Mr. Graham when you saw him in 1933 and that you had not the courage to put it in writing to correct that wrong impression?—A.

40 Q. (Shewn telegram P41.) That telegram is dated the 26th August 1932. On the previous page of that file (P41) (43) is a copy of the telegram received from Campbell Bros. 25/8/33. That telegram reads "View with anxiety proposed new lease presumably involving heavy expenditure." This is a copy of the cable?—A. I receive the telegram from Campbell Bros. in those terms.

Q. Is it correct to state that you replied to that by cable of the 26th August P66?—A. Yes.

Q. You say there "Caroons booked. We control stocks from suppliers not financed by us; tannage suitable winter trade shipment. September

Q. These entries correspond with the first three T.C. items?

"Keep offer open till middle October. Regarding lease new facilities expected £8000 sterling.

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Cross-exa-
mination—
continued.

Q. It was suggested that you hoped to reduce your stocks by £8000/. That was a pious wish. You were under no obligation to tell Campbell Bros. that you would reduce your stocks by any figures or at all?—A. It was only to say how things stood.

Q. I suggest to you that it is incorrect because in the cable of the 25th August Campbell Bros. say “view with anxiety proposed new lease presumably involving heavy expenditure” cannot consider extended facilities until settlement reached with Bank “and stocks heavily reduced.” On 25th August your agents tell you that they cannot give you further facilities until your stocks are heavily reduced. You cabled the next day and say you hoped to do that by £8000/-?—A. It was not a definite undertaking. There was no need to give that amount. It is just to get them an idea of what we hoped to do. 10

Q. The suggestion I make to you is that by that telegram of the 26th August P66 you told your agents that you would reduce your stocks by £8000/- as to get further extended facilities from them?—A. It was merely to give them an idea of what I was doing.

Q. They were under the impression that you were going to get new stocks to fill the whole building?—A. My statement that you would reduce your stocks by £8000/- was a direct reply to their statement that no extended facilities could be given until the stocks were heavily reduced. That was a reply to a letter. I got letter K1 (4). 20

Q. To complete that telegram you say “we control stocks from suppliers not financed by us” and you go on to refer to certain items you offered. These are the first three items in P42?—A. Yes.

Q. By “us” referred to Campbell Bros. and not Kennedy & Co.

Q. Did Campbell Bros finance your business?—A. They opened credits. That is financing us.

Q. Did you have a penny from Campbell Bros. to purchase skins?—A. It was financed by them because we could not have got the 10,000/- from the National Bank unless the 10,000/- credit had been opened for us. The only finance we had from Campbell Bros was their guarantee of our No. 3 account. 30

Q. The only finance was their actual guarantee?—A. It was much the same as far as I was concerned.

Q. Look at the first three items which you say correspond to the items in the cable?—A. Yes.

Q. Those I understand you to say are skins which you hoped to have dyed or recoloured?—A. Yes.

Q. Skins which you had in stock for a considerable time you could not have therefore bought with the proceeds of the No. 3 account?—A. No. 40

Q. They therefore could not have been bought out of proceeds financed by Campbell Bros?—A. Yes.

Q. Your explanation of that expression in your examination in chief cannot be right? I suggest that the real meaning of this expression is “consignment stocks with Kennedy & Co. against possible sales.” Is that right?—A. Yes.

Q. Those words ordinarily meant that those were skins left with Kennedy & Co. for possible sale by the Wewaladua Tanneries?—A. Yes.

Q. On the face of it it will mean that?—A. Yes.

Q. If that is the meaning then it would be correct to say that these are stocks from suppliers not financed by us, by us meaning not Kennedy & Co?—A. Yes.

Q. I suggest that when you spoke to “ We control stocks from suppliers not financed by us you referred to Kennedy & Co. ?

Q. I suggest with that document behind you showing that you had this amount of stocks belonging to Wewaladua Tanneries against possible sale you then wired to Campbell Bros saying that you controlled stocks not financed by us. Do you understand my question?—A. I am afraid I do not.

I must have sent particulars of skins in P66 to Campbell Bros and Carter. I have the cable P66. It is always followed by a letter. In sending them details of the skins I sent them a copy of P32. The measurements of the skins are in P32. The fuller details appear in P32 than in the telegram. It is not always necessary to give details.

Q. When Campbell Bros & Carter got P32 could they have formed any conclusion that they were skins held by you for sale for the Wewaladuwa Tanneries?—A. From outside partly.

Q. Is it possible that you wanted Campbell Bros to get an idea that these skins were not skins you had bought but which you held for sale because you did not want them to know that you were buying them outside their finance?—A. No.

Q. In that telegram you say “ We control stocks from suppliers not financed by us. Suitable tannage winter trade. The date of the telegram is 26th August. Your evidence yesterday is that all the T.C. items were useless unless they were specially dyed or coloured and that S. A. Perera was experimenting on them. These items which together are specified you were going to give Perera to be specially coloured.

On the 26th August you cabled to Campbell Bros “ tannage suitable Winter trade?—A. The tannage of these items are suitable for the winter trade but they were not finished; they were in a semi-finished condition. Unpolished snake skin means snake skins in an unfinished condition.

Q. My point is this. On the date of the telegram you represented to Campbell Bros that these were of the tannage suitable for the winter trade but your evidence yesterday was that the whole of items in P32 was a lot of skins which were unexportable because they had not the right colouring and Perera was experimenting to produce the right colour when the fire occurred?—A. Yes. When I offered these to London I knew what they represented. Fawn was unsaleable at the time. It was alright for the winter trade. If it was not darked by dye Campbell Bros would have had to get them dyed for the Winter trade. I was dealing with people who knew skins. I did not say it was a finished tannage. They were not suitable if not polished.

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Cross-exa-
mination—
continued.

Q. On the other hand your evidence yesterday was that all these skins were not suitable for export unless a particular colour was secured and you were trying to secure that colour?—A. Yes.

Q. Your earlier evidence was that these skins were useless and that there was no demand for them. That is why you opened the No. 3 account for skins?—A. Yes.

The experiments of Perera had not succeeded but if in the meantime I had an offer from home I would not keep them. I cannot say if I have a letter in which I sent Campbell Bros a copy of P32.

Q. P28 (1) of the 24th August draws your attention to the fact that No. 3 account is overdrawn and asks you to refrain from drawing in excess of that amount?—A. I do not suppose I replied. 10

Q. The next letter is 28th August P28 (2) in which they draw attention to the fact that No. 1 account has exceeded one lakh. That I suggest to you was a serious threat if they refused to honour your maturing bills?—A. It would be a serious matter but it would not harm me. I had not the money to meet them without going beyond the bank limit.

Q. That letter is of the 30th August you say. When you received that letter I suggest to you that you wired (K1 (6)) to Campbell Bros on the 2nd September asking for extension of time?—A. That is right. 20

Q. Then it was that they wrote K1 (4) saying that they did not understand why you wanted an extension?

Q. Look at P28 (5). This is a letter from the bank on the 26th September in which they draw your attention to your promise to liquidate No. 2 account by the end of the month?—A. Yes.

Q. Did you have skins then which you could export against the No 2. account?—A. We had not them ready but they were almost ready.

Q. Did you ship any next week?—A. No.

Q. Your evidence is that there were some parcels of skins all parcelled and ready for export. Why did you not export them when they were pressing you to liquidate the account?—A. They were not ready for export. This particular lot was ready. It was against No. 2 account. It was a special tannage of crocodile and pythons and rings. I was trying to get them all ready to save freight. 30

Q. You remember on that point you gave skins to Perera to be brushed up?—A. Yes.

Q. Did all that appear on page 2 of P32?—A. I could not get them all brushed up. I do not remember Perera's evidence on the point. He may have returned part of them but I do not think he returned all of them.

He returned them in July and at this date he must have had them all brushed up and ready?—A. I cannot remember whether they were ready. We may have waited for certain sizes. 40

Q. You told us that they had to be brushed up?—A. We could not have them all ready. In September, I was busy on other jobs and I could not attend to it. I do not think that was the main reason.

Q. You remember the cable where you were offering the particular lot? Do you recall receiving this letter P41 (29). This is in the file already produced?—A. Yes.

Q. That is a letter dated the 23rd August and therefore must have reached you about the middle of September?—A. Yes.

Q. “We have been in touch with Mr. Lawrence again and as a result of further correspondence which he has exchanged with Colombo the position with the bank is becoming acute as they have decided that until No. 2 account is clearly. . . . You were at this stage asking that the limit of 10,000/- on No. 3 account be raised?—A. Yes. It was not enough.

Q. You actually opened your Chartered Bank account in early September?—A. I believe so. That was as a result of my personal interview with Mr. Wemyss.

Q. I think the actual position is that by the time you received this letter you must have opened your account with the Chartered Bank?—A. There may have been a cable before that.

Q. Is it correct that you did not let the National Bank know that you were negotiating with the Chartered Bank for a separate credit?—A. I do not think so. It was not any of their business.

Q. You admit that you did not inform the National Bank?—A. Not to my knowledge. They knew afterwards.

(Shewn P64.) In that letter to the Chartered Bank in the first paragraph you said you had substantial orders on hand. In most instances these have got to be tanned in Ceylon before shipment.....?—A. I did not ask it on that basis but that was one of the possibilities I held out.

Q. You said “For several years past we have had a tannery under our control which is a few miles out of Colombo.....?—A. I have S. A. Perera’s evidence. I had no financial interest in the tannery at all. When I wrote to the Chartered Bank I wrote them to make them understand that I had any control over them. I meant control of service. If I buy the machinery and buy his stuff what else could I do. I would direct the operation of the tannery. I control the stuff and bought his stuff and told him what to do what more could I do. I was practically the only customer. We were dealing with one tannery. There were only a very few tanneries to deal with. I have been home through various tanneries. I drew up plans for improving the tannery. Those have been burnt. I do not think Perera saw that plan. He may have seen it. He may have forgotten about these schemes. I did not tell him in detail until I was able to proceed with the arrangements. My statement that I was drawing up plans for a more up to date building and more modern machinery is not a lie. In this case there were 50,000/- to 100,000/- skins to be tanned and I do not know how they were going to be tanned unless arrangements were made for them. I could find the money for the machinery and the building from home—from Campbell Bros I was just about to liquidate the No. 2 account. I had the stuff here to go forward to liquidate that amount. I was dealing with Perera. He has a small tannery. He has been doing his best with restrictions in his way. I think he would have

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been very pleased to fall in line with my schemes. He hasn't got a very good building.

Q. These skins which you were going to give Perera to tan are skins which you hoped to import from Java and export? Yes. It is correct that the majority of the skins from Java purchases went direct to England. The need for an extended tanners never arose. This was a continual business. The idea was to give the Chartered Bank a sensible outline of what I was going to do.

Q. Your were deliberately writing up this tannery in the sense of making up an exaggerated claim?—No.

Q. I say deliberately because you wanted the Chartered Bank to understand that you had a tannery which was capable of tanning skins you imported from Java?—I didn't say I had a tannery. I told Mr. Wemys I had no tannery.

(Evidence on page 74 (Record)* of the Supreme Court Notes read out to the witness * "From what I have done for the tannery I think I had a managing interest in the Tannery." The question is a question of labour cost. They were Java purchase.

ALEXANDER KENNEDY.

CROSS-EXAMINATION (continued).

(Shown letter P64, dated 5th September to the Chartered Bank and reads para. on page 2.) Q. Were you referring there to the skins in P32—those T/C. items?—A. Yes, they were the entire T.C. items. At the date of this letter they had not been specially tanned in the manner indicated in the letter.

Q. I suggest to you that the statement in there is not correct?—A. What I wanted to convey is that the tannage was suitable for the winter and spring trade. They had not been specially tanned for the particular time—at the date of this letter they had not been tanned. I would have done them in another colour but it would not have been suitable for that purpose. I was trying to get a special colour. Until I got the special colour they would not fetch a high price. I had not a high enough market for them. My statement that they were specially tanned for the winter and spring trade is not quite correct. That is not what I meant to convey. I heard the evidence of Mr. Graham.

Q. His lien covered all your skins kept in the base up to a certain figure?—A. Yes.

Q. The lien was not limited to a particular lot of skins? It may not have been mentioned in the lien. If he wanted to seize the skins for the lien he could have seized all my skins in the basement and got them sold.

Q. You say that these are entirely free from any lien. I suggest that you are asking the Chartered Bank to infer that you had no facilities for your business from any other Bank —A. No. (To COURT: That is over this particular lot of skins, not over the whole stock in store.)

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Q. As regards the Java business you definitely pledged yourself to the position that you asked Mr. Graham to finance and he said he could not because he had no branch?—A. Yes, he may have forgotten it.

Q. You made certain shipments of skins after July?—A. Yes.

Q. And as regards the particular shipment, you asked the Bank to credit the proceeds to No. 3 A/c?—A. Yes; where I asked the Bank to credit proceeds to No. 3 A/c that was on skins bought on No. 3 money; in the case of No. 2 A/c. I would ask them to credit No. 2 A/c. where the skins were bought out of No. 2 A/c. (Shown letter P41) I received that letter from Messrs. Campbell Bros. (Reads letter). Apparently there was a demand for skins.

Q. To which tannery were you referring there?—A. I was not referring—they were writing the letter to me. It is used in a loose sense, skins in course of preparation being referred to as “in the tannery.” I do not remember having used the words “Tannery on this side.” If I referred to a “Tannery” I was referring to No. 2 skins. I had that part of skins cleaned up by S. A. Perera. When I was in England there was no skins of mine in the tannery; they were in course of preparation. I did not use the word “tannery”; they were using the word “tannery”; goods in preparation were referred to as in the tannery.

Q. I suggest to you that you represented falsely to Mr. Lawrence that the difference was covered by some old skins of yours which were kept in a tannery?—A. No.

(Reads further from the letter). Q. What do you mean by “free skins at the tannery?”—A. Skins bought at the tannery and not shipped—that is skins bought by me and kept at the tannery. (To COURT: Campbell Bros. know perfectly what we are doing. Q. They are able to know a good deal of your business because your balance sheet is sent to them in £.s.d.?—A. Yes. (Reads further from the letter). Q. Therefore I suggest that Campbell Bros. are telling you that you had not appraised the local Managers of your position?—A. That is merely a misunderstanding on the part of Mr. Graham. (To COURT: Is that disclosure of yours to Mr. Graham as a result of the advice by Campbell Bros. to come to the open and disclose your position?—A. No.)

Q. But you will allow this; that Graham was under the impression that the security for the overdraft was in London?—A. Yes, but Campbell Bros. knew otherwise. That is not a guess; it is a fact.

Q. When you saw Mr. Graham on the 18th, you must have received this letter?—A. I expect I must have received it.

(Shown P41, page 53). Q. Is that letter of the 23rd August a reply to the letter I previously gave you?—A. Yes. (Reads letter . . . “the skins are in the tanner for final touch up, etc.”)—A. I used that term in the incomplete statement I used that word in a loose form.

Q. On the 23rd August when you wrote that letter had you any skins for final touch up to a tannery?—A. I could not say.

Q. Perera’s evidence on that point is that you have him certain skins for brushing and he kept them only for 2 or 3 days—you cannot contradict

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that?—A. I do not think his dates were correct. I cannot remember if he gave me back as quick as in 3 days. I cannot refer to any skins apart from that. (Reads further from the letter). This letter is a reply to the letter of 1st August. In the letter of the 1st August, Campbell Bros. advised me to come out to the open with the Colombo Manager and let them know what the short fall was.

Q. You saw him on the 18th August and gave your explanation orally?—A. I do not remember the definite date.

Q. 5 days later you wrote to Campbell Bros. telling them that you have given your explanation and that Graham wants to know what skins were in London?—A. I said that all "talagoya" skins were in London.

By "grudge" I meant that it was a type of business that he was not accustomed to.

(To COURT: Why was it not put to him what the misunderstanding was? If only talagoya skins had gone why should you not remember it?—A. I remember it: I think I put it to Mr. Graham. (Shown cable dated 22nd August. P41 (58)). read That telegram is from Campbell Bros. London (Reads Telegram). That is something which they wanted some information. My reply to that is on the same day—22nd August. (Reads telegram).

Q. What are those items you refer to—are those items identifiable on P39?—A. I cannot trace them all here—I can trace some.

Q. Can you trace any?—A. Yes.

Q. What are they?—A. That is B/5 here, No. 3 A/c. (Reads—"Black white ring lizard). Quantities are partly here—I have 1286 here. The balance must have been in preparation—being tanned.—Q. By whom?—A. Item 1286 is No. 3 A/c. The balance about 600, I cannot just at the moment identify it. I cannot say where the balance came from.

Q. Item 5000 Indian Talas?—A. I can identify that. Some of that is coming out of T/C. items.

Q. You say then that part of the 5000 Indian talas came from T/C. items?—A. May be. T/C. items were my private stock of skins.

Q. If the Rs. 100000/- was used to buy 5000 Indian talas, they could not be from T/C. Items? Can you possibly identify these items or were you drawing on your imagination?—A. I cannot make a definite answer.

Q. You cannot identify them. A. Yes.

Q. You cannot explain?—A. It is difficult at the moment. I cannot trace it. (Shown letter P 41-11). I got this by Air Mail from Campbell Bros. (Reads from Assuming etc., etc. . . . ripe for approaching the Bank again." That is right. (Reads letter).

Q. I suggest to you therefore that it is was all important to you to clear your No. 2 A/c. by making the promised shipment?—A. Yes, there is no great pressure.

Q. And up to the 29th September the promised September shipment had not gone forward?—A. I wanted to ship it altogether, that was the real delay. They were in my basement. They are not sent by parcel post because we had crocodiles included in it.

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Q. Did you intend holding a removal sale before moving to your new premises?—A. No, not before but after it. It all depends on what sort of place you are going to—if you are going to a small place you will have it at the former place and if to a bigger place you will have it at the latter place. (Reads letter). Q. They seem to have in mind a clearance sale before removal to reduce the stocks?—A. They themselves might have that view but not I. (To COURT: That depends on to what distance I am going and the space).

(Reads letter K1-4 We shall be interested to know what new Depts. you will be having etc., etc.") They seem to have in mind a clearance sale in your old premises and a removal sale in your new premises?—A. They might have had in their mind, because they are not familiar with local condition. I do not think I had a clearance sale before moving from the Bristol Building to the old Times Building. I cannot remember if I had a removal sale before moving from the old "Times" to the new "Times" Building. I think I had a sale in December so not when I moved. (Shown balance sheet for 1929).

Q. You had loans amounting to Rs. 82,408/53 from private parties?—A. Yes.

Q. Were those secured in any way?—A. No.

Q. On pro-notes?—A. In the case of the two these might be pro-notes. I paid 8 per cent. interest on those loans. The loans rose to Rs. 90,000/- the next year, and to Rs. 98,625/- in 1931. It rose a little more in 1932—98847/-. And at the date of the fire to Rs. 107,000/-.

Q. The amount of these loans went into the capital A/c. of your business.

A. Yes to my general A/c. All these went to the A/c. of Kennedy & Co.

Q. Would it be correct to say that no portion of those loans went into the purchase of skins?—A. It is difficult to say that. It did certainly to begin with.

Q. Did any part of it go to the purchase of skins before it went to Kennedy & Co.?—A. In the first instance it went to the credit of Kennedy & Co. and remained there.

All these creditors remained unpaid today. They have no security except what I have in my stock in trade. I heard that judgment had been entered against me in one but I have not received any notice of it. I had not given a power to confess judgment to anybody. I am not quite sure whether I gave a power of attorney to a proctor. Mrs. Fernando had obtained judgment. That was on a pro-note; that was since the fire.

Q. You have not been paying interest to your creditors in 1933?

In the one that judgment is supposed to have been taken interest have been paid up to date. Mrs. Fernando had been paid interest up to date. About Rs. 8000 is due as interest on the loan a/c. I have been paying interest up to the end of 1932; I have been delaying payment of interest in 1933, partly due to my being away and there was no demand. So far as the business was concerned. 1932 was a bad year for me. I had a nett loss of Rs. 28,000/-; 1933 was still bad. I had a nett loss of Rs. 35,000/- up to

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September. Not all but a part of it may have been considerably reduced in the remaining three months. My drawing from the business from 1929 was always less than Rs. 20,000/- a year. My expenses in Colombo was under Rs. 1000/- a month. In 1933 I went on furlough and that would cost me money. I might draw on capital a/c. on a matter of that kind. I drew on the London office what I required there. My drawings were Rs. 18475/- for those 9 months; that was little more than what I had here—I was travelling about. My furlough a/c for 1933 shows passage money Rs. 1577/-, the rest had come from my drawings. The previous leave in England was in 1930. I was away about the same time, 6 or 7 months. My cost of passage was debited to furlough a/c. and my expenses debited to my drawings. In 1930 my drawings were only Rs. 15000/-, that left very little for expenses here. When I went on furlough Mrs. Kennedy remained here looking after the business. I had drawn that Rs. 25,000/- not likely to have drawn Rs. 15000/- considering the furlough.

Q. As regards the sales in the last 3 months of the year compared to the previous 9 months in 1932, from 1st October to 31st December the amount credited to the Bank was 48883/- as against Rs. 88000/- credited during the first 9 months—I suggest to you that whatever class of sale you had it would not have been possible for you to make during the last three months of year a turnover of much more than half a lakh?—A. You are entirely out in the calculation—I could do quite comfortably £8000.

I heard Mr. Ross' evidence on the point, I know his evidence is based on the figures of the previous years.

Q. Had you any special reason to expect better figures in 1933 than in 1932?—A. Yes, I was moving into larger premises and was expecting better sales.

Q. Although you had more floor space in the Colombo Stores you had no windows at all to display your goods?—A. It is quite the opposite. Those windows were quite suitable for shoe displays. It was not constructed for that purpose but I could have turned them up; we could have done it very easily (Reads letters from Campbell Bros.). They were looking at the picture of the outside of the building; the windows I am referring to are glass windows along the main street—no outlay was necessary for a display—very small outlay, just about Rs. 100/- or less. I had no private resources. I put all my money into the business. I am not possessed of any immovable property. All my savings had been put into the business. Apart from our a/c at the National Bank. Mrs. Kennedy and I had a personal a/c. at the P. & O. Bank for convenience. I put in about Rs. 300/- into the P. & O. Bank for convenience—to pay local bills. The balance to my credit at the P. & O. Bank at the time of the fire was about Rs. 62/- in a good year it may be less. Apart from private money for skins, we had no ready money outside that. That was just a small a/c. I kept prior to the fire. I had that a/c at the P. & O. Bank for several years. I think we started with about Rs. 600/- or Rs. 700/-. It was only Rs. 62/- I had in the P. & O. Bank I had a local purchase journal. The book was with the Auditors.

Q. Did any local purchase skins go into the book?—A. I cannot be certain of that. I would not be surprised to hear that there are no such entries in that. So far as I am concerned the principal local purchases I made was skins. (To COURT: Local purchase was just odds and ends we might odds that we are short of—sundries I do not think skins purchased on No. 2 and No. 3 a/c would be shown in that journal: it never occurred me to put them in there. Apart from P39 I had an old ledger, about foolscap size—about that size (shown). I heard the evidence of Mr. Classen as regards the circumstances in which he came to write down P39.

10 Q. You copy out from the book in a piece of paper and give it to him to write this—P39?—Yes.

Q. Why did you begin that book P39?—A. It was more concise—grouping them together, so that I may have it in a concise form, as most of the orders received were by cable at the bungalow. The ordinary book was kept by me from time to time. Ordinarily it would afford proof of the purchase of skins by me. To me it was a book of the greatest value—one part of it is for goods received and another for goods despatched—in two sections. The total feet is given in P31. The make of it is given in the old ledger. That is the book of the greatest value. I had two safes—one in the
20 shop and one in the bungalow. I put the old ledger in the safes at times but at the date of the fire it was not in either safe. It was in the drawer of my desk. I did not put it into the safe as a rule; there was no room in fact in the safe. I consider the desk drawer a safe place for the old ledger. We could not put all our books in the iron safe. It never occurred me to put in this book (Shewn file marked K2). This is a file marked skin sales 1933. It looks like Classen's handwriting I cannot recall this file. Yes, I have seen this file. On the first page there is only one entry.

Q. You will agree that this file is of less value than the old skin stock book?—A. Yes.

30 Q. But you kept this in shop safe?—A. I do not know, they may have put it there; I did not instruct to put it in there. I did not put my book in there at all. The fact remains that this was in the shop safe whereas the old stock book was not in the safe.

Q. As a matter of fact there were a large number of books in your shop safe?—A. I do not know.

Q. There was a ledger?—A. Mr. Classen attends to that part of the work. The key is with me. I open and close it but I do not know what is in. As far as I could see it was pretty full and there was no space for the old ledger. It is quite possible that there was blank book.

40 Q. Shall I suggest that there was no such book at all?—A. You may suggest anything, but the fact is there was this book.

(To COURT: Except what the Auditors had, the other had been burned).

I carried P39 with me up and down for easy reference. P32 was found in the bungalow safe.

Q. Was there any reason why you should keep that in the safe?—A. That was a question of keeping all the papers together—We do not

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put papers all over the place—it is a matter of convenience. P39 was in attache case and on the date of the fire the attache case was in my safe in the bungalow.

Q. That attache case must have been taken out of the safe by the Police before it was sealed by the Police?—*A.* I do not know.

I put it in the safe when I went in for dinner. I believe it was handed to Mr. Watkins on the 4th by Mrs. Kennedy. The Police Sgt. said that he sealed the safe on the afternoon of the 30th. The file must have come out of the safe before it was sealed. (To COURT: When I came back after dinner I had the key with me. Mrs. Kennedy had taken it away). P32 was apparently not taken out of the case. I heard the evidence of S. A. Perera as regards the circumstances in which P32 came to be written. 10

Q. Do you agree with this: he says (Reads from p. 117 (Record)) that he had to get some money from you and he went to see you and that gave him a rough scribbling in your handwriting and asked him to copy it in his handwriting?—*A.* That is correct—I gave him a memorandum.

Q. He says that he asked you why you wanted and that you replied there are some goods that you bought from him and some from other trader and there is no mark and that you want it for your reference?—*A.* It is not very intelligible—I do not think he had got the whole thing. (To COURT: I spoke to Perera in English). I told Perera that this list of skins I had was in the fawn shade. I told him that it was a list of skins that I wanted done in a particular shade, they would finally go into his possession for tanning if he would give me the shade that I require. (To COURT: I told him write them down and get familiar with them. I wanted him to write it so that he may be impressed in his memory, not the method of doing, but what the skins were). I just thought that by writing it, it would get impressed in his memory. (To COURT: I have carbon paper to write it in duplicate and give him a copy, but he was there hanging about and waiting for cable information). S. A. Perera has not done clerical work for me before, not that I remember. I have a large staff. I would have got Classen to make copies. (To COURT: You could have made two copies and given one to Perera?—*A.* There is nothing except to get it into his memory. I might have given him a carbon copy to be kept by him. I kept it after it was written.) I am perfectly certain that I told Perera on that day this was a list of skin which I proposed to hand to him some near day for re-colouring. That is a thing which Perera cannot forget. I cannot explain why he does not remember it. This is headed “Wewalduwa Tannaries.” That is S. A. Perera’s handwriting. Perera says that every-thing in it came from the rough copy which I gave him. The name “Wewalduwa” was familiar to me but not the spelling. I am not certain whether I wrote “Wewalduwa Tannaries.” I was not sure of getting the spelling right—I cannot pronounce it correct. I had dealt with him for about 8 years. He was one of my biggest suppliers. The name did not appear in any of his correspondence, very seldom. I did not get numerous letters from him with that letter head, I may have got one, but not numerous. I am not sure if the rough note I gave him had the words “Wewalduwa Tannaries” and that he wrote it. 20 30 40

Q. This contains "Wewalduwa Tannery" on it: the Point is this: to a man who does not look behind things does this convey any other meaning except that it was Wewalduwa Tannery stock?—*A.* It is possible. Probably it does.

(Shown file). This is a letter from S. A. Perera with the heading Wewalduwa Tanneries, but I did not know it was there.

(ADJOURNED AT 4.30 P.M.)

3rd October 1934

Accused present.

Counsel as before.

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ALEXANDER KENNEDY. Sworn.

CROSS-EXAMINATION (continued).

I wish to make a statement. When I was examined yesterday regarding my mortgages I had I was under the impression that it was the stocks referred to. There was a mortgage executed since the fire for the security of the stocks. That was not before the fire.

Q. I think it is correct that you used to be the last to leave the shop as a rule? Yes.

Q. Did you take the keys with you? Yes the key of the side door and
20 the safe keys.

Q. Were these the only keys you too? Yes.

Q. Ordinarily what were the keys you took with you? The key of the safe and the side door. The big plate glass door has no lock to it. There were two bolts.

Q. The chute door? Yes.

Q. Where is that key kept? In the draw of my desk.

Q. And the key of the draw? The draw is not locked.

Q. These keys I ordinarily take it you would keep in your attache case and take home. I would put them in my pocket.

Q. That attache case you would keep till you left the shop? As a rule.
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Q. On this day you took the attache case when you went for dinner? Yes.

Q. And left it at home? Yes. There was no need to bring it back again.

Q. What was inside the attache case besides P39? I can't remember. It depends on what I was working at. There would be the current papers.

Q. When you came after dinner did you look at any papers in the shop? I was working out the stock problem.

Q. Working out the stock? I was making arrangements for it.

Q. You were in the new shop making arrangements for the places where
40 the stocks would come? My question is where were the papers on which you were working? In the old shop I was there before dinner. I don't remember if I looked at any papers after dinner.

Q. (Shown P32.) That letter head which is pasted on it did you paste that? I don't think so. I don't remember.

Q. Do you know who pasted it? If I didn't paste it, Perera must have done it.

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Q. Did you ask Perera to paste a cutting from your letter head? I don't remember.

Q. Did you ask him to write Wewalduwa Tanneries on the cover of the file? I may have done so.

Q. You have heard Perera's evidence on the point that you did ask him to do that and he happened to have a note head and for convenience he cut it and pasted in on that file. What he said was this "The file cover of P32 belonged to accused I had not gone prepared to write this When the accused asked me to write Wewalduwa Tanneries I did not as I had a paper and cut and pasted it? I agree with that. 10

Q. There was no reason to ask Perera to write Wewalduwa Tanneries on the file? I think I have already stated that it was a name I couldn't remember very well, and I asked him to write it down so that looking at a glance I could see it related to—It had something to do with the tanneries.

Q. The words Wewalduwa Tanneries occur inside the file on page 1? I had not noticed it.

Q. You know that Perera's evidence is that the words Wewalduwa Tanneries occurred on the file you gave him? You would not deny that? No.

Q. Ordinarily speaking any person getting that file and finding Wewalduwa Tanneries pasted on it would be led to believe that the file was the property of the Tanneries? The list was my private list. 20

Q. Supposing that file came into the hands of Mr. Watkins and he sees the inscription Wewalduwa Tanneries on it would it be reasonable for him to suppose that it was the property of the Wewalduwa Tanneries? It would be.

Q. In fact would any other possibility suggest itself to anybody? It is a private list of our dealings. It is a list in the general course of business. It was simply a list of skins that were to be tanned.

Q. To be coloured? Yes.

Q. The file itself does not refer to the colour at all or that there would be any skins that would be quite to be coloured? I myself knew about. Perera knew what my intentions were. He had a copy that he made out. There was a copy I had given him and the particulars were taken from my copy. They were rough memoranda which were copied. Perera kept a rough memoranda. 30

Q. Are you sure he kept a rough memoranda? It was continually in his business but I don't remember seeing it again.

Q. Did you ask Perera to keep a rough note and to put it into the file and give you the file? I can't remember. We did not come to finality on the point. 40

Q. Did you tell Perera "I am asking you to copy this because I want you to get familiar with the skins? I did. When I sent him the skins I would have sent him P32.

Q. This much is clear. That you told Perera to prepare this and Perera knew that he would be concerned in some way with this lot of skins? I have no doubt of it at all.

(Evidence on page 118 (Record) read out to the witness).

"I tore the rough notes up as it was of no use to me"? He would be concerned till I took the stuff over. I can't account for his saying that it tore it off because it was of no use to him.

Q. If you look at P32 certain of the items are polished and certain of them are unpolished. Is that right? That is right.

Q. You proposed to have those skins recoloured? Yes.

Q. The whole lot of them? If necessary.

Q. If necessary means if you had orders? If Perera got the right shade.

10 Q. To get that right shade before exporting because you get a particularly good price for them? Yes.

Q. The colouring would involve dying? Yes.

Q. Can you colour or dye polished skins? If you remove the polish you can.

Q. Apparently Perera does not agree with you?

(Evidence on page 124 (Record) read out to the witness) Q. Once a skin is repolished you cannot dye it? The dye would not catch on to the skin "Dye has to be put on unpolished skins. It is only then the skins will have the proper effect."

20 Q. Do you agree then to give a proper effect to the dye you must apply the dye to the unpolished skins. I suggest that the meaning of that evidence is that you cannot dye unless you remove the polish? First you must remove the polish.

Q. How do you remove the polish? I have seen it done. I am not a tanner. In England I have seen polish removed from skins.

I knew that Perera knew how to remove the Polish.

Q. Could Perera do it. I think he could but I have no knowledge he can in fact. There was plenty of work on the unpolished before we started on the polished. The small snake skins were unpolished.

Q. Your policy of insurance covered all skins in the basement? Yes.

30 Q. Whether they were your property or not as long as they were in the basement? It was my property.

Q. If you were the custodian of the property and it was insured that would be covered? I don't think so.

Q. Whether they were your property or not so long as they were in the basement? It was my property.

Q. If you were the custodian of the property and it was insured they would be covered? I don't think so.

40 Q. This is the last Policy for Rs. 125,000/-. This is a cover of policy for Rs. 125,000/- for stocks of reptile skins loose or in packages while stored in the basement of the Times Building? Yes.

Q. That I suggest covers all skins kept in the basement whether they were your property or not? I have not directed my mind to that.

Q. There were certain policies which expressly covered it. Look at P73. The Rs. 250,000/- policy—Rs. 231,500/- of it was stock in trade, boots, shoes, skins and like goods, the property of the insured, whether they were held by them in trust or on commission for which they were responsible?

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That expressly covers goods of that class?—A. I couldn't definitely state that.

Q. If for the purpose of your claim you had P39 only you will realise that the amount of proof you had was little? Yes.

Q. If that were the only document on which you could base a claim that would be rather inadequate proof? It would not be much.

Q. But if items appearing in P39 were borne out by the file, the property of another person, that would afford corroborative evidence? I should think if it was drawn up in the proper form and signed. If it was a proper document

Q. P32 is in S. A. Perera's handwriting. I suggest it purports to be at Wewalduwa Tannery file? Not to me.

Q. It purports also, I say, to be a list of consignment stock belonging to Wewalduwa Tanneries with Kennedy & Co. against possible sales? I don't see it in the light at all.

Q. Would P32 be evidence you had in your basement that amount of skins belonging to Wewalduwa Tanneries? No.

Q. Why not? Because there is no signature on it.

Q. Why? Because it is only a list and not drawn up in the proper manner and signed.

Q. What are the formalities you say are wanting? It not drawn out.

Q. What else? It wasn't made out in the proper Phraseology I think it should be proper to mention that these things were definitely the property of the Tannery Company. It ought to convey and drawn in the proper manner. It is not dated at all I think it might be put more fully.

Q. What are the details you would put, you say? I should put the details.

Q. The details of Phraseology? The date, for instance.

Q. You have given the date and signature, I will deal with them separately? I think I would give the details of the stuff itself.

Q. The details are there? They must be grouped.

Q. They are grouped?

(The witness is asked to express what he means by proper phraseology and he is handed a sheet of paper and the prepared the document K3.)

Q. The heading there is a precise, which I suggest to you had it to be proved in a Court of Law that heading would suffice if Wewaladuwa Tanneries were trying to prove that those skins were with you? I don't think it is possible.

Q. First of all you speak of the under noted reptile skins. There is a lot of reptile skins which follow and I suggest those words are superfluous. Do you agree? That is how I should put it.

Q. Being the property of the Wewaladuwa Tanneries, Kelaniya? That is very important.

Q. That file is labelled Wewaladuwa Tanneries, and the words Wewaladuwa Tanneries occur there and it is in the handwriting of S. A. Perera. Do you see. Would not those circumstances show clearly as one can see that

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they are the property of the Wewaladuwa Tanneries? Anybody looking at the file would not know whose writing it was.

Q. I suggest it cannot be anyone else's goods? I don't agree with that.

Q. That might be construed as being your property on the paper I have written as the goods were on consignment to me. I suggest to you there can be no doubt? I don't agree.

Q. You also said that that document would not achieve its purpose because it was not signed? You are making a great point of it. The persons who would sign, if at all, would be yourself on the one hand and S. A. Perera on the other hand? Yes.

Q. My suggestion to you is that P32 you might have used if you were so minded to prove that amount of the skins belonging to Wewaladuwa Tanneries belonged to you? I don't think so.

Q. Did Mrs. Kennedy see that file at anytime? Yes.

Q. Did she know of the existence of the file before the fire? Yes.

Q. She knew the purpose for which you had made that file? Yes.

Q. That you made that file as a memorandum of skins which you proposed to give Perera for colouring? Yes.

Q. And it had been made on the 13th July? About that time I suppose.

Q. Did she know you had sent a copy of the file to your agents Campbell Bros.? I don't think I sent it to them. The items of that were embodied in the cable.

Q. You sent a copy of these particular items which would be covered by the cable? Just a copy of what I offered by cable. Just the items I had offered.

Q. I was on this point. You told us Mrs. Kennedy knew about the file. Would it be correct therefore to refer to P32 as an old file as there was no use for it? It is an old file in appearance.

Q. Rather, it was written in July 1933? Q. When that file was found in the safe in the presence of Mrs. Kennedy she said this was an old file and said there was no use for it? She took the files one by one.

Q. When it was found she took the file and was reluctant to give it and said it was an old file and said there was no use for it.

(The evidence on page 138 (Record) is read out to the witness.) ". . . . She simply held out her hands. She was reluctant to give it over She became agitated and coloured slightly Do you know she said it was an old file? I would have used phraseology like that, if that is what she said.

Q. It is older than P39. P32 was written in July. You will agree that if an attempt were being made to put Mr. Ross and the Police off the scent it might have succeeded by referring to that record as an old record? It might have avoided them trouble, but not myself.

These skins before they were transferred to the basement were kept at Monsoon Lodge? Yes.

Q. That stock while it was at Monsoon Lodge was it insured? No.

Q. How long had they remained uninsured? Several Years? Yes.

Q. You transferred them to the Times building shortly after your return from England? Yes.

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Q. When would that be? It was a couple of days after.

Q. It was about the 11th or 12th July? Soon after I came back.

Q. How long did this process take? About a week I should say.

Q. A certain portion was kept back for cleaning? A very small pro-
portion was kept back.

Q. 10%? It would be about that.

Q. 90% of the skins had been transferred to the Times building? A good
proportion.

Q. Times Building was said to be specially fire proof? Yes.

Q. On that account the insurance companies gave you a reduced 10
premium? Yes.

Q. The position is this. Within a short period before the fire you
transferred this stock of skins to a more fire proof building and took the
precaution of insuring them? Yes.

Q. Was there any reason why you insured them? There was more risk
in a building than in a bungalow. It was very few bungalow fires that you
hear of.

Q. Fires in that class of buildings are very rare? Yes.

Q. The fact remains that the building was fire proof? It was supposed
to be.

Q. The insurance policy of the 17th July was taken out to cover skins
only? Yes.

Q. That policy was taken out, the insured being Kennedy & Co. and not
Mr. Kennedy? Yes.

Q. You did not there draw a distinction between the stock of private
skins and Kennedy & Co's skins? No.

Q. On the 23rd August had you any skins at all in Monsoon Lodge? Yes.

Q. How many? I could'nt tell you.

Q. Within a week of your return or thereabouts 90% had been trans-
ferred and 10% had been left behind and I take it you had only left a few 30
skins the rest being transferred? I can't say.

Q. I heard you say that you had previously cured skins with petrol
and no harm had occurred? I had done it on a small scale.

Q. You proposed treating the skins with petrol at Monsoon Lodge? Yes.

Q. The skins which you transferred to the basement did not require
that treatment? Yes.

Q. It is correct then that it was a very small proportion of the stock
which you were going to treat in that way? Yes.

Q. Ordinarily what time do you go to work in the mornings? It depends
on what work I have got to do. I have a good amount of work to do in the 40
bungalow. I keep most of the files of the skin business in the bungalow.
It is usually about 9 or 9.30.

Q. Was there anything which occurred on the 23rd which tended to
keep you late? I can't remember at the moment.

Q. Do you agree that Hossen came to your house that day about 9 or
9.30 a.m.? That is correct.

Q. When did you desire to treat these skins with Petrol? I had decided soon after I returned.

Q. It would have been the easiest thing for you to get the tins down by your driver or a servant in the bungalow? It depends on what I have got in hand. If it had occurred to me.

Q. You admit you had an account with Walker's and you ordinarily bought petrol to the credit of that account? Yes.

Q. On the previous occasions when you treated the skins with petrol can you recollect how you got down the petrol tins? I think I sent out for it by one of the coolies in the shop.

Q. During that month there must have been several occasions on which you had been buying petrol yourself, stopping the car and putting it into the tank? I did so.

Q. Hossen was ill that day and he was asking for leave and you are said to be a more generous employer than Ogle? I don't know about that.

Q. You made use of him to fetch these tins, sick though he was? He wasn't very bad. He gets over his troubles quickly as a rule.

Q. Was there any urgency about the petrol that day? There was no urgency.

Q. You say you first asked Hossen to go and fetch your order book from the garage? Yes.

Q. He came and told you the driver was out? Yes.

Q. You might well have waited till the driver returned. There was no particular reason why I should have waited. There was no particular reason why I should'nt.

Q. You also I believe said that this is the only purchase of petrol you made for cash? I don't remember I can't recollect purchases of petrol for cash but sometimes I have paid. Then you sent Hossen off and do I understand you to say that you waited till he returned? I did not wait, but I did not go to the shop. I must have been doing the skin business. I must have been dealing with the Java business. I was there until he came back. It is not correct that I waited for him. I don't remember when he came back.

Q. If Hossen himself says he came back about 1.55 p.m. is that right? He may have done so.

Q. At all events you were there when he came and you can't recollect that there was anything to keep you back? I say a man might do his work at the bungalow.

Q. Have you frequently kept away from the shop in the mornings? Whole days sometimes.

Q. Can you recall whether Hossen came said he was asked to give a deposit, could he do so? I can't be definite.

Q. Did you use your car that day? It was being used.

Q. Did you go out that day. When did you go out? I can't say. I was in the bungalow at 3 p.m. when Perera returned.

Q. Up to that point of time you did not go back? No.

Q. Was there any particular reason why you should have asked Perera what the action of petrol on skins was? It was ordinary talk.

*In the
Supreme
Court of
Ceylon.*

No. 9.

Evidence for
Defence.

(a)
Alexander
Kennedy.

Cross-exa-
mination—
continued.

*In the
Supreme
Court of
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No. 9.

Evidence for
Defence.

(a)
Alexander
Kennedy.
Cross-exa-
mination—
continued.

Q. You had used petrol before and you had not noticed any evil result ?
I don't think I had asked Perera as far as I can remember.

Q. Then you are quite definite that you did not ask Perera whether it would be a good thing to use petrol on skins ? I may have told him I intended to use it.

Q. You did not invite his opinion. You had used petrol before and nothing more or less had happened ? No Perera's evidence on the point is " One day I took a sample of skins to Kennedy at his house. After he examined the sample he asked me whether stains could be removed on skins by applying petrol. Did you ask him that ? I don't think I put it in that way. Petrol would be used for removing stains. 10

Q. You had used petrol for stains ? Yes. It depends on what the stains are.

Q. The results had been successful ? Yes.

Q. There was no need for you to ask Perera that ? I don't think so. I told him not to use petrol at anytime, as it would damage the skins ? He told me that. I can't remember the exact conversation we had but that was the purport of it.

Q. You accepted his advice in doing so, although you had used petrol and no damage had been done ? Yes. 20

Q. Perera himself says this incident occurred in July. If that were so and you gave him certain tins of petrol could they be those you bought on the 23rd August ?

Q. You possess two cars ? Yes.

Q. Petrol consumption high on both ? On one on the Mercedes.

Q. What was the consumption on that ? About 18, and 22 on the other.

Q. What quantity of petrol can you carry in each car ? In the Mercedes 8 gallons.

Q. You did not carry any empty tins ? No.

Q. Did'nt it occur to you that these two tins would be useful to you ? 30
Yes.

Q. You nevertheless offered them to Perera ? I did not offer them but he asked for them.

Q. He asked for them and you gave them to him although you admit that they would be of use to you ? Yes.

Q. Some of your skins had been brushed ? Yes.

Q. Does that process remove stains ? No.

Q. It only cleans ? Yes.

Q. Those skins that had been brushed had no stains ? No.

Q. What were the stains on the skins ? I think it was a little dampness 40
and a little mildew.

Q. Would not brushing have removed the mildew ? It would have removed the mildew but there would be the aftermath.

Q. Apart from the rough skin ledger what other stock books did you have ? I had stock books that I had already mentioned.

Q. How many of them ? We had one for the ladies and gents and children. There were three.

Q. Who kept those? Mr. Ogle.

Q. Mr. Ogle refers to only one book? I don't think he could be correct.

Q. Were those stock books you referred to made available to the auditors? They were there if they wanted to see them.

Q. On the other hand Mr. Watkins refers to stock sheets. They are different to stock books? The stock sheets were prepared from the stocks and checked from the stock books. It is prepared from the stocks itself.

10 Q. If you had the stock book what was the need for you to prepare stock sheets? I could'nt send the stock books to the auditors. They were too cumbersome. I know of one firm that does that. Mr. Ogle's evidence is not correct regarding one stock book.

Q. Where were those stock books kept? They were kept in the ladies dept.

Q. These were destroyed in the fire? Yes.

Q. They were never put into the safe? They were too big.

Q. To come to the day of the fire. You went home for dinner at 8 p.m. or thereabouts? Yes.

Q. And returned at what time? About 8.45 p.m.

Q. And you worked in the new shop? Yes.

20 Q. Till what time? Till about 10.25.

Q. You then went to the Times building and I think you went with two coolies back to close the expanding door? I sent the coolies and I followed them. I had that done and I went to the old shop at 10.25 p.m.

Q. You sent the two coolies to the new shop followed them had the expanding door pulled together and came back? Not at once, but at 10.50.

Q. Not before? No.

Q. When was that finally closed that night? The new Shop? It was closed about 10.45 p.m.

Q. Who closed it? I.

30 Q. You came back to the old shop at 10.50 p.m. and the only persons there were Mrs. Kennedy yourself and Hossen? Yes.

Q. Was there any work for Hossen at that time? There was plenty of work. He was tired and had knocked off work.

Q. His work was supervising the labourers in arranging the parcels of shoes? Taking down the stuff from the fixtures.

Q. The labourers left at 10.30 p.m. Was there any work for Hossen? He was waiting till I asked him to go. He could have asked me or Mrs. Kennedy and gone with the labourers at 10.30 p.m. but he did'nt.

40 Q. When you came back at 10.50 all the doors except the vestibule door were closed? Yes.

Q. Where was Mrs. Kennedy? She was sitting near the doorway leading to the vestibule.

Q. Was she doing anything? I can't recollect.

Q. You had nothing to do in the new shop itself? Yes.

Q. You sent for the soda and you were getting ready to go? Yes.

Q. You say that eventually you went inside the shop and fetched the key of the main door inserted it into the lock? Yes.

*In the
Supreme
Court of
Ceylon.*

No. 9.
Evidence for
Defence.

—
(a)
Alexander
Kennedy.
Cross-exa-
mination—
continued.

- In the Supreme Court of Ceylon.*
- No. 9.
Evidence for the Defence.
- (a)
Alexander Kennedy.
Cross-examination—
continued.
- Q. You then went back to do what? To put the lights off.
- Q. How many lights were burning then? There were nearly all burning on the ground floor.
- Q. Any in the basement? I can't say.
- Q. Would you want to verify whether there were any lights burning in the basement? No.
- Q. Were any burning on the first floor? That place had been closed earlier in the evening.
- Q. Were any fans going on the ground floor? They were all going.
- Q. You say it is your usual practise to put the main switch off? Yes. 10
- Q. That main switch automatically puts out the lights and fans? Yes.
- Q. Would you then as a rule put off every tumbler switch. I usually do.
- Q. Your evidence is that you were putting off certain tumbler switches with your left hand and you had your right hand on the main switch when a flash occurred? Yes.
- Q. Can you say whether in fact you had turned the main switch off? I can't say.
- Q. Can you say how many of the tumbler switches you had put off? Nearly all of them. The fans were on at the time. The place was rather hot. The side door had been locked and the front door had been locked. 20 I was going to turn off the main switch.
- Q. Of this you are certain that you did not put off the main switch? I am not certain of that.
- Q. You remember you said your hand was on the main switch? Yes.
- Q. Is it correct to say that the first person to whom you gave an account of what occurred was Mr. Owen? Yes, I don't remember speaking to him in the car. My wife was also there.
- Q. You told Mr. Owen what had occurred? Yes. "On the way to the Hospital I spoke to him, he sort of recovered and Mrs. Kennedy spoke to him. I said I put up my hand to put off the switch and I put off the switch and there was a flash and I knew nothing More." Did you tell Mr. Owen that in fact you had put off the main switch when the flash occurred? No. 30
- Q. I suggest when you were speaking of the switch, you can only refer to the main switch? I have no recollection of that. I was too ill at the time.
- Q. You say there was a flash and you don't know what happened? Yes.
- Q. Can you say from where the flash came? It seemed to come from the board I expect.
- Q. Can you say the flash came from the metal covered main switch? I cannot.
- Q. Can you say it came from higher up the board? I can't remember. 40 It came about face level.
- Q. When you say it was a flash it was not a definite flame? To my recollection it was a flame.
- Q. Did that flame come in the direction of your face? Yes.
- Q. More or less parallel with your face? Yes. I have no clear idea of it at all.
- Q. Did you put up your hands? Yes.

Q. In fact did you cover your face? I tried to protect my face. I have got a faint recollection of that, I did not realise I had an injury on my face. The first injury I had was on my ankle.

Q. You were on your back? I can't say whether I was on my back or face down. I don't know whether I was knocked down.

Q. When that flash occurred there was no explosion? I did not hear any.

Q. Can you say whether the light went out? I can't say.

Q. The next thing you remember is somebody calling you by your name? I remember that my ankles were alight.

10 Q. You remember somebody calling out Kennedy? I remember there was a voice.

Q. Can you remember from what direction it came? Yes.

Q. The next thing was you were out of the building? I have got a faint recollection of getting through some flames. I don't know where it was.

Q. Can you say from where you got out? No. I know the Duke Street entrance.

Q. The chute door, can you say whether you got out from that? I have no recollection of it.

Q. Do you remember coming in contact with some expanding metal?
20 I remember feeling something in my hands.

Q. Do you remember it was a portion of the metal expanding door? I don't.

Q. You remember making a statement to Mr. Ferguson? (The statement at *page 106 made by accused is read out. I have an idea I can remember making a statement to Mr. Ferguson at the General Hospital on the 7th October.

30 Did you tell him this "I had an idea I was jammed somewhere and I had my hand round some expanding metal? I remember Mr. Ferguson being there but I don't remember the conversation. I was in a sick condition. I recall Mr. Ferguson being there but I can't recall what I said to him. I remember his questioning me. I could'nt say whether the Doctor was of opinion that I was fit to be examined. My face was in a swollen condition at the time. I can't remember anything I said to him.

"I went out by the back gate over the chute just as I was getting out of this gate I saw Owen passing by the gate? I have no idea of this nor can I remember going through the chute door at all.

40 "I have an idea that I was jammed in somewhere, and had my hands round some expanding metal. I do not know if anything fell on top of me or what. I seemed to feel that I was struggling with some expanding metal to get out. I then saw daylight. I then went out by the back gate over the chute. Just as I was getting out of this gate I saw Owen passing the gate. He was shouting out for me. Owen then caught me by the arms took me by car and brought me to Hospital."

Q. When did you first learn that a suitcase and two tins of petrol had been found on the ground floor? After the fire. I think Mr. Ferguson brought me that information.

*In the
Supreme
Court of
Ceylon.*

No. 9.
Evidence for
Defence.

(a)
Alexander
Kennedy.
Cross-exa-
mination—
continued.

* Page No.
refers to a
page in
document
used in
Court below
which it is
not possible
to identify.

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Supreme
Court of
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No. 9.
Evidence for
Defence.

(a)
Alexander
Kennedy.
Cross-exa-
mination—
continued.

Q. Do you suggest that you did not know it when Mr. Ferguson told you about it on the 7th? I can't remember it but somebody told me.

Q. Can you say how many days after the fire? Did Mrs. Kennedy tell you? I was too ill for a number of days.

Q. You will agree that it is very unusual for a person to take tins in a suitcase like that? I should'nt do it myself but I have seen people do it.

Q. Was there anybody who was particularly hostile to you or anybody who would like to see you in trouble. Not that I am aware of.

Q. Nobody who leave any suitcase in your shop? I am not aware of any.

Q. Your present suggestion is that this suitcase might have been left somewhere in July? Yes. 10

Q. You cannot say it was this suitcase nor can Manan say it? No.

Q. Have you tried to trace the person who left the suitcase? I made inquiries about people leaving cases behind but I can't say I found any person with reference to this suitcase.

Q. Has anybody claimed that suitcase to which Manan refers? Nobody.

Q. This case has attracted a great deal of publicity? Yes.

Q. No one has written to you saying that he had left two petrol tins in a suitcase? No.

Q. Have you advertised? No.

Q. The suggestion is that he was an upcountry planter? I believe so. 20

Q. Have you got a large number of customers in that community? I have.

Q. Those I suppose are well disposed towards You? Oh yes. I know a Mobiloil tin was found.

Q. Were Mobiloil tins kept in the shop? No.

Q. Brought there for any purpose? Not that I am aware of.

Q. You cannot suggest how the Mobiloil tin came There? It may have come in from the Times.

Q. That tin was found on the morning after the fire? I could'nt find out where it was found. 30

Q. Can you suggest from where it came? No, I did not bring it nor did any of my employees bring it.

Q. You told us that far from your standing to gain in consequence of this fire you have lost? Yes.

Q. Now you will admit that if the Police did not start this investigation and if the insurance companies paid you would have got a large sum of money in Cash. You would have got a large sum of money in cash if the claim was accepted? Yes.

Q. Would you have got that large amount in cash if the claim was accepted by the Insurance companies? Yes. 40

Q. Your No. 1 account at the date of the fire was over drawn by 99,000/- and you had to reduce it to $\frac{1}{2}$ lakh and you had to pay over the $\frac{1}{2}$ lakh by the end of September? Yes.

Q. Your No. 2 account was 19,441/73 at the date of the fire on the 29th September. You did nothing to reduce the amount? I was getting the material ready for despatch.

Q. On your No. 3 account you had to find Rs. 9733/? Yes.

Q. Your maturing bills for which you had been given extensions for a second time amounted to Rs. 21,492/77. Those bills have been dishonoured? No, they have been paid by my friends.

Q. Since when? It has been taken up on the other side.

Q. By Campbell Bros.? Yes.

Q. The bills fell due in December, the extended date? Yes, but the extended date had not come at the time. These bills were accepted by my and the time was extended. I got them recalled. I did not take up the bills
10 and they were taken up on the other side. They supported me.

Q. They were accepted at the time of delivery of the goods? Sometimes the goods come afterwards.

Q. You accepted the bills against delivery against the shipping documents? Sometimes the goods do not come till a fortnight afterwards. They have not yet sued me for that amount. They are not likely to.

Q. You owed the Times Rs. 9159/40? I had't paid that.

Q. You had agreed to liquidate that amount in three equal payments? I had more than agreed to. I paid Rs. 2250/- in September.

Q. The amount on giving you credit for the payment was Rs. 9157/49
20 which you agreed to liquidate? Yes.

Q. In addition to that you owed Mrs. Hunter Rs. 55,000/- on a loan? It was an investment. I think that is a better term.

Q. Her interest was badly in arrears? She is very well of and she does't worry about interest. She had't been inquiring for interest.

File is marked K4 page 3 of which is read out.

"I must apologize for my seeming careless about my interest. Money has been on the tight side

I could't say what interest was due up to the 23rd August. It was a few thousand rupees. That is a correct statement of my financial position
30 at that time of the year. I had't to find something in the neighbourhood of a lakh and Rs. 10,000/-. I had't to find the lakh due to the National Bank. I hoped to have a lakh and Rs. 10,000/- from my stock. I had no resources and no other income. I hoped during those three months to turn over $\frac{1}{4}$ of my stock. I knew I could do that.

Q. Is it correct to say from the figures of the previous years that your average turn over for the whole year was less than a lakh? What years are you taking. A. From 1929 to 1933? Our chief trouble was lack of space.

Q. With increased space you were going to make this rather unusual turn over in the space of three months?

Q. The total turn over for 1929—1933 was considerably less than $\frac{1}{4}$
40 of a lakh? It ranged from 117,000/- to 150,000/-.

Q. My suggestion to you is that if the fire had not taken place you were in considerable financial difficulties? No.

Q. If after the fire took place the insurance companies paid up the whole of your claim you would have been in the lucky position of having a considerable amount of money in your hands? Yes but there was no

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Court of
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No. 9.
Evidence for
Defence.

(a)
Alexander
Kennedy.
Cross-exa-
mination—
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stock. It would take me a year to get the stock. My stock has cost me years of work and I would have to get it up to the present standard it would take me several years to get me back into my former position.

No. 9.
Evidence for
Defence.

3rd Octr., 1934—(2.10 p.m.)

ALEXANDER KENNEDY.

(a)
Alexander
Kennedy.
Re-exa-
mination.

RE-EXAMINED.

I said in cross-exam. I have one son. He had a free education—he had a bursary for two years, otherwise he cost me £100 a year. He is now in a shoe factory. He is studying the shoe trade. When he is a master of the subject I want to bring him out into the business. (To COURT : I would make him to join in my business.) 10

I was questioned about this telegram P66. I stated that I did not want to disclose to Campbell Bros. & Carter that the stock was actually mine. By those words I meant Campbell Bros., and myself. I offered them the first three lots in P33 by that telegram. (Reads telegram.) That was an estimate I made of what I could reduce my stock by. I held stock to the value of Rs. 447,000/- then according to my balance sheet. Rs. 447,000/- is the cost price. Those were goods that had already been paid for. (To COURT : This stock had been paid for. My selling price was roughly 50 to 60 per cent. more than the cost price. That was in 1932 according to Mr. Watkins. If I had succeeded in selling quarter of my stock I would have realised something like over Rs. 16,000/-. £800 is about Rs. 18,000/- at 13/50 to the £. If my anticipations were realised I could have met all my claims in full. (Shown file K1, page 23.) I wrote to Campbell Bros., & Carter on the 16th August 1933, (Reads letter). 20

3rd October, 1934.

2.30 p.m.

(Note : The taking down of proceedings for the day is at this stage taken over by me. I had not followed the case having been away at Kalutara in connection with the Sessions there.) 30

ALEXANDER KENNEDY—under re-examination states further :

On 21st August I sent this telegram to Campbell Bros & Carter informing them of my shifting to the new building and K1 (6) A is the telegram which the Crown put in and which was the reply to mine of 21st August marked K1 (20) A (Both documents read). Their reply was that they viewed with anxiety proposed new lease presumably involving heavy expenditure and that they could not consider extended facilities until settlement reached with bank and stocks heavily reduced—they awaited my reply. In reply to this telegram I added the latter part of P.56 stating that I did not want extended facilities—spacious floors—favourable position . . . will enable us to reduce stock middle October to December £8,000—I also stated therein 40

that in the event of hard time developing we could live on the top floor and that it overlooked the harbour. I wrote in ecstatic terms as I was going to see the business developed in the way that I wanted. Yes, I admit that this does not disclose the frame of mind of a man who was going to set fire to his stock. K1, (18) A was just after I sent telegram K1 (20) A. I then got their telegram K1 (19). I wrote K1 (16) A in addition to sending cable P66. K1 (13) A was sent by me to Campbell Bros., & Carter. Telegram K1 (6) is a request to ask the bank to extend dates of bills too closely drawn. K1, (4) of 5th September is a letter—I could have met the small bills of 10 September—I met the payment to the Times in two instalments during that month. That letter (? P (41) 11) reached me about 25th or 26th and about the 27th I sent K. 1 (2) A—this letter was written two days before the fire occurred. There was a para in letter marked P41 (11) addressed to Campbell Bros., which was a partial reply to telegram P56—goods referred to is what is described in P32, page 11. In P56 of 19th August I state about these goods and about how No. 2 account would be cleared—it is addressed to the Manager of the National Bank. List of goods also appear on page 2 (items 3, 4 and 5) of P39. In P56 I valued the skin at Rs. 18,600/- in P39 at Rs. 20,000/-.

By the compromise arrived at I waived my claim on all these skins as there 20 was not sufficient evidence of their existence. But for the fire my Number 2 account would have been wiped out in the way that I had indicated in my letter to the bank and all my liabilities would have been reduced to about Rs. 90,000/-. The fire resulted in my losing the whole of that money. My telegram indicate that I had in mind outside suppliers who needed no financing and in that transactions between them and Campbell Bros. I would have acted as the seller—P66 is a telegram which refers to outside suppliers stock. (To COURT: Yes, I had liabilities with Campbell Bros. & Carter and my supplies to them went in reduction of those liabilities.)

Once I got the money by selling “outside” stock of skins I would decide 30 as to its distribution (distribution of value). I meant by P36 that if they accepted the offer they could open credit in favour of Kennedy & Co. and I would receive the value of the skin supplied to them. According to this letter of Campbell Bros. & Carter the business of shipping skins from Java had been put to the National Bank. The flooring and fixtures at the Times Building cost me Rs. 6000/- and that was insured to that extent—on the 29th they were being fixed on to the Colombo Stores premises I intended to rent the two top floors or occupy the top and rent the middle floor. The letter of August 23, P41 (53) was my reply to the letter of Messrs. Campbell Bros. & Carter of August 1st. I say here that the position is now 40 clear referring to the No. 2 account and that the skins are now in the tannery for final touching up for September shipment—those are the goods at page 11 of P32 given to be brushed up (see p. 11 of P52 and also P56). I had in my opinion sent sufficient skins to London to cover the No. 2 account. But in reality the skins did not realise in London what I anticipated they would—there was also considerable delay in their sales even at the figure at which they were finally sold. (And therefore you said they are fully stocked at home and you did not want to send more?) Yes. Indian ring

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(a)
Alexander
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Re-exa-
mination—
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lizards approximately corresponds to the local kabaragoyas. (When you want to refer to what corresponds to talagoyas in Ceylon what is the Indian equivalent?) Indian lizards as opposed to the Indian ring lizards. As a matter of fact Skin Stock Book P39 refers to more than 5000 Indian lizards :

No. 9. Evidence for Defence.	D4 item page 4	3600	
	D4 „ page 5	1458	= 5058

(a)
Alexander
Kennedy.
Re-exa-
mination—
continued.

(You were challenged by my learned friend yesterday to show where this 5000 Indian talas appeared in you No. 3 a/c?) Yes. (And you say that the Indian lizards and Indian Talas are used synonymously?) Yes. I had mentioned Indian Talas in the telegram. In addition to the telegram 10

P49 (19) I sent letter $\frac{P85 (12)}{45 12}$ to the National Bank with regard to the $\frac{41 9}{45 12}$

No. 3 account and making reference to the goods over which the bank had a lien. P39 page 4 (No. 3 a/c) 303 plus 47 black and white pythons 350, 1856 black and white ring lizards and 5000 Indian talas—there is certainly a discrepancy re figures between those in letter and those on the telegram i.e. with regard to the black and white ring lizards and total differed in P39 from the total given both in the telegram and the letter. The black and white ring lizards appeared under the head of B5. There was no question of my offering them goods which my stock books did not support. (You have totalled up the totals under various heads?) Yes, I have grouped them together. The rough skins book was in my desk—I gave copies of my addition to Classen. In P32 there is a reference to both polished and unpolished skins 20

unpolished	47000
polished	6770 items 1, 3 and 8)

I had 16,310 unpolished Indian tala lizards, 18,250 black and white tala lizards—over 34,500 Indian lizards which came under two heads. (You were asked whether it was possible to re-colour or colour polished skins. As a matter of fact in P32 you make out that there are 47,000 unpolished skins and 6700 only polished skins. The proportion of the polished to the unpolished is a little over 1/7?) Yes. There is no difficulty in removing polish from the skin. I have seen that done in England. S. A. Perera is a capable young fellow and he has a man trained in India for that work. You said in your examination-in-chief that by consigning stocks by Messrs. Kennedy & Co. against possible sales you meant skins belonging to you?) Yes. (That would appear plain to any one but for the fact that Wewalduwa Tannery appeared on top?) Yes. Neither I nor S. A. Perera made representations to Mr. Ross or Mr. Watkins claiming that these were goods belonging to S. A. Perera—never at any time. The claim was that they were my goods. Yes, there was a reference by Campbell Bros., to one of their letters to “free skins.” I based no claim on P32—Mrs. Kennedy had knowledge of this book—she called it an old record—it would be more correct to call it a record of old skins. What is described in P32 appears in P39. For the purpose of putting forward a claim under P39, P32 was not necessary— 30 40

I never put it forward—P39 contains a record of these old skins plus those bought on Nos. 2 and 3 accounts. Yes, Mr. Ross, stated here that he did not recollect if Mrs. Kennedy wanted to write the word “cancelled over P32 (see p. 144 (Record) of Judges Notes for Mr. Ross evidence on this point). When I did hand over the list of skins to S. A. Perera I would have made a duplicate and made him sign it. It was a lot of skins which I have myself valued at Rs. 98,000 so that I would have taken an acknowledgment for it. In fact I got an acknowledgment from him of the skins I gave to be touched up. I cannot remember when he returned the skins brushed. I did not recover
 10 from the insurance Company value on account of skins given to S. A. Perera to be touched up (brushed up) although he had given me an acknowledgment that he had received them. Re Bank letter P20 (15) para 2 I could not have sold the skins immediately I arrived in England—a reasonable time was necessary. On 9th July I was in Ceylon—I could not therefore state definitely what had been sold and what had not been in England. Re P20 (6) and P41 (1) on receipt of letter of 15th July I called on Mr. Graham on the 18th and explained things to him (see P41 (1)). On 11th July I had barely been in Ceylon 2 days. Mr. Graham had never stated that all the skins that I had
 20 were in England—(see P41 (1)—it is read). The letter P41 (3) shows that Mr. Graham stated that he did not understand my explanation i.e. the full explanation that I had given.

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No. 9.
Evidence for
Defence.

(a)
Alexander
Kennedy.
Re-exa-
mination—
continued.

ADJOURNED.

4th October, 1934.

Same counsel as before.

4th October,
1934.

ALEXANDER KENNEDY. Sworn—Re-examination—*continued.*

With regard to the letter from the bank informing me that my overdraft had exceeded by Rs. 921, I was called upon to bring it within 1 lakh—I did not find any difficulty in doing so—it sometime happened that by error the overdraft is slightly exceeded and I always then brought it within the
 30 limit. It was not a serious handicap if I did not get an overdraft of over 1 lakh—I never wanted an excess of over 1 lakh. I was questioned about the P. & O. Bank a/c—I opened that as a joint account but my wife principally operated on it and that to pay household bills it was never a large account. I produce the Pass Book with regard to that account from February, 1930 to May, 1934. (Counsel draws the attention of Court to the half yearly balances shewn in the Pass Book). Prior to the fire I never made a large deposit to that account. 31st March and 30th September are the half years in respect of the P. & O. Bank. Since the fire I have used this account to
 40 make deposits of sale. The proceeds of that Rs. 11,000/- odd goods went into the National Bank. The balance on the 31st of March this year is shewn as Rs. 1612/75. I had reduced the account with the National Bank No. 1 a/c by Rs. 23,000/- (A7). I was questioned about the stock in the bungalow being insured from March, 1912. I had a Policy right down to 1932—originally when I was at St. B..... it was an insurance for Rs. 96,000/- that was renewed in March, 1922 to Rs. 56000. In 1924-25 I had shifted to the

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Old Times Building—then I had the general stock in the house insured for Rs. 16,000/- the stock in the shop was then insured for 1 lakh. In 1924 increased the insurance to Rs. 1,40,000/-. In 27-28, Rs. 2,50,000/-. In 1931-32 furniture and stock Rs. 20,000/-. I produce a statement prepared by the Manchester Insurance Company in regard to all the insurances I had had with them (A8). I do not think they would cover the non-Kennedy & Co., pile of stock—in the result of the skins at the bungalow were uninsured. I insured the stock in trade at the bungalow because I felt I was obliged to do it—household furniture was also insured for a nominal amount. (Why not the skins?) I expect that it was how it was suggested to me —No, I did not think there was any risk to private skins. (Shewn A9.) This is the covering letter that accompanied the statement marked A8. I did not vary the value of the furniture insured throughout. I took out Policy on 17th July for Rs. 1,25,000 after my return from Europe as I decided to remove all the skins to the basement. But for that Policy I would have been under insured and the only policy then existing was one for Rs. 2,50,000 covering stock and skins. My intention was to bring skins from Java for tanning and they would be for a good part of the time in the building—I stated so in my letter to the Chartered Bank. I was questioned about interest payable to Mrs. Hunter and Mrs. Fernando. Mrs. Fernando had been paid interest regularly and the Balance Sheet shows that at the end of 1933 there was only Rs. 80/- due to her as interest on the Rs. 12,000/- due—that represented one month's interest. In relation to Mrs. Hunter's Rs. 50,000/- when I was ordered bail in Rs. 30,000/- it was Mr. Gordon, Managing Director of Messrs. Hunter & Co., of which Mr. Hunter Jnr., was a partner who gave that in cash bail—despite this fire relations continue very friendly with the Hunters. My liabilities to Campbell Bros & Carter at the date of the fire as disclosed by the balance sheet was £6285. I think it was bigger in 1929. (£6285=87,600/- odd.) The Balance Sheet shows that on December 31st, 1929 my liabilities to Campbell Bros. & Carter was £7244 (Rs. 96,500/- odd.) After crediting Campbell Bros with what I owed on the general stock acct. and debiting what they owed me on the skin acct. the difference was £5000 due to me. The business was very much solvent on date of fire. At the end of December, 1932 Rs. 1,90,000 was left in my hands. It was Rs. 2,39,000 odd as at December 31st, 1931, Rs. 1,90,000/- as at December 31, 1932 and Rs. 1,40,000/- on September, 23rd 1933. Into this figure of Rs. 1,40,000/- at the date of the fire, so far as the skin account went, only Rs. 14,000/- of skins came in. That was not the whole of the value of the skins actually with me. Actually I had Rs. 1,25,000/- worth of skins. The Rs. 1,10,000/- refused to be paid did not form part of the assets of this Balance Sheet. On the date of the fire I had Rs. 1,40,000/- balance over liabilities. Shoes were specially made for me—even if I had ready cash it would take 2½ years to re-stock the shop fully. the staff alone cost me Rs. 96,000/- a year. The production of shoes on my orders requires special tanning of leather. My orders would not fall within the scope of the normal turn over of the makers . . . this in turn would mean delay. One could import shoes for 45 shillings and within 6 months

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of its arrival here, I could tear it up like paper With regard to the suit case I could only say that I did not bring it in and that had no knowledge of it. It was impossible for me to have brought it after dinner that day. I have examined the suit case in the Police Court. I never stocked suit cases of that sort—this is of medium quality—leather case on fibre foundation—bordering on the good. The rim has stamped upon it certain words. I am aware that Police was in communication with Campbell Bros & Carter to find out if I imported suit cases of this description. I cannot even swear that this frame was part of the suit case—

10 there is impressed upon it the words “guaranteed fibre foundation.” A man leaving behind an empty tin need not necessarily be an enemy. I had no enemies—many friends. A person might have left an empty tin in good faith. Once I lost consciousness the first thing I remembered was that my ankles were burnt and the call of “Kennedy, Kennedy” a long distance away. The next thing I remembered was fighting my way through the fire (Counsel re-calls Ross’ evidence that on October 9th when he saw Mr. Kennedy, the former said that the fire might have started from the electrical gear and that he said that to pacify Kennedy as he was not out of danger then and counsel follows this up with the question: So that two days

20 earlier when Mr. Ferguson saw you, you must have been in a worse condition?) Yes. I have also heard the passage read of an alleged statement made by me to Mr. Ferguson—on the date he saw me my mouth and face were swollen—I used artificial teeth and it took me nearly to the end of the month before I could use the dental plates (put them on). My lips were considerably swollen—my articulation was very far from being clear. (Mr. Pereira, K.C. now proceeds to question the accused with regard to this statement—the Court observes that this brought up the same position that occurred in a recent case at Kandy, where an accused’s statement to the Police was put to him. (Deputy Solicitor General) states that he would call Mr. Ferguson

30 to prove the statement. Counsel for the defence states that the objection in the Kandy case was on the ground that it was a confession. The Court takes it that the witness here does not admit making the statement. Counsel states that all that Kennedy states is that does not remember making that statement.) (Counsel for the defence to witness: This passage was read to you: “I have an idea that I was jammed in somewhere and had my hand around some expanding metal.” Were you answering questions or were you making a statement?) I was answering questions. (Counsel: reads further from the statement above referred to) “I do not know if anything fell on me or what. I seemed to feel that I was striking against some expanding metal to get out. I then saw daylight.” This was 11 o’clock at

40 night. We have heard that the whole of the Fort area at 11.7 was in darkness. (Counsel continues reading) “I went out by the back gate over the chute. Just as I was getting out of this gate I saw Owen passing the gate. He was shouting out for me. Owen then took me by the arm and took me to the car.” You have heard Mr. Owen’s evidence? Yes (even if you did say all this what was your condition when you said it?) Far from being fit. I would not contradict Owen’s evidence that when I emerged from the smoke he was

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Question
inaudible.

really on the verandah and no where near the chute door. (To COURT : Owen says one thing. Deen Mahat says one thing. You say you won't contradict Owen. Do you contradict Deen Mahat ?) He made a different statement to begin with. I heard Deen Mahath definitely say that I was bleeding from an injury on the forehead. I do not remember bleeding from any injury on the forehead. My face was all burnt and raw, and my hands were also burnt and raw. (Counsel remarks that Owen's evidence which the accused would not contradict, was different from what the accused is alleged to have said to the Police and obviously therefore the accused had said something incorrect owing to the state of his illness.) (Counsel : You say "Just as I was getting out of this gate I saw Owen." You heard Owen's evidence that he went no where near the gate ?) I would not contradict Owen's evidence— I am trying to reconstruct what happened. Mr. Owen is no particular friend of mine. I knew his name before the fire. He came to my rescue at the request of my wife. I never discussed the matter with Owen or any one else before I made that statement. I got out by one of the side windows nearer the bend, last one near the shop side of the verandah (marks it with X on sketch handed to him). Subsequently I found out that the moulded metal ventilator over that frame had come down. It is possible that I might have referred to that in my statement to the Police—that is how I can recall that fact. Messrs. Campbell Bros. & Carter financed me to conduct his case and my present stock is considerable. (To COURT : I cannot re-call having said anything to Mr. Ferguson—I remember his speaking to me. I cannot recollect having made any statement to him with regard to the fire. (COURT) : I want to know what the effect would be in respect of your drawing against sales of "free skins" on Campbell Brothers & Carter and your drawings against Nos. 2 & 3 accounts . . . ? If I was shipping the T/C Goods as my own I would definitely state that that was against 2 & 3—I would draw 80% and that would go against the reduction of my overdraft—if I had to draw out again I would have to draw out to the limit of the overdraft. If they wanted to take it in October I would have to get a new letter of credit—credit is opened for specified articles—the particular class of goods is mentioned. I could therefore not have shipped these goods under any of the other letters of credit, I would have to get the price agreed on; then get in the stock and cable to open new credit for the value of the goods—then when that is done it means a new credit. Credit could be opened against shipping documents—what we get is a "packing credit" before I ship the goods and conditions of credit would be shewn on it. Campbell Brothers & Carter would open sufficient credit to purchase articles shown on P32. We are notified by the bank. I think Campbell Brothers & Carter would guarantee my overdraft—the Banks are free from responsibility. Kennedy & Co. would draw out and Kennedy would be paid. When I get the shipping documents I go and draw at the bank 80%—20% is drawn after the sale is over. Both the advance and 80% would go to Kennedy & Co. Whether there was any advance or not I have the advantage of drawing money. It was not necessary to draw up P32 and show that the stuff was not actually mine but was available to me. Campbell Brothers & Carter are my agents

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and I taught them the skin business. The only disadvantage is that if they knew that I owned the goods they would ask me to send it on consignment. These were different class of goods and not covered by accounts 2 & 3. If I send them as mine I would not be able to get cash.

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(BY JURY : No. 2 account was on consignment basis running on) for several years at Lawrance's instigation and at my risk. Mr. Graham wanted me to draw 80% of the value on consignments. No price was fixed and I had to get the price on date of sale. I did not want to send goods unless wanted. We sent definitely what was wanted and did not send everything we get on consignment. The cable refers to the question whether it was shipped against 2 and 3 accounts. I have no recollection of having said anything to Mr. Ferguson. He gave me some water.

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Defence.

(a)
Alexander
Kennedy.
Re-exa-
mination—
continued.

ELIZABETH KENNEDY. Sworn.

EXAMINED.

(b) Elizabeth
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tion.

I am the wife of the accused. I married in 1913. I had myself been in the shoe business. I am English born. I was working in London when I met Mr. Kennedy there. When I married him he was coming out to join Smith Campbells. I lived in Ceylon with him. We have a child. He was educated in Scotland and he is now learning the shoe business to come out to Ceylon to join our firm. My husband dealt in skins when he was under Smith Campbell. In 1920 he decided starting his own. At that time we had savings which we had invested in skins and we sold them for £1,000. Mr. Hunter assisted my husband to get his first stock without paying for it. The shop was transferred to the Old Times Building from the Bristol. I was in the Ladies Department—Ogle was the manager. Ogle, Miss Kennedy, my husband and I occupied the same house—we economized. We had an account in the P & O Bank to pay our household bills—I operated on it for the most part. This is the Pass book with reference to that account. We had no large balance in this bank up to the time of the fire. I would calculate and find out what the bills come to and I would get a cheque for an additional 50 as well. Mr. Ford of Messrs. Duncan, Watkins & Ford suggested this arrangement in order to save the difficulty of checking small amounts. Subsequent to the fire we made large deposits because we operated on this bank in connection with the shoe business carried on at the Colombo Stores. No shop goods had been transferred to the Colombo Stores—the flooring, some chairs and show cases had been removed—no goods in the ladies Department were transferred. On date of fire I worked in the Ladies Department. I was also supervising the taking down of the childrens' shoes from the fixtures to the floor preparatory to their removal by the coolies. We closed down about 6.30 p.m.—Ahamath usually did it. We used the main lift or the private lift. The stairs were not suitable for the use of customers. I went home alone about 6.30 p.m. Then Mr. Kennedy was sitting at his desk on the ground floor attending to letters—Jong the typist was taking down the letters. Mr. Kennedy came home for

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dinner about 8 p.m. He always carried about his attache case—he carried in it his files, Code book and skin file book. On this night he brought the attache case and put it in the safe—he generally does it. We have a large iron safe. After dinner we went to the Colombo Stores Building. I waited there a few minutes and went over to the Times Buildings. Messrs. Steele and Ogle and my husband were then in the Colombo Stores Building. Mr. Steele was the Engineer of Messrs. Walker Sons & Co. Ltd. I went to have an eye on the work that was going on in the Times Building. Workmen were taking down the boxes—It was about 8.45 p.m. I was in the ground floor supervising the work. I remained there till my husband came there about 10.25 p.m. He asked me how the work was going on. I said the workmen were tired and it was time to close down. My husband then went to the Colombo Stores Building and closed it. I sent two coolies to help to close the gates. My husband returned about 10 to 11. Hossen stayed behind. Husband asked him if shoes had been arranged for the next day's likely customers. He got the place arranged. Then he asked him to run and get him a bottle of Soda. I said it was rather late—he said that these shops are usually open and we can get it. I told him that there was a very strong smell of gas—I meant coal gas. My husband said that the smell must be coming from outside. Very frequently I have had that smell— usually in the mornings and I had gone round to trace it. People said that the smell must be coming from the adjoining premises—the Telephone Repairing Department. Even what they said as coming from outside I took to be coal gas. I did not know that the Telephone Repairing Department closes down at night. Hossen brought the soda. I was in the shop and the front door was open—I know the Times watcher—he was in the lobby talking to me and my husband. He was waiting for us to close up in order to close up the entrance door. My husband said that he would leave immediately he drank the soda water. My husband drank it at the doorway of our shop. My husband then said “Go home Hossen. Do not come late in the morning.” Hossen left. I was at the door. My husband took the key out of the desk drawer and put it in the lock. I went into the lobby as husband went to put off the switch. One shutter was already closed—one side was open. I was talking to the watcher. The light went off and there was a terrific noise. The watcher and I ran to the lobby door and when we got there the place was on fire. I tried to get in but the watcher asked me not to do so and that he would get help. I could not see my husband. Our car was outside by curve just outside the Main Street. The driver came saying : “Lady, what happened.” I was thoroughly upset and tried to get in—driver pulled me away and there was a terrific explosion and I thought the whole building was going to fall. The building shook. Between the first noise and the second explosion the time seemed hours to me. Driver and I ran out and I told the driver to take the car to the other side of the road as the building is sure to fall on us here. I came out to find the lights in the street gone out. The driver was just starting off when a gentleman got on to the side of the car and said “Fire station.” By that time the building was on fire. Then he turned round and asked “Whose car is this ? ”

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I pulled myself together and said "My husband is inside the burning building and I think he must be dead." Just before that the driver had told him in answer to his question whose car it was. By that time the car had gone to the other side. I got out of the car and paced up and down the street in front of the Colombo Stores. The man got out and ran. Whilst I was there someone came and touched me on the arm and said that my husband was in the car. I did not know who he was—I did not know Owen before. When I got to the car I found my husband dazed and terribly injured. His face was bleeding down one side and all burnt. In the first instance I drove to Dr. Denny at the G.O.H. It was my idea to go to the hospital when I found Dr. Denny not in. When Mr. Kennedy got out of car his hands were red faced and skin was hanging down 2 or 3 inches. I could not say if his clothes were burnt. I was seated by him in the car right through the journey to hospital but did not get any smell of petrol. My husband was not able to give any explanation of what happened. I spoke to him but he was not able to speak. I remained in the hospital till 3 a.m. My husband was chloroformed before his wounds were dressed. Owen also remained there some time. Some tannic acid was sprayed on husband from time to time. I returned home about 3.30 a.m. and returned to hospital about 7.30 a.m. My driver was taken to the Police Station and detained for hours—the Police phoned up and said that they were detaining him and to make some other arrangements for a driver. The National Bank phoned me up the next morning and I had to open the safe and take the insurance policies to the bank. Mr. Watkins also phoned up and asked if an Income Tax letter had been sent as it had to be done before a certain date. I said I would examine the attache case and see about it. I had to hire a car from Mrs. Loos. I went into the Fort and handed the policies to Mr. Graham.

If not for the phone message I would not have thought of it at all. I found the Income Tax letter in the attache case. There was a balance sheet which Mr. Duncan had sent the previous day and there was also a file of skin stocks in the basement. This is it (P39). Mr. Graham asked if I had written to the insurance companies. I said not. Mr. Graham asked me to come in ten minutes and he would have the letters ready for signature—when I returned I signed the letters and he said he would send the letters to the insurance people. I went then to Mr. Watkins with the Income Tax letter. He asked me for the account books of the firm. I said he had the majority of them. He then asked me about the stock files. I said they must be with him as he had not returned them after the last stock-taking. He then asked me about the other books and I said they must be in the shop but that I had seen the skin file in the attache case. I asked him if he needed it. He said he would need it if it referred to skins in the shop at the time of the fire. He asked me to bring it or send it to him. That afternoon the Police came about 2.30 or 3 p.m. and sealed the safe. Mr. Ogle said "The Police have come to seal the safe, do you want anything out of it?" I said No. He said "What about the money." I said "Alright." I took out the money—a few hundred rupees. Then I remembered this file and I took it out and put it in my own almirah—the Police

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was present. Mr. Lloyd came later to get a statement from Miss Kennedy. He got a statement from me about 8 a.m.

COUNSEL: When Mr. Lloyd came to record Miss Kennedy's statement did he say anything to you which indicated that he knew that you had taken something out of the safe?

Deputy Solicitor General objects to question—he adds that if the question is allowed to be repeated it would go to the Jury.

Defence Counsel states that he would give his assurance that he was not going to ask what Mr. Lloyd had said in reply.

Finally the Jury is asked to retire.

Deputy Solicitor General is heard—the evidence is that a serjeant sealed the safe—no question asked if P39 was taken out in his presence from the safe.

This Court allows the immediate question and Mr. Pereira states that he is not going to ask what Mr. Lloyd stated.

The jury is re-called and the question is put to the witness: When Mr. Lloyd came did he say anything to indicate that you had taken anything from the safe?—Yes, he did say so. (Did you Mrs. Kennedy in consequence of what he said do anything?—I opened the almirah, took out the file and handed it to him. He just looked at it and gave it back to me and I handed it to Mr. Watkins on the 4th October. Mr. Lloyd was alone—he had come to take Miss Kennedy's statement.

THE COURT ADJOURNS FOR LUNCH.

4th October, 1934.

(AFTER LUNCH).

ELIZABETH KENNEDY.

The safe was opened again at my request when Mr. Koelmeyer and Mr. Ferguson came.

(Zain Mahat called in). This is the watcher.

On the 6th October Mr. Ferguson and Mr. Koelmeyer came there at my instance. I wanted some papers in connection with the Java skin business and I wanted a file out of the safe. When I did take out the papers Mr. Ferguson said he would have to take a copy of them before I had them and Mr. Ferguson took them away and afterwards sent me copies but not the originals. Mr. Koelmeyer came with the Duncan Watkins Ford's clerk on the 18th. On that day Mr. Koelmeyer wanted to remove some files and I protested that they should be left until my husband returned from hospital. Then Mr. Koelmeyer gave me the key and I opened the safe and I took out the files and Mr. Koelmeyer numbered the files. He said he had his work to do and he must proceed. He gave me this receipt. On that day he gave me A10—on the 6th October. On the 18th October he gave me A11. This consists of 14 different files. This is my writing at the foot. Duncan Watkins Ford's clerk wrote it and I wrote the name of the clerk of Duncan Watkins Ford, Joseph and Koelmeyer. Mr. Koelmeyer

came a third time with Mr. Ross. That was on the 25th October. He removed a number of files on that day and he gave me a receipt on that day. (Shown the receipt A12). This is the receipt. Mr. Koelmeyer came three times in October to take files out of the safe. Item No. 7 in this list is Wewaladuwa Tanneries 1-11. Of these 15 files seven were returned to me. I ticked these off as being returned. They were returned this year about February or January. The other 8 files are still with them. The files on the list A11 some of them were returned—four out of the 14. The first file removed according to A11 is a receipt file of S. A. Perera. That

10 was in the iron safe.

Q. With regard to file P32 Wewaladuwa Tanneries 1-11 when had you first seen it? Sometimes before.

Q. How long ago? After my husband came back from England.

Q. What were the circumstances under which the file came to be made? My husband was going to get some skins re-dyed and he wanted to get a list of them and when Perera had got the dyes correct the skins were going to be debited to Perera. He was going to dye them and when he returned them he would be credited; only his tanning charges would be charged up.

Q. Was it at any time intended that this file should represent stocks belonging to Perera that Kennedy & Co. had? No.

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Q. You had seen this you say, before? I had seen it.

Q. Can you say to what stock of skins set out belonged? These belonged to the stock—to our private stock of skins.

Q. Acquired how, by what source? Acquired by savings and sometimes with house-keeping money and my own money of course.

Q. Miss Kennedy? Yes, Miss Kennedy.

Q. That stock of skins was it added to in any other way or was it increased by another way, than by purchase savings and your monies? When my husband wrote down his stock that stock was written down—

30 it was put into this, private stock.

Q. In what years was that done? It was done in several years.

Q. I am not talking of the particular period, from what year? From the time we started.

Q. Had profit or losses to do in your account? If we had a good year on the skin business we would write down our stocks.

Q. By “writing down your stocks” will you explain quite what you mean? My husband would at the end of the year take stock at the value he considered right and take it in store at that price and in that way it was put into stock.

Q. When that was done you say you actually removed some of the skin stocks and added it to the private stock? Yes.

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Q. This stock of skins where was it before your husband returned from Europe? At Monsoon Lodge.

Q. Stored in what? Stored in almirahs, also on top of almirahs and also from the floor upwards wherever you wanted to put it to make room. We have a store room there.

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Q. How many almirahs were there? We had 7 almirahs in the store-room and a big almirah in the back verandah.

Q. What was done to the stock at Monsoon Lodge? It was sent to the basement at Times Building. That was after my husband's return. He started to get busy and got them in quickly.

Q. Why were these skins that were on the list being given to Perera? They were going to be given to Perera to be re-dyed. My husband was in England and he saw the possibility of doing a good business with them if it was possible to get them different shadings.

Q. When Mr. Ross and Mr. Koelmeyer came in what was the procedure followed? When Mr. Ross came he said he would'nt take the files, he would look through the files and take the ones necessary with regard to the business and I went through them with him and I looked at the files before I gave them to him and I passed a comment on almost each one I passed to him. "This won't be much use to you as it has got quotations" and he would look at it and if he desired he wanted it would place it in a place and if he did'nt want it he would put it in another place. I came to P32 and said "This is just a record of old stocks. I don't think you require it because you have got a list of it in the other file which Mr. Watkins has got." I told him that definitely. I was referring to the skins stocks in the base- 20
ment P39 and he looked at the file and he said "I think I had better take it, you see it is skins," and I said the file did not come into operation and it should be cancelled." I told him it was simply a list. Mr. Ross said "You better cancel it now or you might confuse things," and I said, if you cancel it as it is now it will confuse things." I said that this file had not come into operation. I am sure I told him it was a list of old skins. It was simply a list. I meant it was old stocks meaning that it was this stock that we were going to get re-dyed a good part of it. That stock was good but it had been accumulated for some considerable time.

Q. Relative to the other skins in the basement were the skins in P32 30
old? This was older than the skins in the No. 2 and No. 3 accounts. I am quite clear it was a record of our stocks. I did not say that the record was old. It had been made since my husband returned. I meant that it was a record for my husband's use alone. That file was not more than 3 months old.

Cross-exa-
mination.

CROSS-EXAMINED.

Q. You told us in examination in chief when your husband started the business in 1920 as Kennedy & Co., you had £1000/- roughly being the proceeds of sales of old skins? I did'nt say old skins.

Q. Skins you had accumulated since 1920 you had sold from time to 40
time and you had £1000/-? When we started business we had £1000/- which we had been saving.

Q. That £1000/- was not put into the business by way of investment? In business when we came back, the whole of it.

Q. Did you contribute any sum at all towards the £1000/-? About £250. That was money I had with me at the date of my marriage. It was

money partly saved and it was money I had in a little investment at home and when I came out here I sold out and came here. I was in the shoe business before I married. I was on the sales side. I got about £2/- or £2/10. I was able to save money on that. I had saved on it. I had money which I invested in the poultry business before I got married. We bought skins when we came back and used that money in skins. My husband sold the skins. The stock was being turned over. We kept a separate account for the skin business. We had'nt a separate set of books. My husband had to do with all that but I can't say if he kept a separate set of books. He attended to it himself. He had'nt a separate bank account for that side of the business. We had a separate account to meet our household bills. I don't know about that. It was my husband's business entirely. I did'nt handle the money at all. I know the money went in further skins. I cannot even say how the business progressed. It was my husband's hobby and it had nothing to do. I know he was not frittering away with the money. I had a good idea it was a success. We were getting our skins together. I saw the accumulation of skins. It was my husband's hobby and I had complete confidence in him. As to whether he was doing a good business or whether he was making profits I had to rely on what he told me. It was a family concern between my sister-in-law, my husband and myself. When my sister-in-law came out she brought more than £300/-. She gave that money to her brother and he used it in the purchase of skins not the whole of it. This is what I know, not what my husband told me. I am living with my husband and we talk but I was'nt doing the work of the skins. I did'nt see the accounts. If I wanted I could have seen them. That was not the only contribution my sister-in-law made. When she drew a salary that was all given to her brother for the purchase of skins. She drew Rs. 300/- latterly. She did not keep any money for herself. She had no other resources of her own. We were all one family. We have'nt got separate purses. We were one family. We don't count ourselves as sister-in-law. What she wanted she got from him. You did not give me time to mention Miss Kennedy, I think Counsel interferred. I don't think she was mentioned by me only when reminded by Counsel. Such stocks of skins which Kennedy & Co. had as opposed to Mr. Kennedy's were bought from monies advanced by the bank. I don't know anything about the skin transactions. My husband had this entirely to himself.

Q. You say you don't know whether any stocks of skins Kennedy & Co. had as opposed to Mr. Alexander Kennedy were bought with monies advanced by the bank? I had nothing to do with the business while he was here. I know my husband had a No. 2 account for skins. It was not from 1929. I say that this is my husband's business and I have nothing to do with it. I know that the private stock was added to my writing down. I know nothing more.

Q. You say you do not know whether the stocks of skins prior to 1931 appeared in the books? I had nothing to do with the business. I held my husband's power of attorney in 1929 and 1933 whenever occasion arises I do the necessary work in connection with it. I know he wrote down his

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Cross-exa-
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(b) Elizabeth
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Cross-exa-
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continued.

skins and added to his business because I know he had skins there. I know he did that. At stock taking time I helped him in these things but I have'nt anything to do with the business. I helped him at stock taking time and I can't remember now. I can't remember whether it was considerable then.

Q. Would it be correct to say that about 2/3 of the general stock consisted of ladies and children's shoes? It was all ladies and children's shoes upstairs. I could'nt say whether it was more than half. Duncan Watkins Ford & Co. had the stock books before the fire and they were returned to the Police.

Q. Is it correct to say that the ladies stock on the first floor was less damages? Yes.

(Shown a photograph of the first floor after the fire.) I didn't see the first floor after the fire. The assessor gave you a reply to that, does'nt he. We resold some of the damaged stock. The assessor says it was damaged more by fire than water. We took over a great portion of the stock at Rs. 11,000/-.

Q. The attache case of your husband's you always say he carries up and down? Yes.

Q. I suppose he takes it home when he has finished for the day? Yes. 20
When he left the store he took the case. He carries his private files in that case for convenience sake. He carried the attache case because we had cables at night time in connection with the skins and he carried his code book in that case and generally the cables had to be worked at the bungalow. He always had a file of skin stock. He had the file since he came back from England. Because he was putting skins in the basement he had a file. He had a file before that. It was the same type of thing relating to the stock of skins before that for his rough use which he carried about. I have seen that. That must have been burnt out. Probably it was kept in his drawer. It might have been in the file in the cabinet. He had a ledger as 30
well. That was not a ledger but it was a small file like this. The ledger was a small ledger. That was a list of every skin we had with Kennedy & Co. or ourselves. It was a skin stock book. There would be an entry in that ledger of every purchase of skins made by the firm or by Mr. Kennedy. Those were entries made in the course of business.

Q. That was apart from another file of this description. He had a ledger and he had a file.

Q. What was in the file? Rough notes the same as this to help him when he wanted to do the cables.

Q. From what was this file prepared? That is what my husband did 40
himself. I can't remember when I first saw that file.

Q. Had you seen it before your husband's return from England? How could I. It was not made till July. My husband reorganised the skin business when he returned in July and he was busy on these skin transactions. I know that the file P39 was prepared after my husband's return. I did not see it being written up. I saw it when it was completed. I think it was written up on material supplied. I don't know.

Q. You say you returned after dinner, what time? About 8.45 p.m.

Q. You went straight into the old shop? I went into Colombo Stores with my husband and then I went into the old shop after 2 or 3 minutes. I remained in the old shop. Mr. Kennedy came across about 10.25. I have no doubt about the time I had looked at the time just before and I fixed the time in that way. I said it was about 10.25.

Q. When you say about 10.25 you mean about 10.25? It was certainly past 10.15. It was later than 10.15. On that occasion he came and left with two labourers. The second time he came back was about 10.50. I

10 happened to look at the time before that too. I am not making a mistake.

Q. You made a statement to Mr. Lloyd the morning after the fire? Yes.

Q. At 8 o'clock on the morning of the 30th September? Yes.

*(Page 8 of the crime file read out to witness.) Did you tell Mr. Lloyd this, "About 10 p.m. Mr. Kennedy came across to the Times Building and said he could not close the metal expanding gates of the Colombo Stores? I don't know." Did you tell Mr. Lloyd this "He took 2 or 3 labourers to grease the gates and get them shut. He returned about 10.30 p.m. I can't remember what I told Mr. Lloyd.

20 Q. Your first reply to me was that you did not make a first statement to Mr. Lloyd? I remember that because he said what time was it and I said it was a long long time after the bells went but I can't remember the details. I don't know what the bells were and I looked at the time and it was 10 p.m.

Q. You deny that you told Mr. Lloyd this that Mr. Kennedy came in across to the Times Building and said he could not close the metal expanding doors? I can't remember what I told Mr. Lloyd that night. I had been through a terrible night. I had been through a fire when Mr. Lloyd came and asked me and I told him I was feeling sick and he came and asked me how

30 I was feeling and I said I was feeling ill. He asked me for details and I said I could not give him the details of it and he asked me to give him just an outline of it. I don't remember what I told Mr. Lloyd.

"He took 2 or 3 labourers to grease the gates and get them shut," Mr. Lloyd was stressing about the time? I could't remember the time.

"Mr. Kennedy was thirsty and sent somebody for soda water which he drank."

Q. It would be of the greatest importance to make Mr. Kennedy's last visit to the old shop as late as possible. I don't know about that.

Q. You did not see the importance of making out that Mr. Kennedy

40 came from Colombo Stores as late as 11 p.m.? No.

Q. Would you commit yourself to the statement that it was not earlier than 10.50 that Mr. Kennedy came back for the last time to the Colombo Stores. Would you swear that it was not earlier than 10.50 that Mr. Kennedy came to the Colombo Stores for the last time? Yes. I told Mr. Lloyd I was not fit to make a statement and he asked me to give him an outline. I can't remember, I made a statement in great detail to him.

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(b) Elizabeth
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Cross-exa-
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* Page No.
refers to a
document
used in
Courts
below which
it is not pos-
sible to
identify.

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continued.

Q. You commit yourself in this statement to two particular points of time. You have fixed these incidents at two particular points of time? I didn't go into detail. I don't remember what I told Mr. Lloyd.

Q. Your evidence is that you had been at the shop from 8.45? About that.

Q. Until certainly 10 p.m. before the explosion? Until the fire occurred.

Q. You now say you had a smell of coal gas that evening? Yes.

Q. Can you remember when you got that smell that evening? I can't remember now.

Q. How long after you got there? I was only there for 1½ hours. 10

Q. More than that 2¼ hours? About that.

Q. You were there for 2¼ hours. How long after you got there did you get the smell? I can't remember.

Q. Had you got that smell before Mr. Kennedy came from the Colombo Stores? I can't remember that.

Q. Did you observe to Mr. Kennedy on the occasion of his first visit that you got a smell? I can't remember on which visit it was.

Q. Did you attach any particular importance to it after the fire? No.

Q. When did you first recall it? I have always smelt these smells after I came back. 20

Q. Did you at any time connect the fire with the smell of coal gas you received? I haven't connected the two. I have nothing to do with the fires. I don't know anything about those things.

Q. You haven't made a study of it? I know that fires occur from explosions of gases.

Q. I take it after the fire you would discuss what could have been the cause of the fire, did you? I expect I would like everybody else.

Q. This is a matter of special interest to you. Your husband had been injured and your husband's property burnt so that it had a special interest for you and so I suggest that you might have discussed it with your husband and your friends the cause of the fire? I always discuss the question of my husband's health. I can't remember whether I discussed the question of the fire. I can't remember these things. I would discuss about the cause of the fire. 30

Q. Did you at any time discuss with your husband that the fire might have been caused by coal gas? I did not discuss with my husband the possible cause of the fire.

Q. When you did discuss that with your husband did you recall to him that you had smelt coal gas on the night of the fire? I expect I would.

Q. And you mentioned it to him? I can't remember these things. 40

Q. Do you now remember that on the night of the fire when you smelt coal gas you brought it to your husband's notice? I remember that.

Q. You can't remember whether you had told him so when he came from Colombo Stores on the first occasion or on the second occasion? No.

Q. Do you remember drawing his attention to that conversation after the fire? I can't remember that.

Q. Do you know that your husband has made no reference to the conversation at this trial? I don't know whether any reference has been made to this conversation in this evidence. It is a wonder that my husband has got a memory after the fire he was through. My husband said that the smell must have come from outside. I made no effort on my own to find out what the smell might be due to. It was a strong smell. I can't say from what direction it came, not from the basement. My husband said it must be coming from outside and I left it at that. This was not the first time I had mentioned the smell of coal gas. I had smelt it before.

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10 Q. In your statement to Mr. Lloyd did you mention to Mr. Lloyd that you had smelt coal gas that night and brought it to your husband's notice? I don't remember.

Q. When did you first see Zain Mahat the watcher? When we went into the lobby to get the soda water. When we went to speak to him. The soda water bottle was brought and my husband entered to doorway and the three of us entered the doorway and Hossen poured the soda into a glass and my husband asked me if I would like to have a drink and I said no and he had a drink and handed the glass to Hossen. When my husband put the key into the door Zain Mahat was at the vestibule door. I wasn't talking
20 to him. I was just being pleasant with him telling him how my husband went to put out the lights.

Q. I understand that you, Mr. Kennedy and Hossen were at the vestibule door at the time the soda was taken? Yes.

Q. Your husband drank the soda? Yes.

Q. And inserted the key in the door? He had to fetch the key.

Q. You walked along with Zain Mahat? I did not walk with him but he stood at the door. I proceeded along while my husband went to put the light off. The watcher was standing at the metal expanding door near the pavement. That is always where he stood when he waited to lock up.

30 Q. Where did you first see Zain Mahat? He was standing at the same place at the metal expanding door.

Q. Did he come up to the main shop door? I don't know what he was doing. I was'nt observing him. He generally stopped there. My husband had just time to go and put out the switch when the lights went out and the terrific thing occurred. I did'nt discuss the smell of coal gas with Zain Mahat. I was satisfied with my husband's explanation that the smell was coming from outside. I was satisfied with his explanation and it passed out of my mind. I don't remember whether I mentioned it to Zain Mahat. I can't remember it. It is not likely I told Zain Mahat as far as I remember. I was
40 satisfied with my husband's explanation. I have been in the shop on several occasions when my husband closes up for the night. I don't know what his practice is when he puts off the lights. I stand outside. He put the key in the door and he went inside to put off the lights. We were shutting up and naturally that was what was going to be done. I don't remember he told me he was going to put off the main switch. We were shutting up.

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(b) Elizabeth
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Cross-exa-
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continued.

Q. Did you tell Mr. Lloyd this " I went inside and was in conversation with the watcher while Mr. Kennedy went inside to put off the main switch ? That is correct I suppose.

Q. You have no recollection of it ? I don't remember.

Q. Now can you remember at what point of time the lights went out ? In our shop just before the noise.

Q. Before the explosion the lights were out in your shop ? The light went out.

Q. That was before the first explosion ? Yes.

Q. You have no doubt about that ? No.

Q. Was that a few minutes before the first explosion or how long after ? At once. The lights went out first followed almost immediately by an explosion.

Q. Can you remember what happened to the street lamps ? They went out at the same time ? I can't remember that.

Q. When you heard the first explosion your evidence is that you went along towards the vestibule door right up to the door ? Yes.

Q. The door was still in position ? It was opened.

Q. It had not fallen in or got damaged ? It was as it was when my husband went to put off the lights.

Q. It was not damaged ? Not as far as I know.

Q. Why did you not enter the shop ? I had entered the shop after the watcher left and said he would get help and the driver pulled me out 2 or 3 times because I wanted to get my husband out.

Q. Between the two explosions you were able to do this. You were able to get into the shop ? I did not get into the shop. I went up to the doorway. The driver pulled me out 2 or 3 times.

Q. Where were you when the second explosion occurred ? I was near the lift coming back.

Q. Would you say at least a minute intervened between the two explosions ? I can't say how long. I have no doubt there were three distinct and separate explosions. The second explosion was a tremendous one which shook the building to pieces. The first one was a loud one. The watcher and I ran before the second explosion, the place was on fire.

Q. Can you say in what spot those flames were ? I can't say as I was too agitated.

Q. You cannot say for instance whether the flames were coming from the shop towards the corridor ? I can't describe what the flames were like.

Q. You are quite certain you heard two explosions ? Yes.

Q. Did you mention that to Mr. Lloyd. I can't remember. My mind was 'nt working that morning.

Q. Mr. Kennedy went inside to switch off the main switch almost immediately afterwards I heard a terrific explosion ? I said that.

The driver was waiting with the car to take us home. I rushed towards the car and I then wanted to return and enter the building in search of Mr. Kennedy and the driver said " No " you remain here lady. I remained outside and became agitated ? I don't think Mr. Lloyd has got the details

right. This is an outline of what happened. I don't say it is anybody's fault. I told Mr. Lloyd I was'nt in a fit state and I said I could'nt think and he asked me to give it in outline and I did. I can't say whose mistake it was. My reason is that I was ill I was not agitated in the morning. I was ill and upset. It all means what you mean by agitated and what I mean. I was distressed on account of my husband. I don't say he did'nt get the correct details but I say they were not taken down. I have no reason to suggest why Mr. Lloyd should not have taken down what I told him.

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Q. You have heard on that point the evidence of Mr. Owen? Yes.
10 Q. He says there was really what was one explosion but was a rumbling explosion? That was the second one.

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Cross-exa-
mination—
continued.

Q. You say Mr. Kennedy was bleeding on one side of his face when you first saw him in the car? I did'nt say that his face was all burnt and blood was trickling from the other side and there was blood on the other side too. He had blood on more than one side, I can't remember if he was bleeding from the left temple.

Q. You were present when Mr. Kennedy was admitted into hospital? Yes.

Q. You told us you left the room before he was chloroformed? Yes.

20 Q. Can you say whether his shoes were taken off then? I undid one and Mr. Owen undid the lace. I don't know whether he took the shoe of at least one.

I got no smell of petrol. There was'nt any smell. The shoes did'nt smell petrol. I did'nt smell any petrol on the shoes. I did'nt make a special examination of the shoes to see if they smelt petrol.

Q. You went in the car with Mr. Owen and your husband to the General Hospital? Yes.

Q. Did you hear your husband tell Mr. Owen what happened? I can't remember that.

30 Q. Did you ask you husband in the car what happened? I can't remember. He was too ill to be spoken to.

Q. Did you speak to him at the hospital and ask him what happened? I can't remember. I expect I asked him and I don't remember what he told me.

Q. What did your husband tell you on that point? I don't remember.

Q. Not even an impression of what he told you. You must understand that he had gone through a great shock and I thought my husband was dead. The whole thing was terrible. The keys of the safe at the bungalow were in the almirah where they are always kept.

Q. Who had a key of the almirah? I had.

40 Q. When did you get the office safe key from your husband? The sister at the hospital asked me to get the keys and to take all the valuables as they would not be responsible for them and I took the safe keys that night.

Q. You opened the safe on the morning of the fire to get the attache case for the income tax letter? It was the morning of the fire about 10.30 a long time after I made my statement when Mr. Galessby of the National

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Bank rang me up. I took the attache case and I found the Income Tax letter, I put the attache case into the safe. That was in the attache case. Mr. Atkins asked me where the books and I told him the majority were with me. Then he asked me where were the stock sheets that we would have for auditing and I said you must still have them with you and he said where are the other books and I said they must be in the store and in the conversation he referred to P39 and he said he might need it. It was after the Police came and after the fire that I took the attache case. I don't know that a Sergeant came there alone. The safe is kept in the office room. I did not notice any others with the Sergeant. I took it in his presence. I just took it. The Sergeant did not protest. I would'nt have thought of it if I had'nt to take the money. 10

I left hospital about 3 a.m. in the morning. I went back about 7.30 a.m. I returned immediately because my husband was very sick.

Q. Between that time and that afternoon when the safe was sealed you did'nt meet your husband? I had seen him.

Q. You went to Hospital and left almost immediately? Yes.

Q. Did you go back to the hospital before the safe was sealed? I think I must have gone.

Q. Once at least? I can't remember. My brain won't go to those 20 things. My husband was ill.

Q. It was on the 18th October I understood you to say that Mr. Koelmeyer and a clerk from Duncan Watkins Ford came and removed certain documents? They removed certain files.

Q. On that day they did not attempt to take away this document Wewaladuwa Tanneries? Mr. Koelmeyer took the files as I handed them to him in rotation.

Q. You wanted a list of the documents? Yes.

Q. You gave him a list? Yes. P32 is not a document removed on the 18th October. 30

Q. On the 25th October when he came with Mr. Ross he removed the remaining files? Mr. Ross removed them.

Q. When you came to this file your present evidence is that you said this is just a record of old skins? I did not say that at all. I said it was a record of old stocks.

Q. How do you know that all the items in P32 would appear in P39? I had seen it. I helped my husband. I am a business woman. I know that because the skin file was in the basement those skins there were in the file were in the basement. I know they were in the basement. I knew it. They were'nt transferred. It is just a copy. That is just a rough list for my husband's use alone made from P39 not probably made from P39 but probably made from his ledger. My husband is a business man and he does things properly. It is not a matter of inference. It is a stock of skins in the basement. The other file is a stock of skins with Kennedy & Co. against possible sales belonging to the Wewaladuwa Tanneries. I told Mr. Ross that it had not come into operation. My reason I give you is that my husband was a business man. I had been through it but I had not checked it. 40

Q. Did you tell Mr. Ross that this was an old record? I told Mr. Ross that it is a record of old stocks. I deny that I told Mr. Ross it was an old record.

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Q. Mr. Koelmeyer and Mr. Ross both say you say this was an old record. Mr. Koelmeyer had written down the statement? When I told Mr. Ross about it Mr. Koelmeyer was busy doing his figures. My remark was addressed to Mr. Ross. It was not an old record. I deny telling Mr. Ross it was an old record.

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10 Q. Did you show any reluctance to giving over that file at all? No. I said that it would confuse them. I asked Mr. Ross if I could cancel it. I told Mr. Ross the file had not come into operation. Mr. Ross told me it would confuse things if it was done. I did not become agitated.

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Cross-exa-
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continued.

Q. Did you change? Not that I know of.

Q. Between the date of the fire and the 25th October you must have seen your husband several times? Of course.

Q. By that date he was considerably improved in health? Yes.

Q. Did you discuss this file at all? No.

Q. Did your husband tell you that there is such and such a file in the safe? No.

20 Q. Did he ask were you able to get that file out of the safe? No.

Q. Shall I suggest to you that on the 25th October you knew the implication of the file? I knew that it was in the safe but I knew there was implication.

Q. You don't know it has a bearing after the fire? It has no bearing. It is a list.

30 Q. You don't know that P32 had been written by S. A. Perera? No. I first knew of it after it was made soon after it was done. My husband told me why he made that file. I read P32. It is headed "consignment stock with Kennedy & Co. against possible sale. What is the plain meaning of that"? It would say it was just a rough list. These were not left with Kennedy & Co. These were our own stocks. This file would have come into operation and then it would have been effective. They would have to be debited when given to Perera and credited when returned. It is just a book transaction I had'nt anything to do with this. My husband did it.

5th October, 1934.

5th October,
1934.

Accused present.

Counsel as before.

ELIZABETH KENNEDY. Sworn.

Re-exa-
mination.

RE-EXAMINED.

40 Q. You said that your husband came back from Colombo Stores at 10.25? Yes.

Q. You said that at the time you made your statement you were considerably upset and ill? Yes. I had to go to the Doctor on the 2nd

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October, and the doctor prescribed for me. He was Dr. A. M. de Silva. I have the prescription with me. I produce it A13 dated the 2nd October from Dr. A. M. de Silva. I have had it dispensed more than twice. I have had it repeated. I took it for several days, in fact for several weeks. At the time I had just returned from hospital. The statement was made at 8 a.m. on the 30th September.

But for your being phoned to by the bank would you attended to the insurance policies? I should not have thought of them at all. I would have waited for my husband's return. I have had my husband's powers of attorney for several years. The power of attorney continues. It is'nt cancelled Julius & Creasy have drawn that up. It is not a new one. The old one is operating. 10

The file P39 was handed by me to Mr. Watkins on the 4th October. Mr. Watkins said it was the 4th October. He wanted it and I gave it to him. Mr. Watkins phoned me about the income tax returns and about any stocks and I took it and gave it to him.

Q. Are you aware that the list in P32 was included in P39? Yes. P32 was a record of old stocks belonging to Mr. Kennedy.

Q. Was any claim made by Mr. Kennedy or anybody else on the footing that those stocks were merely held in trust by Mr. Kennedy? No. 20

Q. With regard to Zain Mahat's evidence you were or are you quite certain that the evidence is right with regard to your movements? Yes.

Q. When the lamps are alight inside the ground floor could anyone passing up and down Main Street see the movements of anybody on the ground floor? The Main Street entrance is a glass door and there are no blinds to it and anybody could see through it. There were glass windows right round. They are not cased in. I mean to say that there was no backing to it. It is the kind of blinds found at jewellers. The door to Kennedy's shop was a large glass door giving a clear view. It was not obscured by anything.

(c) Dr. N.
Attygalle.
Examina-
tion.

DR. N. ATTYGALLE. Affirmed.

30

I am a Fellow of the Royal College of Surgeons (England) I hold a diploma for Lyncachology (throat and nose diseases) and I am a member of the College of Gynæcology Great Britain. I am a Fellow of the Royal Society of Medicine. That is a Society of distinguished medical men. I am attached to the Lady Havelock Hospital. I have written a treatise on the treatment of burns. Copies of that has been circularised through the various hospitals by the Director of Medical and Sanitary Services.

Myself, Dr. Blaze and Dr. Ratnavale were appointed as a medical board to report on the burns on Mr. Kennedy. That was on the 14th October. That was the date we examined him. 40

Q. Did you put down on paper the injuries you observed on him at the spot? What we observed we did not put on paper, but our conclusions were noted on paper. We were asked certain questions and we answered them. The question we were called upon to decide was whether the burns were due to an electrical spark or to a flame.

Q. Dr. Nair was the cause of that idea?—I am not aware of that. We were asked whether the burns could have been caused by an electric spark. We did come to the conclusion that the burns were not caused by an electric spark but by a flame and we so reported. There were healing burn marks on his face. They were distributed all over his face probably from the margin of the hairy part of his scalp to the chin spreading outwards to the interior surface of the ears. The marks were more obvious round the mouth, nose and the prominences. The other prominences are the cheek bone and the forehead. We concluded that the burns were more severe on that because when we saw them they were healing. The eyebrows were singed and the eye lashes were singed and the hair on the temples were singed and the singeing was more marked on the right side. On the right side there were healing marks and on the inner side of the right hand it extended to the fore-arm about $1\frac{1}{2}$ ". The outer margin of it was on a lower level than on the right.

On the back of the right hand there was a mark light brown extending about 3" long and $\frac{1}{4}$ " wide extending obliquely downwards and outwards. The lowest point of it extended to the middle of the fore-arm. It extended obliquely downwards and outwards. The commencing point was higher up and reached the middle of the fore-arm when it came upwards. There was an interval of about 6". There was no connection with that point and the other burns. We couldn't come to a definite conclusion regarding that injury. If the hand was covered at the time it could not have been burnt. If he had a coat on it is unlikely that it would have burnt. From his physical condition we couldn't come to the conclusion that it was a burn. It appeared to be an excoriation of the skin the superficial surface of the cutis being rubbed off. I found two other excoriations one on the back of the right elbow. That was a smaller excoriation, in appearance it was well marked about the size of a -/50 cent. piece or smaller. It was partly healing. I think it was the healing surface that showed. Burns of that kind would leave a scab of that kind. There was a similar and smaller excoriation on the left elbow also circular. We came to the conclusion they were excoriations of the skin. They were rubbed off and they were in the healing stages at the time. Any hard object would rub it off, a fall need not necessarily have caused it. It is very unlikely that it could have been caused during the 2 weeks when Mr. Kennedy was in bed. On the left hand there were burns similar to that on the right hand but they did not extend so high as the right hand. The fingers of the left hand both inside and outside were burnt. With regard to the right hand they were similar but they were not quite the same. The similarity was not quite the same as on the right hand.

On the right knee there was an abrasion on the outer side. It was a scratch on the side. An excoriation is a question of degree but in this case there was a scratch in the side of the right knee. There were burns on the outer malulus of the right ankle and there were burns on the inner side. They were above shoe level. On the outer side it was about 3" in length and $1\frac{1}{2}$ " wide. On the inner side about $\frac{3}{4}$ " and 2" long. The inner were in

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three different spots I remember. They were three different unconnected parts on the side but we measured all three together. The width of the lowest part was $\frac{3}{4}$ " on the inner side and $1\frac{1}{2}$ " on the outer side. The width was taken at the lowest level which was the broadest. On the left ankle there was a small burn on the inner malleolus on the side of the left ankle about the size of a -/50 cent piece.

All the burns in our opinion were due to a flame. I did not include a red hot object. We described the burns as being due to a flame. We could not include a red hot object. The description that the burns were due to a red hot object would apply more to the burns on the ankle. 10

The modern treatment is to spray tannic acid on the burns. As soon as a case of burns is admitted into the hospital the burnt area is cleaned up usually with an anæsthetic unless they are minor ones when they wouldn't need an anæsthetic as it is a painful process. Once they are cleaned up they are sprayed with tannic acid. It is done very hour or every half an hour and it is done 8 or 12 times till it forms a thick brown crust. Once that crust is formed it is impossible to say anything about the degree of a burn. This is an illustration from Choice's manual of surgery of a crust formed on the 5th day. It is the coagulated albumen plus the tannic acid. The brown raised area is the crust itself. 20

Q. Would burns due to burning oils present characteristic appearances as these burns? They don't give a particular appearance but if the burns were due to oil you will get smells and there is soot deposited. You get the smell of oil from the injured part. I am reading from Choice's manual of Surgery. "The parts of the body being protected by clothing are less injured by fire than when exposed . . . and they are characteristic by a distinct odour of petroleum."

This is a quotation from Dicks and Mann. Burns caused by burning oil leave a characteristic odour"

This is an illustration by Webster in Legal Medicine and Toxicology. 30 There is another by Taylor on page 573 in volume 1.

Q. As a matter of fact you have experimented with petrol? Yes.

Q. You immersed your hand in petrol and shook it over a flame? If you immerse your hand in petrol for a time take it out and if you leave it for a few seconds and pass it through a flame it doesn't catch fire.

By a few seconds I meant 10 or 15 seconds. I couldn't accurately time it.

But if the fingers were dripping with petrol at the time it catches fire immediately. I had Dr. Blaze to help me and I set fire to my hands. I think by the time the hand is passed through the fire the petrol is not completely evaporated because there was a smell of petrol but I could not be definite on that. I also set fire to a sock immersed in petrol. After it burnt for some time I put the fire out and what we observed was this that when you put drops of petrol on the sock it spreads over a wide area and the area of the burns is more towards the centre of the sock than at the edges and we found the smell of petrol persisting for over 2 hours. That was not a sock immersed in petrol, we only put drops of petrol on it. It was 40

a pair of cotton socks. I did not immerse the whole sock. The levels were sharply defined in both hands we saw no dripping whatever. The edges were well defined. I did not find anything to indicate a dripping character of a burn. They were well defined. The margins were well defined. The only marks I found was a separate mark on the back of the right hand about 3 to 4". If he had a coat on the coat would have burnt.

10 *Q.* If a man were trying to fight his way through burning material could he have come by burns on his face? The burns such as he had could have been caused if he was fighting his way through the flames. His hands if exposed to the flames would have burnt.

Q. Have you an authority for the proposition that if a man was clad that his clothes would get burnt? (Witness reads it) "parts of the body protected by cloth are less injured than those exposed . . . such as petroleum. Unless the clothes were saturated with petroleum the clothes would protect the body? It would if the cloth does not catch fire. If the cloth catches fire it is worse. Once the cloth catches fire the flames come in contact with the parts and catches fire. The flames remain on the clothes a longer time than on parts of the body.

20 *Q.* Could a person in a dazed condition having concussion do things and not remember them? Yes. His memory will be a blank up to a certain point and he will remember events after he recovers. It is possible that a man who has received concussion and has received injuries will not feel any pain.

(Shown the bed head ticket marked P1.) The first place where you find detailed description of the injuries is on the 29th September burns 1, 2 and 3 degrees both on hands, face, head, right ankle. The first entry is the history of his having accidentally burnt himself at 11.15 to-day at the Times building. I don't know who made the entry of 11.15. The initials of the person who made them are there. On the other page there is another
30 description. There is a description of the injuries as 1, 2nd and 3rd degree both hands, head, face and ankles. What happens in this case is that he goes to the out-patients department and makes notes and goes to the ward and the ward officer goes round and gives a description of the patient. On the 15th October I have a detailed description. The first entry reads burns, face, upper part 1 and 2nd degree, head, face and ankle is mentioned by the admitting officer on the first day. The back of the head is specifically set out on the 15th. Both hands up to the wrist glove shaped, 1, 2nd and 3rd degrees. I could'nt say it was down, from recollection. It was
40 on the back of the right arm a narrow streak $\frac{1}{2}$ " wide. There is nothing to show that it is connected to the back of the hand. That is of the 1st and 2nd degrees.

Q. Was it possible on the 15th to have specified the degree of the burns. You saw him on the 14th? We could not come to a conclusion as to the different degrees of the burns on the 14th October. As tannic acid spread on the burns it was difficult to give definite degrees of the burns.

It depends on the person who describes it whether he calls the forehead a part of the head.

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Q. You saw Mr. Kennedy for the first time on the 14th October? Yes.

Q. Just two weeks after he had sustained his burns? Yes.

Q. Would it be correct to say that they were already healing? That is what I described them as.

Q. So that you could not be in as good a position to describe those burns as the doctor who saw them the morning after the fire? After the wounds were sprayed with tannic acid the one and only person who can give an accurate description of them was the surgeon who saw them before the tannic acid was sprayed on them. The spraying is repeated at hourly intervals until the burnt area has attained a deep coloration. 10

Q. Would it be correct to say that the average number of applications that would be necessary before that brown condition of a coloration is attained would be 12? It varies from 6 to 12 and in some cases it might require more than 12 but with 5 or 6 applications you get a good coating.

Q. From that bed head ticket you are unable to say how many times tannic acid was sprayed before 7.30 a.m. the next morning. If the patient was admitted at 11.30 p.m. and if he was given morphine and atrophine at the outpatient's department how many times would they have sprayed the wounds with tannic acid? If they had carried out instructions they would have done it every hour. This particular bed head ticket doesn't show how many times the injuries have been sprayed. By 7 a.m. they would have sprayed him about 7 times. It is a recognized form of treatment, it has been in force from 1925. It was a treatment first started in America. When you apply tannic acid so many times to produce this condition of coloration. Does that apply to a degree of the burns. It does apply unless it was charred. The application of the tannic acid A third degree burn is where the parts of the true skin are destroyed and where the true skin remains. Where the true skin is destroyed you couldn't get the raw flesh. If you expose any parts and destroy any parts of the skin and if you examine them microscopically you will see the levels of the skin under the tissue. When you make sections of the skin you will get the levels of the skin. That is a third degree burn. The papillae are there. The sweat glands are there and the cutis vera is there. It is exposed where the true skins has been exposed or destroyed. The subcutaneous tissues are present. It doesn't depend on the degree of the burn to produce coloration provided the muscle is not completely burnt for then the tannic spraying would be useless and the evidence of the burns could be found if the skin is not completely burnt. 20 30

Q. The description of the burns of this kind and an examination of it does not call for high degree of surgical skill? No. 40

Q. Any doctor can describe them? If he is intelligent enough.

Q. Dr. A. M. de Silva is a surgeon of very great experience? Certainly.

Q. If there is any error as to his description of the burns it must have been due to faulty observation? I can't say what it is due to.

Q. If Dr. A. M. de Silva does purport to describe these burns and their degree ordinarily speaking would they be consistent with a coloration?

If tannic acid had been applied as it ought to have been done I think it would be difficult to describe the burns. It forms a coat when you apply it but it doesn't harden till some time elapses. It is soft at first and then gets hard.

Q. Do you then suggest that if the treatment was carried out in the way it should have been a crust would have formed in seven hours and it would have been difficult to describe the burns? In my experience it is difficult to say so. This result may be generally attained by 12 applications but may be required.

10 Q. The book is not authority for the statement that you can produce a crust in 6 applications? If you apply it in the proper way. I have made applications of it and I have seen it produced after 6 applications and sometimes after 3 applications. The idea is to form a thick protective crust and to protect the cuticle under it.

I did not see any burn which went up the fore-arm nor did the other members of the board see it. We described one burn. We said there was a light brown mark on the right of the forearm.

20 Dr. A. M. de Silva described the injuries on the back of the hand about $\frac{1}{4}$ " wide at the top tapering to a point 2 to 3" below? I did not find such an injury. The burn did not stop at the wrist but on the side it was continued a distance of 2".

Q. The burn there did it taper? In a sense that it was like that. It was not actually tapering. I did not see the $\frac{1}{4}$ " tapering on the 14th.

There were excoriations of the skin at the two elbows. That might be to any hard substance coming in contact. Those wounds were partially healed when I saw them. I couldn't say how they had been treated. I couldn't say what the treatment was.

As regards the right ankle on the inner side there was three separate injuries. That is what we saw. Three different marks not connected.

30 Q. If there had been three drops of petrol at those three points where they took fire would you expect burns at those points? It is possible.

Q. If you exposed such a small area as the ankle to a flame would it be unusual to get burns at three different places than in the same area? If petrol dropped on these three points it is difficult to keep them separate as it was too close.

Q. Rather than three distinct burns? Yes.

40 Q. On the other hand if petrol had been at those three distinct places burns might have been produced by that petrol coming in contact with the flames? It would burn. They were so close. I couldn't differentiate the flame to burn at those three points.

Q. On the outside there was one burnt area? Yes.

Q. Do you say that that condition on the inner side was unusual? What do you mean.

Q. Have you come across burns of that description before? You get a burn when clothes or petrol catches fire. I haven't come across three identical points like that. I haven't come across similar described places

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continued.

in such proximity in such an area. It would soak through and burn through one area.

(Shown the socks). *Q.* You see the tear on that side. There is one tear which is distinct from the rest of it? No.

Q. Socks with which you carried on different experiments were completely of different texture? Yes. I did not immerse the sock in petrol. We dropped petrol on the socks. We poured petrol on the areas of the socks and exposed it to a flame put a wet towel on it and examined the socks. Our observation was the centre portion was burnt through and not on the other portions. The socks were burnt more in the centre than in other places. We didn't sprinkle the petrol. 10

Q. If a person were pouring petrol on the floor from a can and he got drops of petrol on his socks that would be rather a different condition? I couldn't say so. If petrol drops on a place it depends on the spraying action of it. The spraying action would spread it over a wider area.

Q. You get then rather a different condition to what you had? I couldn't say what condition you would get. If you probably splash petrol on the floor it will get in near his legs.

Q. The experiment where you said you immersed your hands in petrol and passed it over a flame what flame was it? It was a petrol flame. We placed a few logs on the floor and poured petrol on it and I passed my hands through it. It leaves a smarting sensation on the fingers for a couple of hours. 20

Q. You said that those socks smelt of petrol two hours afterwards? I did not say these socks but the socks I used. It smelt for two hours after. The socks were not washed in the interval.

Q. Did you see burns between the fingers? Yes.

Q. The complete areas of the hands burnt? Yes.

Q. Would that condition be consistent with some quantity of petrol being on the hand and your hand being wet and your hand gets burnt? Yes. If you soaked your hand with petrol and the hand was dripping with petrol and the petrol caught fire it would be consistent with that. My experiment only proved that if the hand was dripping the petrol caught fire. Sufficient petrol would catch fire and produce burns of such intensity. 30

Burns caused by oils would give a characteristic odour and a deposit of soot. The reference to that is petroleum and oil.

Q. There is no case where they refer to petrol? No. I think there is soot when you burn petrol. I can't refer to any case where that condition was present as a result of a petrol burn. The odour of petroleum lasted for a long time. Once the tannic acid is sprayed if you clean it the odour will not remain. In the case of a bottle lamp accident it is different. In a bottle lamp there are a couple of ounces of kerosine oil in the bottle and when the oil upsets the clothes catch fire. If the oil was sprinkled on the cloth you would get a smell of the kerosene oil on the cloth. The smell would persist but I don't think the quantity matters. 40

Q. Now what do you mean by burning oil? If you set fire to the oil the flame would be produced not by the oil itself but by the gas.

Q. If petrol vapour is ignited you get a flame? That would not be burning oil.

Q. Would you look at page 110 of Dicks & Mann. That page does not deal with the circumstances in which clothes would burn. It deals with both (the witness reads the page) Cloth catches fire when saturated with petroleum.

Q. If a person had petrol on his hands only and those hands were exposed to a flame and his clothes were not saturated with petrol is it likely that the clothes will escape the fire? If the flames spread further and the clothes came in contact it would catch fire.

Q. Take this case. There are burns on the hands, face and ankles. No burns on the clothes. Is that condition consistent with some petrol being only on his hands? It is possible.

Q. Were those burns you found on Mr. Kennedy consistent with his having been exposed to sudden flames. Suppose you ignite vapour and flames rush out and you are exposed to the flames? It depends on the duration of the flame and the intensity of the heat.

Q. You were asked about concussion of the brain and a memory being left blank as a result? Concussion is a momentary paralysis of the junctions of the brain, acute cerebral aenæmia. It is very difficult to describe a shock. It is a state in which there is a paralysis of the muscular system of the brain. The other is the nervous state and this has more to do with the cardio-vascio system.

Q. So far as one's memory is concerned is it correct to say that a shock to the nervous system will effect the brain than the other systems where the heart is concerned?—Concussion of the brain will effect the brain more than a shock. The difficulty is to express these conditions. If a person has concussion it might produce a blank memory. A concussion of the brain is a blow or an accidental fall on one's head and is called hyper acute anæmia of the brain. For a number of hours the memory would be blank. A shock doesn't produce unconsciousness. It is difficult to say the state of a shock. When a person is shocked there are so many other factors to be considered. It is difficult to dissociate one from the other. A shock produces irritation so that the nervous element cannot be entirely dissociated from a shock.

Q. It would not effect one's recollection of what happened?—Not a state of shock.

Q. While you are in a condition of shock you will be able to give a coherent account?—You may or may not. It depends on the shock and the general condition of the patient.

RE-EXAMINED.

One sock has holes on both sides of it where the ankles would be?—There are several holes in this.

Q. On the right side it has got a fairly big hole and more than one?—Yes. On the left side the hole is a little bigger than a -/50 cent piece (the witness holds up the sock).

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continued.

Q. The burns you found if that was the right foot the burns on the inner side were actually bigger than the hole on the sock. I describe them as three distinct ones. The other sock has only got a hole on one side. There are several holes.

Q. Corresponding to the ankle there is a hole?—There are several holes. There are two holes on the right side of the sock. The burns do not tally with these tears. There were two tears here. The burns there are almost two circular burns here. They do not tally with the burnt area on the inner side of the left foot. The other one is different to the burnt areas. On the outside there are two holes. One burn is about the size of a -/50 cent piece on the side of the malulus of the left ankle. I don't know that A could have been the sock on the right foot. The burn is much bigger than what I found on the foot. The burn on the inside is smaller than I found. They were the three areas which I found. They were $1\frac{1}{2}$ " long and $\frac{1}{2}$ " wide at lowest part of the burns. They were continuous.

Q. When petrol was poured on a sock did you actually experiment to find out what area would be burnt of any under lying substance? Probably from what I burnt it would be a smaller area.

Q. If petrol was splashed on the floor do you know of any reason why it should splash on the ankles only?—I can't explain it.

Q. Where would you expect it to splash?—In front of his legs.

Q. Would you expect anything splashed on the floor to come on the socks and get on the trousers as well?—If the trousers were low down I would expect it to get on the trousers.

Q. If a person was on his back and his legs were projecting over any flame over heat that was coming upwards would you expect his ankles to be burnt rather than any other portion?—It all depends on the position of the flame and the position of the ankles.

Q. If he was lying on his back the heel would be the most prominent part. The two ankles would be projected outwards. If you expose a flame and the ankles were held in that direction the ankles would be exposed to the flame.

Q. Had the ordinary treatment been followed in the case of Mr. Kennedy when he was admitted at 11.15 by 7.30 or 8 a.m. could it have been possible to say what the degree of the burns were?—That has been my experience. If you spray tannic acid 6 or 7 times it is difficult to say the degree of the burn. You can describe the area but not the degree.

Q. Have you yourself seen a case where the hands and face were burnt by gas flame?—I have.

Q. Was that an area of burns similar to the area of Kennedy's burns?— They were similar but to a lesser degree. A lady went to light a gas cooker and pulled out a gas ring and there was a leak and the whole thing flared up and she put her hands up and her face and hands got burnt. She is a doctor's wife. There was no burning of the clothes.

Q. If the flames was caused by burning petrol or petroleum would you expect to get a smell in the burning of the petroleum?—I would expect a

carbon deposit. I don't know much about petrol but with kerosine you certainly get the smell of kerosine. I couldn't say definitely about petrol.

Q. You said that shock alone could cause forgetfulness?—It is possible. If a head came in contact with something hard or fairly violently that would cause concussion. It is difficult to get a 1st degree burn on the back of the head. The hair gives protection. It would have to pass the stage of singeing.

Q. With regard to the tapering mark on the back of right hand you said you saw no burns?—I said I saw no tapering. It was certainly not there when I saw him on the 14th. There were three of us and we examined the patient and stripped him naked and covered him with a towel and examined him.

(THE COURT ADJOURNS FOR LUNCH.)

(AFTER LUNCH).

DR. N. ATTYGALLE.

RE-EXAMINED.

Q. With regard to the experiment you said that the flame over which you held your hand was actually burning petrol? Yes.

Q. And after a few seconds your hand did not take fire?—That is so.

Q. When it did take fire did you find any difficulty in extinguishing the flames?—There was no difficulty. We covered it with a wet towel and held it tight.

If a man got his hands burnt with petrol he would have to cover the flames and extinguish it.

(To COURT): I suppose if a man was subjected to such an explosion and he was knocked down he would get concussion.

It was a light brown mark we saw. I can't say whether it was treated or not. Probably the bed head ticket would give it. I can't say whether it was sprayed with tannic acid or treated.

(To Mr. Obeysekera with permission).

Dr. Blaze has the notes with him. I refreshed my memory from them. I dictated it and he measured them, Dr. Ratnavale kept on watching. Details were recorded and we were agreed on the conclusions we drew.

G. T. HALE. Sworn.

I am a partner of the firm of Julius & Creasy. I am aware that Mr. Kennedy opened negotiations with Walkers for a lease of the premises known as the Colombo Stores. I was proctor for the firm of Walker's and Mr. Kennedy. The negotiations were completed between Walkers and Mr. Kennedy by the 10th August 1933. The actual rental was agreed upon. I was instructed to draft up a lease in accordance with the terms of the lease. The lease was to be for the balance period of 65 years beginning from the 19th January, 1900. That was a long term agreement. The Fort Landing and Building syndicate were the land owners and they had

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leased the grounds to Walkers for 65 years. That part which was referred to as Colombo Stores of the building was sub-let for residue of the terms. The rental was 1750*l.*— for the first two years as set out in the draft. Walkers were to pay the taxes. I had a draft lease ready by the 22nd September. Two copies were sent to Walkers one of them was for Kennedy and one for them. It was approved of by Walkers on the 25th September with the exception of 1 or 2 verbal alterations. They were quite minor alterations. It would have been ready for signature in the first week in October. After the fire both the parties deferred signing the lease. I have not received instructions that they were not prepared to implement the lease despite the fact that there was no written lease I had instructions in the event of any sub-tenants desiring to take any part of the Colombo Stores building before the completion of the lease that Walkers would be prepared to discuss the matter with them with a view to having a long tenancy if they wanted to. The lease provided for rental being paid quarterly originally but it was altered to rental being paid monthly. We received instructions from Walkers that Kennedy had agreed to pay his rent monthly. I have the lease draft ready since October.

Cross-exa-
mination.

CROSS-EXAMINED.

Q. You told us that Walkers had approved of your draft?—Yes. 20

Q. That was on the 25th October?—Yes.

Q. Had Mr. Kennedy approved of it himself?—I understood so. Walkers was dealing direct with him and before 25th I believe he had seen it. By law he is in possession of the premises.

Q. Do you know why the lease has not been signed all this time?—I know of no definite reason. I expect my clients have discussed it.

Q. Do you know that they were going to give him the same terms?—I have received instructions to draw up the lease and I have not received any other instructions to vary those instructions and the matter is now standing over. 30

When was the arrangement made that the rent should be paid monthly? —About the 15th October.

That was shortly after the fire?—Yes.

It would be correct then to say that in fact Mr. Kennedy has possession of these premises only as a monthly tenant?—Yes.

Re-exa-
mination.

RE-EXAMINED.

He occupies the ground floor but he pays rental for the whole building. I know Walkers had no objection to his sub-leasing the premises on the lease.

(e) Dr. J. R.
Blaze.
Examina-
tion.

DR. J. R. BLAZE. Sworn. 40

I am an M.D. London and M.R.C.P. That is the highest medical qualification available by examination. I am on the staff of the General Hospital, Colombo. I was on the commission appointed by Dr. Briercliffe the Director of Medical and Sanitary Services to report as to certain injuries

on Mr. Kennedy whether they could have been caused by an electric spark. Dr. Attygalle and Dr. Ratnavale were the other members. The three of us went down on the 14th October to examine the patient. Notes were made of the injuries we found on Mr. Kennedy. I had him stripped for that purpose.

10 His whole face was burnt from the edge of the hair to the lower edge of the jaw and chin. The burns were more prominent about the nose and mouth. The hair on his eye-brows and eye lashes were singed. The singeing was greater on the right side. On the right side there were burns
 20 on both sides and these covered both surfaces palmar and dorsal surfaces which extended to the forearm for $1\frac{1}{2}$ " above the lower ulnar bone of the fore-arm on the inner side and extended only as far as it extended to $1\frac{1}{2}$ " above the joint of the ulnar bone. On the outer surface it was in a level with the wrist. When I examined him on the 14th there was no indication of a continuation of this burn on the back of the hand upwards.

What has been described by Dr. A. M. de Silva as a tapering injury?—We found no such injury.

I found an injury on the back of the right fore-arm. That was situated on the upper half of the fore-arm on the outside of the back of it and it
 20 ran downwards and outwards and terminated about the middle of the fore-arm, but it was quite separate from the injuries on his hand. On the left hand there were similar burn scars on both sides but they terminated at the level of the wrist and did not extend to the fore-arm. I don't know that there was very much difference between the fingers of the left and right hands but I found injuries on the point of the right elbow. There was an injury about the size of a -/50 cent piece or perhaps a little smaller and on the point of the left elbow just a trifle higher than the injury on the right elbow on the extreme end of the left elbow there was an injury of the size
 30 of a -/10 cent piece. If the patient was in bed for a fortnight before I saw him I don't think he could have come by those injuries by his having been in bed. I don't think it is possible to cause injuries in that way. The injuries did not appear to be more recent than the others he had on him. It depends on the general condition of a patient. It is possible in nervous diseases to get pressure sores even in a fortnight but not in the case of a healthy person suffering from wounds and is not in a debilitated condition or with prolonged illness. I don't think it is possible. I saw the condition Mr. Kennedy was in. Apart from the burns he was healthy. In my opinion he could not have got pressure sores by being in bed a fortnight. I also found injuries on the right
 40 knee. There was a small scratch on the outside of the front of the right knee. I found certain injuries on the right ankle. There was an injury triangular in shape with its base downwards and tapering upwards and about 3" long and about 1" wide at its base—its widest part. Then there was a more or less triangular injury on the inner side of the ankle which was about 2" in length and about 1 or $\frac{3}{4}$ " wide at its base which was tapering upwards. That was not a continuous injury. It was divided into three parts on the inner side of the right ankle.

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Supreme
Court of
Ceylon.*

No. 9.

Evidence for
Defence.

(e) Dr. J. R.
Blaze.

Examina-
tion—con-
tinued.

*In the
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(e) Dr. J. R.
Blaze.
Examina-
tion—con-
tinued.

On the inner side of the left ankle there was more or less a circular injury about the size of a -/50 cent piece or perhaps a trifle larger. I was present when Dr. Attygalle formed certain tests with regard to petrol. He immersed his hands in petrol so that it dripped with petrol and we had a fire burning over which he passed his hands to see whether he could make it ignite and for how many seconds it would ignite and we found in 10 seconds it was impossible to make it ignite and if you shook the petrol 10 times and held it to the flame it would not ignite. On the other hand if it was dripping with petrol it would ignite at once. I have seen a lady patient with burns similar to Kennedy's burns as a result of gas explosions. She went to light the fire of an oven stove forgetting that she had already a gas ring on the top and there was a small explosion which burnt her right hand and her face and hands the distribution being similar to those on Mr. Kennedy. I think what actually happened was that a ring was burning on the top and she turned on the gas and the gas escaped and there was an explosion.

10

Q. A person present when an explosion took place if he were knocked down would get concussion of the brain?—Yes. Even otherwise he would have a shock but not burns and an explosion would it suffice to make him lose his memory of things for a time?—Yes.

20

Cross-exa-
mination.

CROSS-EXAMINED.

Q. Is it correct that the commission of which you were a member was appointed to ascertain what the cause of the injury on Mr. Kennedy was?—Yes. As far as I remember yes.

Q. The opinion which your commission expressed was this "That the injuries were burns caused by a flame and they could not in your opinion be caused by an electric spark"?—That was the unanimous opinion of the board. That was the only report submitted to the Director. I believe that is so as far as my recollection goes because I have not had the board papers since I sent the report that we were asked a specific question and we confined ourselves to answering that question. I had notes made at my inspection. I have a copy of them. They were typed as soon as they were made the same day.

30

Q. Your examination was on the 14th October?—Yes.

The injuries were then partly healing?—Yes.

Have you experience of application of tannic acid to burns?—Not very much but I have seen it applied.

Within what period of time does a sort of crust form?—The object of the treatment is to cause a crust formed so that in a few hours of the treatment a crust of tannic acid does actually form. Mr. Kennedy was admitted to hospital at 11.30 and if the treatment was carried out by 7.30 the next morning a crust would have formed. If the treatment was carried out you would'nt be able to see the degree of the burns because it was covered with tannic acid. You could see the area of the burns and not the degrees of the burns.

40

Q. You are aware of Dr. A. M. de Silva's evidence in the case?—I saw it in the papers.

Q. He deposes to a burn on the back of the arm extending to the wrist down to a distance of 3" and $\frac{1}{2}$ " wide at the top and tapering towards the bottom. You say you did not observe such a burn on the 14th?—No.

Q. If there was such a burn your not observing it would have been accounted for by the lapses of time that it had been healing?—I think it is doubtful if it would not have left a mark. A 2nd degree burn is a blister and even at the end of two weeks it would leave a mark.

10 Q. On the right wrist on the other hand you say that the burn extended beyond the wrist on the inner side a distance of $1\frac{1}{2}$ " and in a lower degree on the outer side?—Yes.

Q. Did that converge to a point?—It was if you tie a string round your wrist it was like that. So far as my recollection goes it was like that. It formed a curve round that area.

Q. Those injuries on the elbows to which you have referred and on the right knee they were not the result of burns?—I don't think so.

Q. May be abrasions?—Yes.

20 Q. Supposing a person is fighting his way out from a building which was crumbling down it having taken fire can he come by injuries without damage to his clothes?—The injury on the back of his hand and the injuries on his right arm I thought were due to abrasions. If I had to form an opinion I would say it was an abrasion. I would not say it was a burn.

Q. That particular case to which you referred was the case of a lady who was burnt as an accident to a gas stove. Those burns you said were similar to Mr. Kennedy's burns, but were they of a lesser degree?—Yes.

Q. In that case is it correct to say that the lady was in close proximity to the flame itself?—I don't know but what she told me was that. I can't say what her position was at the time.

30 Q. In that case can you remember whether she had burns between the fingers?—She had.

Q. Her hands were burnt both back and front?—Yes.

Q. Where did they terminate?—At the wrist.

Q. In the lady's case there was that difference between the burns on her right hand and Mr. Kennedy's. In her case the burns stopped at the wrist?—That is so far as I remember but I have no recollection of it. I examined her the same evening or the following morning. Dr. Attygalle had seen her before that.

40 Q. Will you describe an elongation of a burn?—I would describe it as an oblique ring of demarcation.

Q. It had nothing to do with the elongation that Dr. A. M. de Silva speaks of at the back of the wrist?—I know of no such mark. I examined him carefully and if there was such a mark I would have seen it. If there

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(e) Dr. J. R.
Blaze.

Cross-exa-
mination—
continued.

*In the
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No. 9.

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Defence.

(e) Dr. J. R.
Blaze.

Cross-exa-
mination—
continued.

was a burn of the second degree a coating of the treatment consisted of an ordinary . . . prior to the application of tannic acid. When tannic acid was applied there would be no scab left. When the scab came off there would probably be a mark. I saw a mark on the back of the forearm about 3' long.

Q. In the notes you refer specifically to certain injuries as burns?—

Yes. The injury on the right fore-arm in this fashion as a linear light brown mark?—Yes.

Q. You were asked whether the intense flame of the 1st degree after a length of time I take it causes a burn of the 3rd degree in the hands and face would have to be subjected to some for some little time?—Yes. 10

Q. For instance Dr. Attygalle's hand did take fire when it was dripping with petrol?—Yes. I put out the fire but there was no blister or any burn except one of the 1st degree.

Q. It would have to be a burn for a considerable length of time to cause a third degree burn?

Q. Your report excluded the possibility of burns being caused by a momentary flash, that it was caused by an electrical spark?—What had you in mind?—A. They are characteristic of burns and differ to those caused by a spark caused by a short circuit or coming in contact with a live wire. 20 When you get hold of a live wire you cannot release your hold of it. I don't think a short circuit would cause the burns we saw. I don't think a momentary splash of coal gas would cause the burns. It depends on the duration of the explosion. The burns in the case of the lady were not as intense as these burns. She was not knocked down.

(f) H.
Brougham.
Examina-
tion.

H. BROUGHAM. Sworn.

I am the Managing Director at present of Brougham's Ltd. I have considerable experience in management of business establishments in the Fort, Before I started on my own I was buyer and manager of one of the biggest departments. 30

Q. Is it within your experience that customers do leave articles belonging to them in your shops?—Yes. They sometimes leave them for quite long periods. I remember one instance where a customer came and left a hold-all in my shop. It is a canvas arrangement in which they put all things. That hold-all was in the shop between two stock takings for a period of 18 months or two years. At the end of that period I had it opened and I found a lot of old clothes and wrapped in the old clothes was a case of amunition. There were two shirts some breeches and I believe there was also a pair of boots or shoes. There was also a case of amunition. This was a fairly large cardboard case. There were live cartridges in it. 40 That was not claimed by the man who left the hold-all behind. He took his goods away and said could he leave the hold-all here and that he would come back for it. He bought a fresh outfit from us.

Apart from that have you experience of customers leaving articles for quite long periods?—We have had goods that are bought and never claimed. We have also instances of attaché cases being left behind.

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CROSS-EXAMINED.

I took his word for it that the hold-all contained old clothes.

Q. What you found in the hold-all were old clothes and a small box of cartridges. I expect any sportsman may take that hold-all in a bag or trunk?—I don't know I have not had instances of suit cases being left behind.

(f) H.
Brougham.
Cross-exa-
mination.

10

Z. A. MENON. Affirmed.

(g) Z. A.
Menon.
Examina-
tion.

I am an assistant in the firm of Kennedy & Co. I ordinarily work in the first floor in the ladies department. Usually when there is a rush of customers a salesman from one floor would go to another floor, I remember an instance where I had to go down when I was sent for to sell things to customers.

Q. Were you able to fix the particular date by the sales book?—I think it was the 15th July last year.

(Shown the entry in A5 No. 25328.) This is an entry in my own handwriting. It is the cash sale book. This is the book ordinarily used in the gentlemen's department on the ground floor. There are earlier entries like the 15th in my own handwriting. On this day I have sold two pairs of laces for 70 cents to a gentleman. The next sale is one bag for *15 $\frac{3}{4}$ %. That is my handwriting. There are only two entries in my handwriting. None of the other entries of the 15th July are mine except these two. There is a sale of two pairs of laces on the 18th July not in my handwriting. I work in the ladies Department and there are no other entries in my handwriting. The man who bought the laces left a suit case with me and said he would call for it or send somebody. He asked me to keep it aside until the next day. That suit case was about 24" long. I gave him a piece of paper and pencil and he wrote his name and address and I handed it to Mr. Classen after the gentleman had gone. When customers bring suit cases we usually take the name and address and leave them aside till they are called for. We keep it a side in a cup-board. There are two shutters to it. There is no key. I remember the door leading from the Times lobby to the ground floor. There are racks on either side of the entrance. There were cupboards too on the lower section. When the question of the suit case containing the petrol tins arose in the Police Station I drew Mr. Kennedy's attention to the suit case left by the customer. I mentioned it to Mr. Kennedy that I was able to remember the fact that I had sold him two pairs of laces. The sales book is for July. I was going through it. I went back to the ladies Department thereafter. I don't know what was in the suit case. It was fairly heavy. I am quite positive about it.

*Sic.

Q. Can you remember what type of suit case it was. It was just an ordinary suit case. It was an expanding suit case.

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(g) Z. A.
Menon.
Cross-exa-
mination.

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How long have you been with Mr. Kennedy?—From the commencement of the business.

From 1920?—Yes.

What were you before that?—I was at Smith Campbells with Mr. Kennedy. I was getting Rs. 125/-.

Is it usual for you to work in the Gentlemen's department like this?—I work in all departments. In case some one is ill I work in that department. It is not unusual for me to come and work in any department. It is a common practice for people to leave parcels in the shop. Sometimes 10 people leave suit cases and never call for them. I only remember this incident where the suitcase was left behind.

8th October, 1934. 8th October, 1934.

Proceedings of the morning sessions i.e. 11 to 1.30 p.m.

Z. A. MENON. Affirmed.

CROSS-EXAMINATION—(continued).

Q. This gentleman who left a suit case at the shop on the 14th July, what time did he come?—I think in the morning; I cannot remember the time.

Q. Was he a regular customer?—No. 20

Q. So far as you know had he an account with you?—No.

Q. All he purchased from you was a pair of laces?—Yes.

Q. Did he ask you whether he may leave the suit case?—He asked me to keep the suit case and said he would call for it.

Q. You asked him for his name and address?—Yes.

Q. He only wrote the name and address on a piece of paper which you supplied?—It was an ordinary scribbling block of paper.

Q. Did you give the suit case and that piece of paper to Mr. Classen?—Yes.

Q. Was it on a rack or on the floor?—On the floor. 30

Q. And you did not put it inside a cupboard?—No.

Q. Is it not usual for articles deposited in this way to be placed inside the cupboard?—That is taken by the others; I never put it in the cupboard.

Q. My question is, is it not usual to do so?—A. Yes it is.

Q. You do not know whether the tag was tied on or labelled?—I do not know.

Q. An ordinary luggage label I take it?—I think so.

Q. Why did you not place it inside the cupboard?—It was you who took charge of the suit case and it was you who left it?—It was a very busy day and I had no time and therefore I gave it to Mr. Classen and came back. 40

(To COURT): Is that the custom?—It is the custom.

Q. How many times have you done this?—I have done it more than a dozen times.

Q. Did you see the suitcase there after the 15th July?—I do not remember seeing it and I do not know what happened to it.

Q. You do not even know whether that customer came there and removed the suitcase; he might well have done so?—A. Yes.

Q. You carried the suitcase?—Yes.

Q. Was it particularly heavy?—Fairly heavy. (To COURT: What do you call fairly heavy?—If it contains two petrol tins from the weight of it could you say whether it contained petrol or not?—Have you ever handled two tins of petrol?—I carried only the case; I do not know what the contents were).

Q. I want to know whether from the weight of it . . . whether the weight was as if it were two empty tins or tins with petrol?—I cannot say what the weight was.

Q. Can you say what type of suit case it was?—It was expanding suitcase.

Q. Was it locked?—I do not know.

Q. Did you try the locks?—No.

Q. Can you say whether it was this suit case?—(Shown P9). Something like it, but I am not quite sure whether it was this.

Q. When did you first mention this to anybody?—I first told Mr. Kennedy this in April or May.

Q. You know that a suit case containing 2 petrol tins was found there the morning after the fire?—Yes.

Q. And you must have known that within a few days of its being found?—Yes. I heard about it.

Q. But you did not tell Mr. Kennedy anything about this till April this year and after the first Police Court proceedings?—Yes that is right.

Q. When you told Mr. Kennedy this, you connected the suitcase that was found with the suit case which had been left behind by the customer.

You thought it may be the same one?—Yes.

Q. And shortly after the fire when you heard that a suit case had been found the same idea struck you?—Yes.

Q. But you kept it to yourself for seven long months?—Yes. (To COURT: Why did you do so?—After the case had been filed in the Police Court it struck me about it.

Q. Even when you first heard about it you knew that the Police were trying to make out that Mr. Kennedy was responsible for the petrol tins being there. Did you know that or not?—Did you not know that the prosecution was trying to show that it was Kennedy who had taken petrol tins there to set fire to the place?—Yes I knew that.

Q. Did it not strike you then to go and tell your master about it namely, that that suitcase was brought there by a customer?—I take it you have great regard for Kennedy?—Yes.

Q. Then why did you not go at once to him?—I cannot explain that (It did not strike me to do so).

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(g) Z. A.
Menon.

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continued.

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(g) Z. A.
Menon.
Re-exa-
mination.

Q. Would it not have been the simplest thing in the world if you wanted to lie to say that you did tell Kennedy about it?—(No answer).

Q. You say you cannot say what the weight of the suitcase was?—Yes.

Q. In the course of your duties you have to make up packages of goods that are sold in the shop?—Yes.

Q. If you sell a suitcase you have to wrap it up?—Yes.

Q. Can you give the weight of it months afterwards?—No, I cannot.

Q. All you can say is that somebody did bring a suitcase there which you handed over to Classen?—Yes.

Q. You know that the Police did not institute a case against Kennedy till more than 6 months after the fire?—Yes.

Q. Did all of you think that there was going to be no case on account of such a delay?—Yes we thought so. (To COURT: Q. As soon as the Police charged Kennedy in the Police Court did you know?—Yes after the case was filed we knew about it.)

Q. Anyway you did not give evidence in the Police Court?—No, I did not.

(h) E. L.
Morgan.
Examina-
tion.

E. L. MORGAN Sworn.

I am an Assistant photographer of Plate & Co., Ltd.

Q. You took this photograph A3 of the ground floor of Kennedy's shop as it stood?—Yes.

Q. About when was it taken?—Somewhere in April 1932.

Q. This is the proof copy of the same thing?—Yes. (That is marked A3A).

Q. That shows a little more of the racks on the other side of the door?—Yes.

Q. You have not got them in A3?—No.

(i) Zachias
Silva.
Examina-
tion.

ZACHIAS SILVA. Sworn.

I am an Assistant of Plate & Co., Ltd.

Q. At the instance of Mr. Reid I think you took certain photographs of the damaged Times building occupied by Kennedy & Co. at one time?—Yes.

(Shown A16.) Q. This is a photograph of the damaged verandah taken from the direction of Caffoor's Building showing the top layer of the verandah pushed away from the floor?—Yes, that is right.

(Shown A17.) Q. This is a photograph which shows a girder bent upwards?—Yes.

Q. From where did you take that do you remember?—From the ground floor.

(Shown A18.) Q. This is another photograph taken by you showing amongst other things a block of concrete hanging down from the ground floor, downwards?—Yes.

Q. Where was that taken from?—The same floor that is the ground floor.

VERNON JAYAWARDENA. Sworn.

I am a photographer doing business on my own.

Q. You took certain photographs of a section of the Times Building that was lately occupied by Mr. Kennedy?—Yes.

(Shown A19.) That is the photograph taken by you of the pillar that is in the basement showing the girders from below?—Yes.

(Shown A20.) This is the composite photograph showing more on either side of that same picture?—Yes.

(To COURT: Q. You mean it includes A19 as well?—Yes.)

10 (Shown A21.) Q. This is another photograph of the girders also taken from below?—Yes.

(Shown A22.) Q. Where was this taken from?—Also from below.

Q. Showing a girder that is bent upwards?—Yes.

H. H. REID. Sworn.

I am a partner of the firm of Edward Reid & Booth. I am an A.R.I.B.A. I hold the diploma of the Aberdeen School of Architects.

Q. Amongst other buildings your firm has built the Chartered Bank Building, the Galle Face Flats and you are at present building the Madras University in Madras?—Yes.

20 Q. You have examined the section of the Times Building during the occupancy of Kennedy & Co.?—Yes.

Q. On how many occasions?—Numerous occasions the last four months ago.

Q. You have been there several times since the jury visited the spot?—Yes; 2 or 3 times.

Q. And you have made a close observation of the damage done?—Yes.

Q. You were requested by the defence to calculate the cubic capacity of the basement?—Yes.

30 Q. The gross cubic capacity of the basement is how much?—A. 17934.9.

Q. You deducted from that the piers representing the cubic capacity of 131 cubic feet?—Yes.

Q. The chute well and the slab?—219 cubic feet.

Q. The spiral stair case?—5 cubic feet.

Q. The rolled steel joints of beams?—19 cubic feet.

Q. You took into account the fact that the verandah portion of the floor is at a lower level than the main ground floor of the shop?—Yes.

Q. That reduces the cubic capacity by a further 359 cubic feet, making all told 733 cubic feet; gross 17201.8 cubic feet?—Yes.

40 Q. The gross ground area of the basement?—1505 square feet.

Q. The net area of the floor of the basement?—1464.

Q. Then there were certain areas—open spaces in that basement?—Yes.

Q. First of all the stair opening?—13.9 square feet.

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(j) Vernon
Jayawar-
dena.
Examina-
tion.

(k) H. H.
Reid.
Examina-
tion.

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(k) H. H.
Reid.
Examina-
tion—con-
tinued.

Q. The chute opening is?—28 square feet.

Q. Then there is a space over the girder on the Times side which was not filled up?—That is how much?—A. 2.9 square feet.

Q. Making a total of 44.8 square feet?—A. Yes.

Q. The ground floor was built of standard quality of concrete?—Yes.

Q. That is 1, 2, 4?—Yes.

Q. You were requested by the defence to examine that building with a view to ascertaining what force was required to cause the damage that you saw?—Yes.

Q. Whatever the explosive agency employed or that did cause the damage, was, in estimating the pressure exerted by the explosive, what factors in your opinion required consideration?—A. First, that the basement was not an enclosed space. Secondly, the effect of the stresses on the concrete floors and walls and building generally. 10

Q. And you have considered that matter from the point of view of several things that were under your observation?—Yes.

Q. First of all you reckoned the force required to fracture that corner slab looking from Kennedy's towards Caffoors Building?—Yes.

(To COURT : Q. In other words that is the verandah floor?—The corner portion of the verandah floor.) 20

(Shown A16.) Q. As shown I think in this photograph Mr. Reid?—Yes.

Q. You also considered it from the standpoint of the pressure having caused an upward curve on the rolled steel joists as shown on this photograph A17?—Yes.

Q. From what other aspects did you consider the matter?—The actual force required to break the main slabs in the main floor of the shop.

Q. At what point?—At the point immediately under the wall, over the chute.

Q. With reference to this plan P24?—It is the wall separating the chute area from the main floor. 30

Q. Would you mark it yourself on the plan?—(Witness marks it ZZ).

Q. What other matter did you consider?—I also considered the spalling of concrete in the bosom of a compound Stanchion immediately over the ground floor level.

Q. Under what other heads?—That there is evidence of the whole super-structure of the building over Kennedy's shop and a portion of the basement having been momentarily uplifted. There is evidence of a momentary uplift of the building; of the whole of that super-structure over part of the basement from the eye level in the basement. There is evidence that the whole building lifted momentarily and came back. 40

Q. Now in regard to the force required to cause the damage at the curve, the corner?—You have made a sketch plan I think yourself?—Yes, showing portion of the corner. (Defence marked it A23).

Q. You estimated the force required to sheer the floor?—The floor was completely sheered at the curve in two places.

Q. By that you mean?—By that I mean that the concrete had severed; really one portion of the floor had severed connection horizontally from the other portion of the curve.

Q. And you estimated the force required at how much to cause that sheer?—The force I estimated was 240 lbs. per square inch.

Q. You took 240 lbs. at the sheering strength of the concrete?—Yes.

Q. What do you mean by that?—We are working assuming for the purpose of calculation that 240 lbs. per square inch is necessary to cause a sheer.

10 Q. You are familiar with the Concrete Engineer's Pocket Book?—Yes.

Q. Page 240 says this: The sheering strength of concrete is usually much less than the strength?—Yes.

Q. (Reads from book the following) "In a 1:2:4 mixture an average ultimate sheering strength of 1,480 lbs. per square inch has been determined by tests"?—Yes.

Q. Do you agree with that passage?—Yes.

Q. As a matter of fact you took less than 1/6th of that as the sheer strength for the purpose of your calculation to be on the safe side. Yours is a very conservative estimate?—Yes.

20 Q. Did you work out the sheering strength? What had you to do?—I took the superficial area of the concrete which had been sheered and multiplied by 240 lbs. per square inch.

(To COURT: In this instance it means the separation of the curve from the floor?—The total of that worked out at 519,840 lbs. That is over the one place which had been sheered.)

Q. Did you then add to that the sheering force required on the inner side of the curve?—I took a similar area there.

Q. That is the point marked on your plan as XX?—Yes.

30 Q. What else had you to reckon?—We reckoned on the pull out on the opposite side of the verandah, that is the inner side of the curve. That is the main shop, on the corner window.

Q. Several bars of the reinforcing material did you find torn there?—Yes.

(To COURT: Q. Broken?—Yes.)

Q. They were No. 36 bars?—Yes. From the extreme corner as estimated there were 36 of the longitudinal bars partly ruptured and partly pulled out.

Q. And what did you take the adhesive strength of steel to concrete?—600 lbs. to a square inch.

40 Q. Is that again a mean? Neither the minimum nor the maximum?—Yes, that is the mean strength.

Q. That gave the total pull force of the reinforcement at?—128,304 lbs.

Q. What else did you also add to that?—I took the sheer on the concrete of the side marked C in plan A23.

Q. What did you get the sheer of that side as?—144,000 lbs.

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Q. There was again another sheer of 5,000,000 lbs.?—Yes. I took a similar sheer on side D but only for half the length of 10 feet.

Q. And you added that force also required for breaking the* ?—We took the other 5 feet as well. That comes to 111,302 lbs.

Q. The total force required to cause all that damage comes up to how much?—1,495,286 lbs.

Q. Over what area was that?—Over the area of 16,680 square inches.

(To COURT: Over which area of the plan?—(Witness points it out on the plan to His Lordship.))

Q. And to get the stress per square inch what have you to do?—You have to divide the total poundage by the area and you get a total of 89 lbs. per square inch. 10

Q. Is that a conservative estimate?—I should say so.

Q. As you have already said you took the sheering strength of the concrete as 1/6th of what the books say should be taken?—I did not also take into account the dead weight of the floor slab itself nor the adhesion of the floor slab to the supporting rolled steel joists.

(To COURT: The 2nd one that is the adhesion of the floor slab would be a great factor to be taken into account?—Yes, it is.)

Q. You did not take into consideration the weight of the curve?—I did not take the weight of the curve nor the thrust of the curve against the ground into consideration. 20

Q. You considered the upward stress on those rolled steel joists. The force required to bend those joists?—Did you find those joists curved upwards?—In the floor of the ground floor the 3 secondary joists had a distinct upward curve.

Q. And you did not in your reckoning take the weight of super-imposed loads?—No.

Q. Or the adhesion of the concrete slabs to the supporting rolled steel joists?—No. 30

Q. Now with regard to the rolled steel joists, you assumed the same load of the joists as 2.5 of the safety factor?—Yes.

Q. The actual safety factor is how much?—4. I only went up to 2.5 of the ultimate breaking stress.

Q. And you thus found the stress acting on that rolled steel joists?—The stress acting there was 84,000 lbs.

(To COURT: Q. That means the super-imposed stress?—Not the upward stress.)

Q. Does it make any difference if the force was exerted from up or below. 40

Q. But whether from below or upwards, the reckoning is the same?—Yes. The calculation is the same.

Q. You divide that by the area of the flange of the joists which is 1900 square inches?—Yes. Q. That is 15 by 12 by 5?—Yes.

Q. Then you get the stress per square inch?—Yes; 93.33 lbs.

Q. Then you also reckoned the force required to break the floor along that line you have marked in blue pencil on that plan; alongside that wall?—Yes. That is the spot I have marked ZZ in A18.

Q. You took a length of 7 feet you said?—Yes.

Q. And how many strands of British Reinforced Concrete material No. 97?—13 strands.

Q. What is the ultimate breaking strength of one strand as set out in the hand book?—2929 lbs.

Q. For 30 strands?—87,870 lbs.

10 Q. You added to that the shear of the concrete which is 181,440?—Yes.

Q. Again taking 240 lbs. instead of 1480 lbs.?—Yes.

Q. Which in lbs. per sq. inch works out at 3206 lbs. per lineal inch and 356 lbs. per sq. inch. Because one cannot determine in the last calculation the leverage that was acting at that.

Q. So that 356 lbs. per square inch was required to do the damage that was done alongside that wall?—Yes.

Q. Then you reckoned the force required to spall the bosom of the stanchion. Will you explain what spalling means?—(Witness explains it to Judge and Jury).

20 Q. You found you say the concrete in the stanchion spall?—Yes.

Q. Of what dimensions?—10" by 11" over all. I cannot be quite certain.

Q. Near what?—Near the fan switch. The concrete had been lifted in a manner something like this (demonstrates) right away from the bottom, above, to a distance of 3 feet. The concrete remained above the 3 feet. From below the 3 feet it was spalled.

Q. Is it visible there now?—Yes.

(At His Lordship's request the witness goes up to the jurors and explains to them what he really means.)

30 Q. Now how did you work that out?—You work that out by taking a height of 3 feet; reducing it to inches; taking an average of 9 inches by the 240 lbs. shear and it gives you 77,760 lbs. The area is 9 inches by 6 inches average. That is equal to 54 square inches or a stress of 1440 lbs. per sq. inch. The lever-on contribution to this surface cannot be ascertained with precision but if we assume 15 ft., that is the over-all length of the secondary joists then the pressure would be 86 lbs. per sq. inch.

Q. You stated also that you found evidence of the whole of the super-structure having been momentarily uplifted?—What was that evidence?—Cracks on the whole of the basement walls, transverse in places and vertical
40 in other places.

Q. In point of fact the super-structure of that building has stanchions going right through it?—I understand the super-structure would be a homogeneous mass from about eye level in the basement right to the top.

(To COURT: That would make it one solid structure?—Yes from that level.)

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Q. Actually the basement was built under the supervision of Mr. Hall?
—Yes. I understand so.

Q. The steel was put in by whom?—Mr. Hutson.

(TO COURT: Q. What did Hall do?—I understand he built the base-
ment up to the eye level. With the stanchions coming above the eye
level the frame attached is a steel frame structure and it rests on the re-
taining wall at about eye level.

Q. The evidence in the basement is that you can see the cracks in the
super-structure of the basement?—There is evidence at the junctions of
stanchions and beams where the rivets, bolts, etc., had been moved. There
is definite evidence of the upward lift. 10

(TO COURT: Q. That is visible?—Yes it is. You could see the move-
ment which had taken place. You can see the uplift either in the bolts or
rivets. That is apparent.)

Q. Then the fractures on the masonry piers—do they appear on the
verandah side or the other side?—They appear on both sides of the verandah
piers.

Q. In point of fact are you able to insert a knife blade in some places
in the cracks of the basement wall?—Yes.

Q. You say you found the cracks in the beams, cleave connections 20
etc.?—That is the connecting cleaves fixing the joists to the stanchions.

Q. Cracks in the retaining walls connecting the basement to the
stanchions?—Yes.

Q. At what level is the basement wall?—At the general floor level
diminishing in intensity the further one got from York Street.

Q. What would that be due to?—Caused by what?—Caused by some
intense pressure in the basement. The upward movement would com-
mence where the super-structure is attached to the basement. The momen-
tary movement would occur from the eye level in the basement and the
whole floor had been temporarily lifted. 30

Q. Was it possible without complete drawings of the upward floor to
reckon what the force would have been to cause that momentary lifting?—
No. It was not possible.

Q. Assuming that one column bore a load of 100 tons which would be
a very conservative estimate, what force would have been required to raise
that column even momentarily?—Force in excess of Quarter Million lbs.

Q. Would that indicate a force considerably in excess of any other
forces you have already enumerated?—Yes.

Q. You also estimated the damage done to the chute?—Yes.

Q. The walls are fractured?—Yes. 40

Q. You actually crept into that chute to ascertain whether there was
any soot or discolouration inside?—Yes.

Q. Where did you find discolouration actually?—Only near the en-
trance; near the opening into the chute and very slight traces where the
smoke had come through the cracks in the walls.

Q. What in your opinion had happened there to the chute?—I am of opinion that the top of the chute momentarily lifted. By the top I mean the top surface.

Q. That is reinforced concrete?—Yes.

Q. The supporting walls are only 9 inch brick walls?—Yes.

Q. Both the supporting walls are out of plumb now?—Yes.

Q. And in your opinion that was caused you say by the flat top of the chute being momentarily uplifted?—When that momentary uplift took place it had damaged the border in the two side walls.

10 Q. What do you attribute the slight bulge to?—To the compressed atmosphere inside the chute being of a greater intensity than the atmosphere immediately outside the chute which had been released into the other portions of the basement; into the ground floor. This atmosphere was absolutely concentrated and had come out from there and tended to bulge the walls.

Q. Compressed air coming out with great force as a result of the explosion, would some of it find its way into the chute through that opening? And there is no other exit?—A. Yes, causing the chute to lift, and in coming out helping to push the walls out.

20 Q. Was there any evidence that the damage to that building was caused by anything other than an explosion, whatever the cause of the explosion was?—No.

Q. It has been proved that this wall U separating the spiral stairway from the chute, had come down over the entrance to the spiral stairway. That was found in that position the following morning. Now could that wall have come down in that position from anything other than the explosion?—I do not think so.

30 Q. Would I be correct in saying that in your opinion that wall came down simultaneously for practical purposes, with the other damage?—I should think so.

(To COURT: Q. Does that mean that everything happened at the same time?—I would say that it is a question of split seconds).

Q. You know the pillars that held the main switches on the ground floor. You know the ground floor and the door . . . (His Lordships points out all that to witness in the plan). Regarding the actual collapsing of walls, it would take a certain time for the walls to collapse).

Q. My point only is that it is attributable to the explosion?—In my opinion it is.

40 Q. What fraction of a second elapsed between the floor falling and the wall falling you cannot say?—No I would not say.

Q. We have it proved in this case by Mr. Collins that two gallons of petrol was capable of producing a force of 35 lbs. per square inch. You have found by experimenting at various points and reckoning the force at various points that the force actually exerted by the explosive was actually more than 35 lbs. per square inch?—Yes.

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Q. You say the actual force exerted as evidenced by the momentary uplift of the building must have been considerably higher than any of the other figures that you have given us?—Yes.

To COURT: Q. Then this must have been a terrific explosion?—A. In my opinion the more I go into it the more I am convinced that the explosion must have been a most terrific explosion.

CROSS-EXAMINED.

Q. In what year did you qualify?—1921.

Q. I believe you came out to Ceylon as an Assistant Architect to the Public Works Department?—Yes, that was in 1925. 10

Q. You were retrenched were you at the end of two years?—No, I was not.

Q. Under what circumstances did you leave the Department?—I came out to Ceylon on a specific agreement for the purpose of the University. After the end of 2 years Government asked me to continue my agreement, but I was thoroughly fed up and I asked Government to release me from further service which they did. I did very little work during those two years. What I did in the beginning was purely for the University. Latterly I did some general architectural work in the general office.

Q. Was it in 1927 that you joined the firm of Edward Reid and Booth?— 20
Yes in 1927.

Q. When did you first inspect this building?—I should say about four months ago. No—I think I visited the outside of the building on the day of the explosion.

Q. You did not in fact inspect the building on that day?—No I did not in fact do so. I came from India overnight and from what I gathered from a friend I thought it was inadvisable to go there.

Q. I take it the visit you paid on the day of the explosion did not enable you to find out the nature or cause of the explosion?—It did not.

Q. You made a series of inspections the first of which was four months 30
ago?—First of which was four months ago.

Q. The debris had been then cleared?—Most of it.

Q. You know the ground floor slab? Today the whole of it has been taken down? In fact was the premises in the condition in which you now find them?—They have been considerably cleaned up I should say.

Q. Whole portion of that ground floor must have been removed when you went there? Practically from the door to the chute?—practically.

ADJOURNED FOR LUNCH.

8th October 1934.

(AFTER LUNCH.)

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CROSS-EXAMINATION—(continued).

Q. You told me that when you first inspected the ground floor slab it was approximately in the condition in which it is now?—I think so approximately.

Q. Do you as a matter of fact know that considerable portions of the ground floor slab were removed in the course of clearing up?—That must have been done.

Q. In doing that would you agree that considerable damage might have been done to the reinforcing wires and other fabric?—It is extremely unfortunate that we had no opportunity of seeing it before it was removed.

Q. You are forming your opinions on incomplete data?—I had the opportunity of seeing a photograph.

10 Q. You have been working out the pressure at 356 lbs. to a square inch over a 7 feet wall over the chute. In working out that figure you took into account that 30 strands of reinforced wires had been broken. You are unable to say whether these strands were broken in that way as a result of the explosion?—I am able to say that I examined those strands minutely from the top of a ladder and the indications are that they were torn asunder.

Q. You cannot say they were torn asunder in clearing away the slab portion of the ground floor?—Not in every instance.

20 Q. In fact I suggest to you that you cannot say whether any of those strands was broken as a result of the explosion or not. The strands coming asunder is proved that it was the result of an explosion. It was pulled asunder as a result of a shearing of the stanchion. The workmen could not get at the parts where they were broken. They were practically sunk into the basement. They had to cut them with a cutting machine. They could not get at them with the cutting machine. They were particularly flushed with the false face of the concrete. (Shown P45.) This is a photograph taken from the basement and that shows portions of the ground floor hanging down.

Q. I am trying to recall to you the condition which must have been present shortly after the fire?—Yes.

30 Q. This is not a condition you had an opportunity of seeing at your inspection?—Right.

Q. This is a photograph of a particular section of wall you examined?—Yes.

Q. Can you say approximately where these wires were?—Across there (the witness points to them in the photograph).

Q. You could not see the other face because the other wall has held the slab in position?—You can see the vertical portion of the slab.

Q. In the process of clearing away that portion of the ground floor certain of these wires at all events may have been torn?—Some of them may have been.

40 Q. You can't say how many?—The majority of them were not.

Q. You told my friend that in your opinion all the damage that has been done to this building is the result of an explosion?—Yes.

Q. That is your opinion?—Yes.

Q. There is evidence that almost immediately after the explosion there was a very intense fire?—Yes.

Q. And that fire went up that lift well?—Yes.

Q. The heat generated must have been very great?—Yes.

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Q. Did you say that the heat did not act in any way on the fabric?— I say there are joists on which the heat would act. Practically near the wall there were joists which were sufficiently near to the fire and the heat had acted on them and they were twisted. The joists in those particular points were twisted as a result of the heat.

Q. Do you say that the heat had no effect on the concrete itself?— There were no traces as far as I can remember of the effect of the heat on the concrete.

Q. Will you admit that heat applied to any slab of concrete would disintegrate it?—Only it is an excessive and prolonged fire. Probably 10 after some hours and if the fire was in a place where there were films or any such combustible material.

Q. You are really concerned with the amount of heat had to be applied to the slab before it was disintegrated?—It is the intensity of the fire over a period of time.

Q. You have heard that the lift well acted as a flue?—It did.

Q. The evidence is that the fire raged for at any rate $2\frac{1}{2}$ hours?—That it was raging till 1.30 a.m.

Q. On your own admission the heat of such an intensity has a bearing on steel girders?—At that particular point. 20

Q. Therefore, would you admit that heat of the intensity would also have affected concrete sections of the building?—I would admit that the lift well acted as a chimney shaft. I have experience of it at home where a fire went up and the flames naturally converged on the shaft.

Most of the concrete pieces which were shattered had been completely removed. I am expressing an opinion of what is there now. There is no evidence of that concrete having been destroyed by the fire. A good deal of the concrete had been removed prior to my inspection. I am not in a position as Mr. Hall who made an examination of the building or of an architect who put up the building and also saw it shortly after the fire and 30 for hours for many days after to speak about the condition of the concrete.

There were reinforcing wires protruding through the top of the slabs.

Q. You said that in certain places you did see the reinforcing wires at the top?—It was at the points where the slabs went through the girders. Where the slab went up the girders it went through. Generally the reinforcing was at the bottom but that is not in accordance with the instructions of the (British Reinforced Company) people. The reinforcing wires vary some of them half way in the slab and some of them were at the bottom.

Q. Actually that ground floor was built to meet pressure from up 40 downwards?—Yes.

Q. Where the floor is constructed in that manner the reinforcement is placed at the bottom?—Not the entire length if it is an entire slab. This was not a continuous slab.

Q. Taking the area of Kennedy's ground floor is it correct that the reinforcing was at the bottom?—Generally in the main floor the reinforcing would be continuous at the bottom of the shop.

Q. The purpose of reinforcing concrete in that way is for it to withstand pressure upwards downwards?—Yes.

Q. Therefore it is not constructed to withstand pressure exerted from below upwards?—It is in certain cases. In this particular case as the reinforcement is at the bottom of the slab and at the top, the beam itself coming into Times.

Q. In the middle of the span it is not constructed to withstand pressure from below upwards?—No. In the middle it will withstand pressure from below upwards. If it is treated as a continuance of a reinforcement slab
10 the pressure will only be in the centre of the slab.

Q. In fact if you invert that slab would it be likely to give way as a result of its own weight?—No.

Q. You will not agree?—No.

Q. You say that irrespective of the span?—The span has a decided factor on the tensile strength.

Q. At certain portions at certain points of the slab very little pressure from below upwards is required to break it?—That is to fracture it. If the reinforcement was designed to take a pressure from top it would not cause a fracture.

20 I can point out a fracture at the site. It is on the corner of the slab.

The walls of the basement are of concrete?—Some of them are of concrete and some of them are of brick. The panels of the two outer walls are of concrete. The roof consisted of reinforced concrete slabs. It was a continuance of the inner wall. The slabs seemed to be continuous. The reinforcement from the main floor was over lapping the reinforcement of the verandah. The reinforcement at the curve extended practically 9 inches into the $9\frac{1}{2}$ " curve.

At the corner of the verandah you found certain cracks and the slabs broken at the top?—There was very little pushing up of the slabs at the
30 corner. There is certainly a crack in the centre. It radiated from the middle of the shop outwards.

Q. Those cracks are they characteristic of the manner in which concrete reacts to pressure applied in the wrong direction?—Not in that particular crack.

Q. You told us there was evidence of shearing there?—Yes.

Q. Do I understand you by shearing to suggest that a portion of the concrete had got shifted at its bottom?—Yes.

Q. Over a distance of about 19' altogether. The action of shearing is a cleavage. I am talking of horizontal shears. That shearing had taken
40 place at the point of reinforcement. It is near the centre of the reinforcement as near as possible. I don't agree that could have been caused by heat. In the position this slab is at the moment there is an opening of 9" so that all the heat collected in that particular place would find its way out of that particular opening. There is no indication of heat causing that shear. It is clean cut shear. It conforms to. It is not consistent with its having been caused by heat.

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Q. To produce that horizontal shear in what direction would you take a force?—We were taking the force acting on the base of the slab exerting a vertical uplift on the slab. That produces a horizontal shear. That was an absolutely fixed corner slab. Theoretically it was a perfectly fixed slab and you would not remove it with force because you have a pressure and you have two piers so that is absolutely held in position. The slab was so well reinforced so that it sheared across the curve which I think had been cast at the same time as the slab. I am taking a force which has acted on the whole of the slab at one movement and it has caused a fracture on the four sides of the slab. It is one of the places that has caused the fracture. 10
The actual shearing has taken place. You could have lifted the curve and sheared it absolutely. The reinforcement of the floor slab was right through from the floor slab and was intermarried with the concrete. The line of cleavage was where the reinforcement went through.

Q. You calculated the forces necessary to produce that condition. You assumed that a pressure of 240 lbs. per square inch was necessary and you worked out the total pressure at 519,840 lbs.?—Yes, I did not take them separately. I calculated that 240 lbs. per square inch sheared it. The total pressure was 166,800. I took into account the amount of pressure necessary to shear the concrete there. I took that at 240 lbs. per square 20
inch. I took the total area from the corner of the piers. I took the full maximum area of the joists which I did not need to calculate the pressure. The total pressure worked out at 89 lbs. to a square inch.

Q. Is that a pressure applied at once or gradually?—I did not consider the area in this calculation. I say that it is the minimum pressure required to cause the damage. I worked it as a static pressure but it is a dynamic pressure. I considered that you could not get a full dynamic force because it was a closed area. I also made due allowance in the calculation in taking it at 240 lbs. I could have taken what is given in the British Reinforced Company books. I did certainly consider it as a dynamic force. I took it 30
as a fact but I based my figures on a very reserved principle. I could have arrived at 1/3 the figure I have given to give the force of a dynamic force. If it was a purely dynamic pressure but I am not going to concede it is such. I know no mathematical formula to say this was a dynamic force. I think that would be a reasonable figure. The pressure brought gradually on and on to a maximum you will get (.....) of a material. I am taking what I considered as a conservative strength.

Q. Do you say that an average pressure on that amount was exerted through the basement?—There was a bigger pressure than that exerted.

Q. 89 lbs. per square inch produces how much a square inch?—14816. 40

Q. You had openings in the ceiling practically 43' in the ceiling of the basement. The total pressure is 21,692,624lbs.—That is assuming that it was an enclosed space. I made allowance of 45' for the openings. It is an appreciable opening. I am not prepared to say what per centage it was. I don't agree that such an amount of pressure if applied to 11164 square inches of the basement would have practically damaged the whole basement. Mr. Bruce will give you evidence on that point.

Q. You say that to produce that shearing 89 lbs. of pressure would be necessary?—Yes.

Q. In fact as it develops it produces a pressure of 89 lbs. a square inch? The evidence is that there has been a pressure of 89 lbs.—I can't say what compression there was in the basement but it must have been a most terrific pressure seeing that my figure showed that it actually 89 lbs. at that particular spot. Making allowance for all these openings that amount of pressure had been produced. I don't agree that that amount of pressure would have brought down the whole building. I took the wall
10 ZZ along a 7' length. I took into account the pressure necessary to break 30 strands of reinforced wire. I took the ultimate breaking stress of a strand at 2924 lbs. That produces a total stress of 87880 for 30 strands. I can't say how many of the strands were broken by the explosion. The actual pull on the concrete embedded in 9 inches of concrete is greater than the breaking strength of a strand and so I took the lesser of the two.

When you consider a force is necessary to break each strand of steel you are not concerned how it is embedded?—Provided it is securely embedded.

You have made no allowance for those strands which may have been
20 broken in the process of removing the debris?—No because the strands must have either broken or elongated at the time of the explosion. Before the strand breaks it elongates. We have definite evidence of elongation at the spot. The actual point of elongation is given as 35 tons per square inch before it started to give. That is an elastic limit. I have been too conservative with my figures. The evidence of concrete is metal. You can see the metal where the concrete has been sheared. That produces a total figure of 87890 from the strands. To that I added the shearing pressure of 269,310 lbs. I got that from the depth of 9 inches. The two concrete floors at B.R.C. (British Reinforced Concrete) came out of the verandah floor and
30 went up and went across into the main floor and you had that particular depth of 9 inches over the full length of the 7 feet. That produces a pressure of 356 lbs. per square inch. I did not make an allowance for cleavage. I got a much bigger figure for cleavage. The complete reinforcement has been removed at a level of half of 7 feet. It would definitely bring the leverage down at once. It would reduce at once. I am not prepared to say by how much it has been reduced.

Q. It is your opinion that those beams which showed a very slight forward movement that that forward movement was caused by explosive force?—Yes.

40 Q. I suggest to you that that was more likely caused by the application of heat?—No.

Q. Why is it not possible to have been caused by heat?—Because heat applied to steel on the floor the invariable custom is that the floor sags. That is the effect of fire.

Q. You don't know the condition of the floor there. How do you say that if this was caused by the application of heat it would have caused the

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floor at that point to sag?—The joists would sag. If you apply heat on the underside of the joists the joists will naturally sag.

Q. Is it the fact that you cannot say how steel beams would react towards fire?—If that beam was subject to fire it would have extended towards its length and pushed the other beams there and bulged the flange there.

Q. You say that the upward curve is slight?—It was 2 or 3 inches : it must have been more. Assuming that this was a sag, it must have come to his former limit.

Q. You find that the other beams in that ground floor area some have 10 been outwards, some inwards all in irregular fashion. Those three beams in the centre where there is no floor have bent upwards and all the others have bulged and the evidence definitely supports a shearing that could not have been caused by heat.

Q. You said there had been a momentary uplift of the entire building?—Not the entire building. The building over Kennedy's shop.

Q. You referred to what you called cracks in the wall of the basement at roughly 5 feet?—Yes.

Q. Are those cracks evident now?—They are.

Q. Are they superficial cracks?—Superficial cracks going through the 20 plaster and I inserted one piece of wire into it with a magnifying glass it appeared to go in deeper. That appeared on the inner wall of the basement I can't say whether that appeared on the outer wall because we had no facilities to examine that. There is a blackening on the plaster on certain portions of the wall. If there was intense fire it would have come off. Those cracks are the superficial cracks of the plaster and go right through the concrete. You can see the cracks all round the basement practically all round the basement. They have practically travelled the whole length of the basement and in some places minutely. From the presence of the horizontal of cracks I can say that the building must have been lifted momen- 30 tarily upwards. I can deduce no other factor.

Q. I understand that the steel frame comes to that level the base of the stanchion coming to a higher level?—I did not verify that. Mr. Hall told me so. You can see the vertical cracks down the side of the stanchions because there is given in a building. In a steel frame structure there is a give. It is not a monolith structure like reinforced concrete. There is elasticity in the building. The greatest movement had taken place from the ground floor as its greatest pressure on the stanchions is at ground floor level. It is not necessarily a vertical movement. It was brought upwards and came to its present level. The uplift is vertical. 40

Q. You cannot say whether it was within a higher level?—It is more noticeable as you come to the other side of the building.

Q. Corresponding to the movement there at the outside if the steel structure went down below there must have been a movement down below?—I can't say that.

Q. No damage has been caused to the basement level?—The basement floor seems quite sound. The basement has not been cracked but I did not

have full facilities to examine that. My inspection was done in the company of a Criminal Investigating Department Officer which is not conducive to concentration. That momentary pressure was due to a momentary uplift. I can't say at what point. There is evidence of it in the whole of the shop and decreasing intensity towards the shaft of the building. The building had probably been rocked and then come back to its almost original position. You can see the cracks at the Times wall and in that facade. I don't think that could be accounted for by heat. There was practically no heat. The door frame is practically untouched so that there is no evidence of heat.

10 The intensity of the heat on the plaster has not made it come off. It has come off only in parts but it is stuck to many parts of the wall. There may have been the action of water cooling the plaster and making it come away. Heat will not disintegrate a good mass of concrete unless it was intense heat applied over a prolonged period.

Q. If heat was applied and water was applied to it you would have shrinkage of the slab?—It will break up. I don't think the heat would have penetrated into the heat.

Q. You will not concede that damage of what has been referred to as the coping of the verandah slab that it might have been caused first by the application of sudden heat and then the application of water to it?—I will not agree.

20

Q. With regard to the chute entrance you said that you went inside and found little evidence of discoloration at the side?—From where the smoke had come at the top. The chute consisted of a concrete slab resting on two walls.

Q. Supposing some explosive mixture entered through that aperture. Would not the consequent expansion blow out the walls?—If the walls had lifted $\frac{1}{2}$ lb. per sq. inch 7 feet when it lifted for the explosion certain of the bricks adhered to it when the wall lifted. It more or less acted as a lever with a fulcum at the time. When it came down the bricks have not gone into the place there in before. I should say the actual bending or shearing of the wall was caused by some inside pressure. Immediately the top was lifted the wall had very little stability at all. Half lb. to a square inch would be about the dead weight to the top of the chute.

30

Q. The wall "U" you said must have fallen over as a result of the explosion. That is the wall separating the chute chamber from the spiral staircase chamber? I should imagine that it came over as a result of the explosion. I would not care to commit myself to a statement as to what time it fell over. I can't say whether it fell over after a little time. I see the portions between the point "S" and the opening here.

40

Q. The evidence is that the floor has given way?—There were still pieces left here on the floor when I made my last inspection. One has only three feet to cross. From point "S" it is 4 feet from the front of the stanchion to the portion of the floor damaged. It is 4' 9 at the outside. I should say that the floor went over and if anybody was there he would have been toppled on to that floor. I should say that it was fairly early

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that the wall collapsed. I can't say whether it collapsed before the wall
"U."

Q. From what you saw there was one explosion or more?—I would
not like to commit myself to say so.

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If there was more than one explosion I would attribute the greatest
damage to the severest one. Although I can't say whether it was within
a hundredth of a second all the damage was attributable to an explosion.
It was certainly not after hours but after some minutes. It was a matter of
few seconds. I examined the wires with a view to my being examined 10
about them. The majority of the wires were pulled asunder. They were
not cut. The cutting machine could not get at the joists. We did remove
small pieces of concrete and we had to have two men use a 4' crow bar to
break that strand of wire. They were exceptionally well-built men. The
cleavage required considerable force. It was close to the corner. The
concrete could be damaged if it was subjected to an intense fire for several
hours. Page 11 of the British Reinforced Company handbook states :—
"It can only be injured by the fiercest of fires . . . even then collapsing
would be improbable."

By disintegrating I mean the concrete breaking into pieces. 20

(Illustration on page 222 referred to and page 223 of the British
Reinforced Company handbook read out).

Bitumen is highly inflammable. An intense fire had gone the length
of reducing the steel frames to twisted wrecks. The beams where the
frames had been making into the chute. The metal gets shortened by
intense heat and its own weight, causes it to sag, *i.e.*, because it is slightly
softer than it was.

*Page No.
refers to a
page in
document
used in
Courts
below which
it is not
possible to
identify.

(Page 237 of the concrete engineer's pocket book read out *page 317
of the Supreme Court Notes read out to witness).

The rate of expansion of steel and concrete is same the coefficient 30
of expansion of one is .00006 and the other is .000065. That is why re-
inforced concrete is able to withstand heat. There is no unequal expansion
between the various materials.

I say that it is almost completely fixed slab. I took that at a very
conservative figure at 240 lbs. The heating strength of concrete has been
known to me 1290. I think I would take it at more than 240 if I was
considering the dynamic force. The actual force exerted on the ground
floor along the wall protecting the staircase was reckoned. There was no
factor that could be reckoned. I can't say what the spalling of the concrete
on the stanchions was. Mr. Hall told me that the basement had been built 40
by him up to eye level and that Hutsons put up the steel work. Mr. Hall
collaborated with me in working out these figures. He has been through

the figures. Mr. Hall told me he was in the basement the morning after the fire.

Q. Did you with Mr. Hall examine the pipe to which these electrical cables run?—I looked at it and what was the column on which the fan switch was. At the bottom end of the pipe there were no signs of any cement having been put there. It is more seldom put than not. You can pack that up with solution which gives more play to the cable. There were certain horizontal and vertical cracks on the basement wall and cracks outside which showed that there had been a temporary uplift of the building
 10 I don't think those cracks can be attributable to any other causes I can't attribute them to any other causes which would produce them.

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mination—
continued.

ROBERT HALL. Sworn.

I am a building engineer. I was an engineer at Walker's for many years in charge of their department. I am now working on my own, I have about 33 years experience of building work. I was associated with Mr. Reid in examining the sections occupied by Kennedy & Co. in the Times building since the fire. I first examined the fire on the morning after the fire at 9 o'clock. At the time there was the Police, the Insurance Inspectors, and the general crowd. I did not get into the basement because
 20 the only road to the basement was through the spiral staircase and there was a lot of debris lying over the rail and I had to get permission from the Police to get down. I saw that it would be a very difficult job. I saw the ground floor. The floor was shattered and some sections were hanging down on the fabrics and some were like the leaves of a book. Since that visit I have been there about 6 times I think. After the first day after the fire I examined the building, until a barricade went up. I paid a number of visits out of curiosity. The barricade went up a few days afterwards. Thereafter one had to obtain permission from the Police to get in. There are various points at which one is able to arrive at the figures, but these
 30 figures are only taken out of the actual stresses but you cannot co-opulate the other stresses which were employed in smashing the concrete. In reckoning what actual force had caused the damage I examined the corner of the building which faces the north-east—the wall near the door which leads to the spiral staircase. The staircase is the easiest test of the lot. One could take the verandah as one fact alone—the circular beam. I should not say it was the simplest test but it was the easiest. The 13 × 5 steel joists bent upwards. There was also a spalling in the concrete in the bosom of the pillars which is near "W" which is the column which carried the switch for the fan. That is apparent now. There is an indication
 40 that the corner of the building has moved up. That is the segment corner. On the corner between Duke Street and Main Street there is an indication that the whole of that corner has been lifted upwards. These are the points to which I gave my mind.

(l) Robert
Hall.
Examina-
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Accused present.

Counsel as before.

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I gave the various points in which I collaborated with Mr. Reid necessary to disrupt the floor.

There was a shearing top and bottom of the beam supporting the floor slab at the corner opposite Caffoor's building. By shearing I mean the concrete was split level. That was a horizontal shear. I reckoned the force necessary to cause that shear. I took the shearing strength of concrete at 240 lbs. per square inch. The books put it much higher. Some authorities go as much as 14080 lbs. to the square inch. I got the force exerted to ease that shearing at 519,840 at the top and the same at the bottom. I worked out the pull out of the reinforcement. That is at the corner inside the verandah where it was played off where there is a window. 38 bars were torn out of British Reinforced Concrete. Fabric No. 9 I worked that out at 128,304 lbs. total. I reckoned the force at 144,000 lbs. necessary to cause the shear at "C" in the plan P23. At point "D" there are 5 linear feet of shearing. At point "D" I reckoned the force at 72,000 lbs. and 38 strands broken and disintegrated 111,302 lbs. making a total of 1,495,286 lbs. That is the force I ascertained to cause that shear. The area in the corner slab is 16,680 square inches. I got the stress per square inch at 89 lbs. That is exclusive of the weight of the slab the piers and the fixing of the joists, fractions and other stresses. The span on the steel frame was 1/15 tons approximately. That gives a stress of 84,000 lbs. on a flange area of 93.33 lbs. per square inch. I directed the attention of Court to those steel joists. They all have an upward curve. That is shown in the photograph P21. There is a spalling of the concrete in the stanchions. That is the stanchion with the regulator for the fan. I reckoned the force exerted to ease that spalling at 89 lbs per square inch. I might mention that this is not a complete figure before this could spall there must have been a pressure employed at this point by the movement of the 13 x 5 steel beams and before that could take place the pressure on the steel beam must be reckoned. I think the force necessary to cause the spalling was nearer 200 lbs. because you must take the force on the steel joists. This was only a resistance against the movement. There is concrete attached under the wall ZZ. The reinforcement material elongated to its limit and snapped. I examined it with a magnifying glass and found the ends tapering showing elongations. British Reinforced Concrete wires are cut with a special pair of cutters and these could not be cut to get a cleavage. If it had been hanging clear any Engineer would have left himself sufficient hang for the floor to be cut later. The wires have snapped right into the base of the concrete. I think a layman could not understand what I mean unless he saw it. There was one piece where I paid particular attention because it was a clean cut. I am able to say from personal experience

that it was in the same condition as it is now except that the surrounding concrete has been removed. I believe there is a photograph in the Court somewhere which shows that particular place very clearly.

(Shown P51.) This is the photograph. You will be able to see the marks of shearing on the British Reinforced Concrete from where it is torn out to besides the doorway. That is also shown in the photograph A18. There is a girder. The verandah front came on top of the girder and the floor of the ground floor overlapped it. The actual force employed there over a length of 7' amounted to 84 lbs. a square inch. The ultimate breaking stress of one strand is 9000 lbs. The shearing of the concrete at 84 lbs. for 240 lbs. amounted to 181,444. The shearing of the British Reinforced Concrete strand was 884,870 making a total of 690,310 lbs for 48.4 square inch. Taking a lb a linear square foot it comes to 3200 lbs or 356 lbs per square inch. It is obvious that this was one force that shattered every point at one time. I don't know that the floor would have a chance of moving more than 2 to 3". It would have been shattered at once. In certain cases the slabs were shattered completely shearing the concrete and the reinforcement and in other places they were shattered at one side and the concrete folds like a book in other places. The concrete was shattered and fell into the basement. They had fallen right through and other parties were hanging like festoons. In some places the British Reinforced Concrete had been shattered into two and in other places the British Reinforced Concrete had been left at one end. I think there were one or two Police photographs which showed it very clearly—the pieces hanging down. It showed the mark of the wires pulled from the concrete but the wires had been pulled completely down from the bottom of the beam. You can see some of the ends. I don't like to say that the end had been cut but here it was impossible to cut with the British Reinforced Concrete cutter because it was close to the reinforcement. There is evidence of the whole structure having moved. In a portion of the structure in the corner—circle here on the outside on the main columns—you will see cracks on a level almost within a foot from the ground. These openings or cracks are still visible. It was apparent that the structure had moved. Here the angle of shearing indicates a forward movement. There is also in the basement retaining wall a movement to be seen in the joists approximately where the stanchion pieces were fixed after the fixed retaining wall had been surtained. It is capable of being seen the first time that these were noticeable—when they were present. The building is bound to go down with its own load. The cracks were not so pronounced as they were a month before but they are still there. I was in charge of Walker's building department when the lower portion of the retaining wall and the raft foundations were put in the basement. I was there when the lower portion of the raft and the portion of the retaining wall up to a certain level right from the excavation up to about 4' above the actual floor was put in. The steel frame was erected by Hutson & Co. I believe the steel was imported by the Times and it was erected by Hutsons. I could not be sure that Walkers completed the concrete work. I believe Hutsons continued the concrete up to a certain level and Walkers carried on the super-structure and put on the

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basement floor which I understand is 11" thick. If there was momentary uplift the force required to do considering the stanchions even it was taken at a lower figure of 100 tons to a stanchion it would require at least 250 tons to move those stanchions. One has to reckon it as a movement of the stanchion. You have got the resistance of the stanchions which is attached to the steel beams joining it to the other stanchions. It is connected on three sides and to move that up you have to take all the resisting forces for it is a difficult job to move any individual part of the building.

I saw the chute entrance to the basement. That had its supporting walls bulging in various dimensions. I have gone very carefully into the whole matter. One would assume that during the explosion a momentary compression of air was released and that the chute has received its quota of the compressed air and the opening to the lower portions of the chute side is very much smaller than the portions towards the retaining wall and therefore when the floor gave way and the wall entered the basement and it released a compression from the chute which must have gone into the basement and the walls not being strong enough to withstand this pressure it must have given way and for a fraction of a second the chute floor must have been lifted up. There was no anchoring. It was just cemented on. The concrete had been left suma on top of the walls. When the compression started it being a chamber which had only got three edges it is obvious that the compression must have taken an upward direction through these openings. There the force must have been considerable and the release considerable and the pressure came up to these different lbs per square inch. The release through these openings must have been travelling at great speed. All gales cause suction to be left behind which will suck in a human body. That is caused by atmospheric pressure on a human body and it runs into vacuum. That will happen and with the increase of pressure inside the chute walls that would tend to cause an uplift.

There are two pipes in that building through which the cables had been carried. There is one where the fan switch is and the other is in the portion of the Times building where the wires went to light the dressing room in Kennedy's shop. There is no indication that these have been cemented up. When they punched a hole through the floor they made a hole in the concrete and that is still there and it has never been filled.

Judging from the condition of that basement and the ground floor as I see it now I would say a force that caused that must have been enormous and what drew my attention first was the shattering of the floor. I was in France for 10 months during the time of the great bombardment and I started to figure out that the force caused by the dropping of an aerial torpedo is tremendous. I have done salvage in concrete and wood and steel in France. Considering the enormous forces let loose it is not possible for any man to survive that force. I have experience in France when I saw men killed in less explosions than that. There was an explosion in a main street where an aerial torpedo penetrated a roof and three floors in which thirteen were killed and the only survivor was a kiddy who was in the corner of the basement which had been covered up by its mother. In that explosion

the side wall remained intact and the force went straight outwards. The floor was shattered to pieces. The upper floor was alright. The floor upwards were torn out piled on top of the debris. I honestly think that any person could have emerged alive after having been subjected to the force in the basement.

I was rather severely burnt in 1912 or 1913 while cleaning a car. I was asked to take down the radiator of a car and readjust it. This was about 7.30 p.m. It was dark and while doing so I had some difficulty in detaching a nut. I was detaching a nut and a gentleman said "I will give you a light and he held a light down by the carburetter and I was burnt on face and arms. I was actually claiming the base of the carburetter to get some grit out with a wet petrol rag. This was an old type of carburetter. It had no outlet at the bottom. Both my arms were blistered. I took them and rubbed it off and took the whole thing off. I nursed my arms in motor grease and left it as it was certainly burning. The pain was severe and I left it there for sometime and when it cooled down I finished the job and cleaned the thing off. There was a burning sensation on my arms by next morning. I had 20 blisters on each arm and hands about the size of a thumb nail and the skin was covered with blisters and all the pain had left.

Mr. Reid and myself went through the reckoning as to what volume of coal gas would be trapped by the joists and girders. We went into the area which was confined by the girders supporting the ground floor of the basement and after making deductions for the area which lead to the chute which could not imprison any material and we got the cubic capacity of 13062.85 cubic feet. That is the nett cubic contents encased by the beams including the area of the chute and the special staircase. I also worked out the area of the openings. The total area of openings at 44.8. I also worked out the gross cubic contents and the nett cubic contents. We figured it out independently and came to the same conclusion. The gross cubic contents was 17,939.9 cubic feet, deductions for beams, spiral stair piers, etc. the nett area is 17,201.8 cubic feet. That is the actual nett area. I might mention in taking these dimensions that I took 50% of the side of the walls so as to get a mesne measurement as the wall sloped about 9" from the ceiling down to the basement floor. That is the measure including the space inside the chute wall. In that chute there was no sign of an explosion. It looked new. The only thing was that there was a certain number of pillars pushed to the front from 5 to 6'. I went right inside it and stood up inside with the electrical torch. The racks were standing up against the walls with cardboard boxes on them and they reduced the cubic capacity. If you took the boxes as being perfectly solid and packed absolutely tight that would reduce the capacity of the basement by 15,000 cubic feet. If the whole of that area had been filled with boxes to its fullest capacity with sand and dirt there would be 50% air space. Even sand will absorb 50% of its volume in water. Fine sand is 50% void. With 100 cubic feet of metal and 50 cubic feet of sand and your portion of cement would not get a cube of concrete in the result. For shoes in boxes you only to take the cubic contents of leather. My estimation is not more than 1500 cubic feet would have been

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taken up by the contents of the floor, even assuming that the boxes were solid.

CROSS-EXAMINED.

Q. What do you say your qualifications are?—32 years of building and 4 years at Technical College and three years at the International Correspondence Schools. I have no engineering degrees. My experience has been confined to the practical side of building and also to designing of buildings.

Q. Would it be correct to say that your theoretical knowledge is practically nil?—It is 4 years with the Technical College and three years in the International Correspondence Schools. I did not obtain any degrees or diplomas. I took a first prize for the class. At that time degrees were not considered to be much. I might mention that during the war I was Chief Engineer and I had several Engineers working under me. I made calculations not in conjunction with Mr. Reid I did it independently of Mr. Reid. I worked them out independently of Mr. Reid and checked them with him. 10

I came out to Walkers in 1911 to take charge of the shop and to take over the whole of the buildings and to shift them from the old workshop and re-erect them in the new shop. We had to take them from the existing building where the present harbour is and re-erect them elsewhere. Before I came out to Walkers I was in Stockholm in Sweden in 1909 in charge of a firm of building contractors. I was the engineer in charge. I was in charge of quite a number of buildings after I completed my course in the Technical College. A man in charge of a building at home is not in the same position as overseer in Ceylon. I did not come out as a building foreman but as a general foreman. I came to Walkers on a salary of Rs. 300/- a month. I was with Walkers until early 1915 when I left them to join the Army. I rejoined them in 1920 and left them in 1930. I left Walkers because the present Manager and I could not agree. I don't think I am prepared to answer the question why we did not agree. I am not prepared to make a statement what would injure the firm in its business policy. We agreed to part good friends and I agreed to assist them for sometime after I left them. I left Walkers not because of any reflection on my character I was asked to resign after certain remarks I had made. I am not sure that they could have discontinued me if I did not resign because I was on an agreement with them. The agreement provided for dismissal when there was a fault which was detrimental to the firm's interest. I was asked if I would resign without my making any trouble, on certain terms. The terms were that I got all my bonuses, three months salary in lieu of orders and we left the best of friends. If I did not resign the firm would have taken action and asked me to return. We came to an amicable agreement and I retired from the firm. I have had an agreement for 1911, since then I have had no agreement. I had no fixed term of employment Walkers might have asked me to leave without giving me any reason for asking me to leave. 20 30 40

Q. Would it be correct to say that this is not your first experience in Courts of Law?—Not by a launch. I have had certain amount of litigation. I have got a case where Mr. Thornhill and myself appeared as plaintiffs.

That was a case against the Pelmadulla Tea and Rubber Company. In that case the Privy Council said no consideration had passed because two cheques I had given had not been put before the*

Q. Did the Privy Council express the view that it was a fraudulent transaction with a view to defrauding the Pelmadulla Tea and Rubber Company?—No.

Q. You say the whole question can turn on the question of registration of your prior deed?—Yes.

10 You would have succeeded against the Pelmadulla Tea & Rubber Company unless the transaction against you and Thornhill was proved to be a fraudulent one.

The Pelmadulla Tea & Rubber Company could have shown that the transaction by you and Thornhill was a fraudulent one?—I take it that the finding of the Privy Council is wrong. I might mention it cost me Rs. 75,000/- to pay for the land.

I went to this building on the morning after the fire at 9 a.m. I was not then interested on behalf of any party I was never retained by Mr. Kennedy. The position is that I was asked whether I would give evidence for Mr. Kennedy. I am not in a position of technical adviser for the defence. I have never been present in Court in any advisory capacity. I have not even asked for a fee. I could not say when I was asked whether I would give evidence for Mr. Kennedy. He had heard that I would assist him if he went to Court. He knew that I had worked out figures. I made these figures just to get a bit smarter as you read law cases. My interest in this case is purely and simply technical. On the morning of the fire I did go to the basement I went as far as I could go but the Police turned me out of the building. The building was not guarded by the Police to any extent on the morning after the fire but Mr. Bantock saw me and Mr. Gray discussing the matter and he came up and challenged us and Mr. Gray said that he was the Chief Engineer of Factory and he asked me what I was and I said I was an Engineer and he said that he had discovered some things that we must keep away till an enquiry was held and that we would have liberty to inspect the building and when the liberty came a barricade came up and there was a cordon round it. I made a superficial inspection and directed my attention to certain facts and I took particular note of the damage that had been done and as a matter of interest I worked out what force would be required to cause that damage. My superficial examination might be the same as yours, for I was trained by being made to walk round a building and to say what was the matter with it and to make calculations. If I were in the basement at that time I might have been able to say a lot more. I could not see any form of opening without going into the basement but I could say the amount of pressure in that basement. I went into the basement but I could not say exactly what the pressure was for it must have been about 3 or 4 months ago. It was unsafe for me to climb down the staircase on the morning after the fire as I was not being paid to risk my life. Mr. Small was paid to do his job. I made these estimates as regards the amount of pressure before I went into the basement. I started

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my figures but I don't say I had completed them. I could not say if Mr. Reid had started his figures at the time. I started to collaborate with him. When Mr. Bruce, Mr. Ferguson and myself went down into the basement three or four months ago the debris had been removed. The basement in the building was in pretty much the same condition as it is now. I have calculated the force necessary to shear the corner of the verandah and also that the reinforcement has been torn out. That calculation depends on two facts first that the British Reinforced Concrete has been torn out and second that there was a shearing in the particular place I have mentioned. The shearing is a cross section movement coming between two 10 loads. It might shear horizontally or vertically and it might shear half way down on the level. The shearing I found here was the result of direct pressure. Pressure which was the result of a force caused by the compression of the air as far as I can make out. It might be heat. Those shearings could not have been caused by heat because the mass of concrete is too great for furnace heat to be caused within four hours. If you apply great heat to a slab of concrete and you follow it by the application of water it causes the concrete to spall. There was a crack in the centre of the slab. The cracks in the corner were the result of a very fierce explosion. It is not correct that with the reinforcement at the bottom very slight pressure 20 would have been sufficient to produce those cracks. It would have required double that heat to cause those cracks. The damage caused was from the windows radiating to the stanchions. The concrete on this side was reinforced with three layers, top, centre and bottom. That is on the west side. That is obvious. It is to be seen now. I expect a floor is designed to take a pressure on its surface. It depends on the kind of floor. This floor was designed for taking a load on its surface. It was not designed to take pressure from below. My figures are very conservative. The point where there was shearing was where the concrete roof of the basement met the walls. At that point there was a steep. There would be the steel 30 beams running in this direction and the cross beams running across. It is the steel beam which carries the super structure. I found the shearing at five different places. There was a shearing 2 inches wide. It is evident now. It was filled up with debris just after the fire. I discovered that only a few days ago. Round the circle there is a retaining wall underneath it. The concrete at that point of the retaining wall to the underside of the beam afterwards was a mass of concrete filled in which made the finish to the retaining wall. That was reinforced. It was 16" deep. I found a shearing running in the underside of the level of the beams and a shearing in the level of the underside of the floor making it two shears. The average 40 pressure in the intake chamber was 89 lbs. to a square inch. It was a momentary pressure. There was a fraction of time somewhere. The forces exerted there reached a volume of 2,000,000 lbs. per square inch. It would work out at a very big volume. The wall is 4½ inch brick and that would stand more than 5 lbs. per square inch. As soon as the floor lifts itself there was a release of pressure. You could not expect a 4½ inch wall to stand that pressure, but you have got a force employed on the base of the

floor, and on the underside of the steel beams and on the underside of the stanchions which was the effect of the explosion. I agree that the force was caused by an explosion. I have not come across any Commercial explosions which would do that damage. Commercial explosions are used for commercial work and they can be regulated. Commercial explosions are dynamite, gunpowder, gelignite, gelatine, etc.

In this particular instance you cannot say the damage is localized?— It depends on the position of the person doing the explosion. It is very simple to use a high explosive and do so without leaving a mark on the floor. I say that from experience. You can avoid it by mattressing the underside. I should say if there was leather skins, etc., which mattressed the underside there would have been very little damage. I have seen articles standing 1000 lbs. pressure of velocity and I found no damage on them. To produce an enormous pressure some commercial explosive of a high grade would have to be used. I have not seen a commercial explosion that would do that damage. Such an explosion would have been sudden and the force exerted dynamic. All forces are more or less dynamic. A dynamic force might mean anything. It might be quick as when a kick is caused by a high power rifle. In this case you have got to remember that the force employed was equal whether they were heating a piece of paper or a stanchion. An explosion produced by coal gas might have that effect. I know the coal gas used in Ceylon. Coal gas of that kind could be treated by taking out certain ingredients out of it, by taking the coal gas and separating certain ingredients. It will have to be subjected to a form of chemical treatment. If it stales it might be due to a leakage. A leakage might leave you lighter gas but I don't think an explosion could have been caused by the use of ordinary coal gas. I have experience of some coal gas explosions. In my experience coal gas explosions are usually accompanied by fire. An explosion constitutes a flame. The fire depends on the material surrounding it. It depends whether the materials surrounding it are combustible or not. That depends on the vacuum caused which would fill up and expand causing an ignition.

I found bents in the steel beams at three joists. The other joists bent downwards, sideways and twisted. In the case of those bent upwards the cause was the application of some pressure. It could have been the cause of application of heat. If a beam is compressed between two stationery forces its first movement might be sideways. The iron expands but the ends are stationery. The heat might have had some action on the beam. There must have been some upward movement and its own weight may have brought the beam down. The first action of the heat would be to keep it down. The heat had no effect on the beams. You will remember that the absorption of heat by steel is slow, and therefore it takes considerable time to heat that beam, but an explosion is always instantaneous which means that the beam would have been driven upwards.

Q. Did you make allowance for that possibility in your calculation?—
No. We disregard the drop in the steel because we were uncertain. We left out uncertainties. There is another fact in that steel beam which was

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covered with concrete which took 600 lbs. to a square inch and when these are calculated it comes to three times my figures. I am not in a position to say whether the concrete was removed first or afterwards and so I left it out. There was a spalling in the bosom of the stanchions. That is obvious. The concrete has been sheared. The wall 8' high was leaning on towards the window. I looked at it from the verandah. There was a considerable amount of debris. The wall had collapsed. Chunks of concrete were hanging on the main floor. I went right round the verandah and right round to the vestibule door and I walked across as far as I could get to the concrete without interfering with the debris which is from the vestibule door and also from the shop entrance door which is now visible. The vestibule is on the Times entrance. From outside I did not see the clean cut wires. I saw them broken and afterwards I saw them with a magnifying glass. From what I saw I can't say what had happened. In parts I saw chunks of concrete still hanging from the wires. Those chunks have been removed. In removing those portions of concrete I should think any force used in dragging them would pull them away from the wires. I think at least 200 to 300 lbs. would be necessary to drag these from the wires I am perfectly confident that we have not any coolies who could drag out and break 2900 lbs. Some of the wires have been cut with a cutter and some have been pulled till they were broken. I did not examine them under the best conditions because the Police would not allow me. It was not a complete examination. I did not examine any portions of the concrete which had fallen through the basement. I had no opportunity to do that.

You had no opportunity to do that. You cannot say whether there were any portions of concrete fallen like that showing the positions in which the reinforcing wires had been?—I paid particular attention to it because there was a slab of British Reinforced Concrete which had been completed stripped of the concrete. In the basement you could see portions of concrete with the marks of the British Reinforced Concrete materials marked in them.

Did you examine any portions of the broken concrete to see whether it showed traces of the reinforcing wires being there?—On the verandah I saw one piece of concrete sheared in that form.

Is it correct that so far as the floor slab was concerned the most damage was down in the shop?—In the centre area.

Did you find in that particular area considerable evidence of disintegration of the concrete itself?—Yes, it is shown clearly in the photograph. You look at the photograph you will see where it has been completely torn off.

You also told us that there were cracks on the basement wall still evident?—Yes. I saw them about a week ago.

They are horizontal?—They are horizontal, vertical and radiating. The horizontal cracks are they on eye level?—Approximately.

You also told us they are not now as pronounced as they were a month before?—I should say that owing to the work going on there must have been a movement which moved the building and moved the finer parts

and set the building back again. These were evident at the last inspection. The plastering of the basement has been stripped out in parts.

Where it has been stripped off there were indications of it having been smoked?—Yes. The cracks are behind the plaster. I have tested it. I had taken off a small portion of the concrete where there was a fissure and I found the stanchion close to the surface of the concrete.

I supervised the building of the foundation and portions of the retaining walls up to a certain height. There was a concrete raft. In the portion I supervised there are beams running in different angles. The reinforcement
10 commenced from 3" from the bottom surface of the concrete. The raft is a slab on which the building is actually floating on. The retaining walls stood at a level of 4' from the top but those were put up after we put up our portions of the retaining wall. I saw Hutson's put them in. It is difficult for me to give the levels between the finished level and the level before but as far as I remember they came about 4' from the basement.

You said also that having regard to the damage caused it was quite impossible for any person inside that basement to survive?—It is my opinion.

Are you aware that despite this explosion and despite this fire some
20 racks were found in an upright position?—Possibly they were. I take it for granted that they were in the middle.

Even some of the stocks were not disturbed from their boxes?—It is possible. If these force was very close to these racks the racks would become the centre of the pressure. If anyone was on the edge of the explosion he would get the full force.

Do you agree with Mr. Napier Clavering that it was due to the explosion of some explosive the effect on what was in the basement would be shattered?—No. If there was high explosive I would have expected a round
30 hole in the middle of the floor and radiating angles from that point which might have sheared that floor.

Would it do damage to anything was outside its range?—An explosive has funny ways of working.

Given the same conditions the result would be different?—No. You can't say to a definite point what would happen in an explosion. If a person had been in that basement you would have found him in a mixed mass. It would depend on the position he took up. You have to remember that a human being is not a solid body.

You worked out the amount of gas that would be held by a girder?—I said that gas is lighter than air.

Given that there was 1,300,000 cubic feet of coal gas and that there was
40 an ignition would it give this amount of pressure?—I have not worked it out. I have not worked out the pressure necessary to produce that damage. My estimation is a conservative estimation but if I wanted to get the maximum I should have taken 16 lbs. to a square inch which would give me 300 lbs. per square inch.

Did you try to find out what amount of coal gas could produce that large amount of pressure?—No.

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Cross-exa-
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continued.

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9th October, 1934.

Proceedings of the afternoon session : *i.e.*, 2.10 p.m. to 4.30 p.m.

ROBERT HALL.

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RE-EXAMINED.

(l) Robert
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mination.

Q. You were asked what salary you got when you came out originally ?
—What salary were you drawing when you severed your connections with Walkers ?—Rs. 1200/- a month plus a share in a scheme for bonus, and profits.

Q. Have you drawn that yet ?—We get that every year.

Q. What does that come to ?—It varies. That was a private scheme 10
and I would not like to say.

Q. And you stated that you agreed to part as friends. Is that correct ?
That is quite correct.

Q. You have now set yourself up on your own as a builder and consulting engineer ?—Yes.

Q. Have you built a large number of big buildings in Colombo ?—
Quite a number.

Q. What were the biggest buildings ?—Two Grand Stands of the Turf Club, State Council Chamber. (To COURT : I was in charge of Walkers Building Department when they did the State Council Building.) Also 20
the Hong Kong and Shanghai and Imperial Bank.

Q. You were questioned about a case you had the misfortune to be left into ?—Yes.

Q. Did you consult anyone before you did that ?—I consulted Mr. J. A. Perera and E. J. Samarawickreme K.C.

Q. You were asked your opinion as to whether coal gas could have caused all that damage ?—Yes, under certain circumstances by the deletion of the heavier elements. Ordinarily commercial coal gas could not ; not powerful enough as far as my opinion goes.

Q. Have you worked out the result, and the forces as a result of the coal gas explosion ?—I have worked out no figures ; I am only giving an 30
opinion.

(To COURT : Q. What are you going on ?—The comparison of other coal explosions that you have seen ?—I was judging that from seeing the explosion in Holborn London in 1928 when the whole street was burnt out.

Q. Was it in the main building or basement ?—It was in the gas main.)

Q. Could 2 gallons of petrol have done it ?—No. I can vouch for that.

(To COURT : Q. Have you destroyed structures by petrol ?—No, but I have seen local petrol explosions in the Motor Docks in France.) 40

Q. We have it in evidence that there was a pipe through which the cables came on to the main switch boards ?—Yes.

Q. Would that pipe be within the area enclosed by the girders ?—That I could not be exactly sure of. It can be seen.

Q. If it was enclosed of course it could easily come up that pipe?—
The pipe came down the centre of the stanchion and terminated in the
floor which is over a steel beam. There was a possibility of an escape of
gas having to go through the steel beams and get to the exit. But it will
be easier seen on the site than I could explain.

Q. Coal gas being lighter than air, would rise up?—Anything lighter
than air would take an upward tendency even if it was a small funnel. Any
vertical pipe if it is empty acts as a conveyor of air.

10 Q. Could a temporary flash caused by a *tumbler* switch set fire to the
gas if it came up that way?—If the gas was strong enough.

(To COURT: Q. Do you know anything particular about this?—Any
gas rising would surround the *tumbler* switch. A flash of a switch is equal
to a flash of a sparking plug in a motor-car.)

Q. The flash of a spark of a motor-car plug ignites the petrol and air
mixture in the cylinders?—Yes. There is another point. The circula-
tion. (To COURT: Q. Can you say whether a spark like that can set fire
to it?—There is a possibility of the gas rising and filling up the *tumbler*
switch casing.)

20 Q. Was it possible if any gas did take fire to strike down that pipe in
the basement?—Quite possible.

Q. You were talking of ionizing?—Ionizing has a greater exploding
capacity.

Q. You know Thorp's Applied Chemistry?—I know the book and I
know Chemistry to a certain extent. I am not a Chemist. I do not profess
to be an expert.

Q. You said you did find in the bottom of that basement which you
dug up, sand and black mud?—Yes.

Q. Heat acting on a beam tends to make the lower side soft?—Yes,
and reduces the strength and normally it would sag down.

30 Q. Heat alone could not possibly drive a beam upwards?—No.

Q. Force is required?—Yes.

Q. And the force on the beam probably took the beam rather higher
than it is to-day?—That is what one would expect; that a beam would go
higher and come back to normal later on.

Q. Was there evidence on any of those girders of really a high tem-
perature being reached?—There was evidence of a very high temperature
being reached on the two beams which showed that they had been bent
laterally. Those are the beams nearest the lift well.

40 Q. You were asked a question about the debris in the basement showing
a few supports of the shelves in down and upright position? (Shown P45.)
As a matter of fact how many of the posts that support the original shelves
are visible in this photograph—P45?—That is difficult to say.

Q. Are there more than 4 or 5 that are obvious?—There are four—two
on either side of a stanchion.

Q. Are any of them perpendicular?—Practically perpendicular, on the
centre.

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Q. And they are close up to the basement wall?—No. They appear to be in the centre of the floor approximately.

(To COURT : I should say they are 2" by 2".)

Q. It is resting in the midst of a lot of debris on the ground?—Yes. How far they were supported by the debris it is not possible to say. I should say that there is a possibility of their being supported against the stanchion.

Q. (Shown one in P45.) Is this one perpendicular?—I would not like to say so. That has no relation whatever to this other one. (Points to another.)

Q. The smaller the object the greater the chance of it was close up to the basement wall of its escaping the full blast?—It would receive practically the same force.

Q. Could the damage on the verandah i.e. the corner slab, have been occasioned by heat?—No.

Q. Has heat alone any great effect on concrete?—Only up to a point, where the concrete becomes practically red hot. That would practically be four hours at furnace heat.

(Reads passage from British Reinforced Company Book to witness.) I agree with that passage. There was an instance of that in the Walkers basement some years ago by the fusing of a wire, when a large stock of celluloid took fire. The only damage done was the bending of a six-foot beam.

Q. Would the bulk of the flame be drawn that way?—It would obviously go up the lift well.

To COURT :

Q. Have you been erecting other buildings in that part of the Fort?—Caffoor's building in 1914.

Q. Are you aware of what is known as marsh gas or coal gas?—I am aware of it.

Q. Have you known of any inflammable gas finding its way into a basement?—No. There has been no case for about 23 years of any inflammable gas being found in any basement.

Q. Then as regards petrol, do you say that this could not have been produced by a large quantity of petrol?—In my opinion and from figures, this damage could not be done by petrol for the reason that petrol is an expanding gas on the same principle as gunpowder. Gunpowder takes the line of least resistance always. All explosive gases do so but not high explosives. A very very fine gas has a different effect. What I mean by gases of that description is detonating gas which detonates just as dynamite. I am perfectly satisfied that petrol could not do it, even sufficiently of petrol. As I said before petrol would only expand and the weakest part would go first. In my opinion it is a chemical explosion of a semi-high nature; I say semi-high because they are in grades. The type that comes from the ground.

DR. T. RAMANATHAN. Affirmed.

Q. You were the House Officer on night duty on the night of the 29th September last year?—Yes. I am now stationed at Mantota in the Mannar District as District Medical Officer.

Q. You were in charge of Mr. Kennedy only on the 29th night and the 30th?—Yes.

Q. On the 1st of October where were you?—I was transferred as Acting Medical Officer, Outpatients Department.

10 Q. Mr. Kennedy was brought into hospital at what time on the 29th?
—About 11.30 p.m.

Q. Can you remember the injuries that he had independently of the Bed Head Ticket?—Yes.

Q. What were they?—They were burns of the 1, 2 and 3rd degree of the face, both hands, ankle, and back of the head.

Q. Did the face present a raw appearance?—Yes.

Q. Reddish colour?—Not reddish colour but raw. It was more a yellowish colour.

20 Q. With regard to the face and hands what degree burns really were there for the most part?—They were 1st, 2nd and 3rd degree burns distributed all over.

Q. Can you say what degree burns really covered the greater area?—I cannot say that now.

Q. Both the hands were also badly burnt?—Yes.

Q. How far were the burns on the hands?—The entire hands up to the wrists.

Q. Was there on either hand a continuation of the burn up to the back of the fore-arm?—There was no such burn.

Q. The patient was chloroformed I think?—Yes.

30 Q. What was done then? After being chloroformed some of the skin was hanging in shreds. The skin was loose in a part and there were shreds in another part. We had to cut off the skin and spray it with ether after thoroughly cleaning it with tannic acid.

Q. Were there any blisters? The blisters were also cut out.

Q. Then you cleaned it with ether? It had to be thoroughly cleaned.

Q. Then you sprayed it with tannic acid?—Yes.

Q. How long did you apply tannic acid?—Almost every half hour.

Q. I understand you yourself sprayed that?—Yes.

Q. You remained with the patient for some time? For about 2 hours.

(To COURT: Q. Who sprayed that?—The Sister carried on.)

40 Q. While you were there how many times was the spraying done
—At least 4 or 5 times.

Q. One goes on spraying till what happens?—Till you get a dark crust which later turns to black.

Q. If he was sprayed every half hour beginning from 12 then there would have been about 12 or 14 applications? About 10.

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Q. By 7 or 7.30 a.m. could one by looking at this partially formed encrustation of tannic acid say what the nature of the burns was below? —I would not have been able to say that by morning.

(To COURT: Q. You could not say the degree of the burns?—No. I could not.)

Q. You yourself did the first spraying for the first two hours? I myself did it and I sometimes instructed the Sister to do it under my supervision.

Q. If there was a continuation of a burn over the fore-arm you would have noticed it?—I would not have failed to notice it. 10

Q. Why were you with the patient for 2 hours?—I was with the patient for nearly two hours to see that the spraying was properly done. The patient was also in a state of shock.

Q. Am I right in saying that his life was in danger?—Yes. His case was rather serious.

Q. Did you observe any injury on the upper half of the forearm?—I did not observe any such injury.

Q. Or on the elbows?—No.

(To COURT: This gentleman was brought there with very serious injuries. Did you examine his whole body minutely to see if he had injuries on his hands, etc.?—We do not do that. I was concerned with the life of the patient, the burns and the shock. He was given morphia, saline and glucose injections to combat shock.) 20

Q. He appears to have been given a quarter grain of morphia on admission by the admitting Doctor? (Witness is handed P1) Yes.

Q. After that comes your observations?—Yes.

(Mr. Pereira takes witness through the entries in P1.)

Q. Then comes the 30th. That will be I suppose 1 a.m.? Observations on the 30th were made the next morning at 7 a.m. The day is reckoned as from 1 a.m. but I made these entries on my next morning rounds. 30

(To COURT: Q. You did not write down details of the injuries?—Yes, I have also done so. My entries are up to 8 a.m. on the 30th.)

Q. You were present when these clothes were taken off. His shoes, socks, and other things were taken off?—When I saw him he had no coat on; he was in his trousers and shirt. I did not see the shoes and socks, they had been removed.

Q. Were the trousers dirty?—They were dirty.

Q. Was there any small whatsoever of petrol that you got?—There was no such smell.

Q. As a matter of fact were you questioned by the Police?—4 or 5 40 days after the accident a Police Officer questioned me at the Medical Superintendent's Office. I do not know that officer's name. It was a Ceylonese Officer.

(To COURT: Q. Was it an Inspector?—I think it was Inspector Gunaratne. I do not know him personally. Questioned as regards anything

in particular—about petrol?—Yes. I was questioned about petrol and I said I did not observe any such smell.)

Q. Look at that Bed Head Ticket under date the 15th. You find there somewhat of a detailed entry of the injuries?—Yes.

Q. Who wrote that?—That was written by Dr. Fonseka. I know his handwriting.

(To COURT: Q. You were not there?—No. I was not there.)

Q. Is Fonseka the surgeon?—He is the House Surgeon to Dr. A. M. de Silva.

10 Q. Those are in his writing?—Yes.

Q. Am I right in saying that there is no entry in the Bed Head Ticket detailing the injuries in fact in Dr. A. M. de Silva's handwriting?—This is a copy of the Bed Head Ticket. This is not the original.

(To COURT: Q. Then how did you say that part of it was in Dr. Fonseka's writing? I saw the original.)

Q. You came down last night and you saw the original?—Yes.

Q. This is only a copy?—Yes.

Q. Such as they are, the entries of the 15th state the nature of the injuries in much greater detail than anywhere else in that Bed Head ticket?
20 —Yes.

Q. Was it possible on that date for any person to say what the degree of the burns was?—I do not think it was possible because most of the burns would have been healing by then.

(To COURT: Q. Even after healing cannot you say that? Not with any certainty; not to a nicety. You can say the nature but not the extent. Whether it was second or third degree burn could not be said.)

Q. From the Bed Head Ticket now is there an indication as to on what part of the back of the forearm the injury was on?—No. (To COURT:

30 Q. Whether it was upper or lower end of the forearm it does not say?—No mention is made.)

CROSS-EXAMINED.

Q. Did you regard this as a medico-legal case?—No. Far from it.

Q. You did not think it would become one eventually?—That did not enter my head.

Q. You were concerned with the treatment of the case?—Yes.

Q. Therefore it would be correct to say that you have not made as accurate a record as you might have made if it were a medico-legal case?—Yes.

(Witness shows Deputy Solicitor General where his record commenced.)

40 Q. The whole of your record does not refer to the nature of the injuries at all. All you state is "Patient has injuries of 1, 2 and 3rd degree on etc. (reads)"—Yes.

Q. When you say on the back of the head you mean a mere reddening of the skin?—That is right.

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Q. Are you certain that that injury on the back of the head was not the result of a fall?—It was a burn. No doubt about that.

Q. Tannic acid has got to be newly prepared before it is administered?—It is prepared and kept in the Dispensary.

Q. Is it not correct to say that you must prepare it?—You take the powder and prepare it just before spraying. I got this from another ward and I had already begun work between 15 and 20 minutes.

Q. There is an entry here “ Urgent. Tannic acid spray ”?—That is the entry made to get it from the Dispensary, but seeing that it would take some time I went up myself and got it. 10

Q. Did you get instructions from Dr. A. M. de Silva?—Yes we phoned him up and got instructions.

The only entry on the 30th is (Deputy Solicitor General reads it) Yes.

Q. Did you go round with Dr. A. M. de Silva on the morning of the 30th?—Yes.

Q. And were you present when he examined Kennedy?—Yes.

Q. At that point of time were you able to say what degree of burns they were?—It was not possible. (To COURT: The crust had formed?—Yes.)

Q. Did you discuss with Dr. A. M. de Silva the nature of the burns that morning?—No. 20

Q. Did he ask you the result of your examination?—He only read the Bed Head Ticket and went away.

Q. Do I understand you to say that you have now no recollection of the burn on the top of the back hand?—I did not observe any such burn.

Q. You are definite now on your recollection if it?—If it had been present I would have made an observation.

Q. You have not made a detailed account of the burns at any time?—No I have not.

(To COURT: Q. Did you spray the back of the forearm?—No I did not. That is how I remember. If there had been a burn on the forearm I would have mentioned the forearm as well.) 30

Q. If Dr. A. M. de Silva refer to such a burn can you account for it in any way?—I cannot account for it.

(To COURT: Q. Next morning he was still suffering?—The next morning we did not examine him at all because he was suffering still from chloroform and morphia effects.)

Q. You stated he was in a state of shock?—Yes.

Q. Was he still conscious?—Yes.

Q. He answered your questions rationally?—Yes he answered. 40

Q. Did you ask him how he got burnt?—I asked him how it happened and he said that he went to put off the switch and that there was a flash and that he did not remember anything else. That is as far as my recollection goes. I cannot remember his exact words.

Q. Do you recollect his saying that there was a flash?—Yes he said so.

Q. You made a statement to the Police on the 2nd of October as you say?—Yes.

Q. You are quite definite that he mentioned a flash?—Yes.

Q. I am not suggesting anything. You made a statement on the 2nd October when your recollection was much clearer?—Yes.

Q. Did you say “He told me that he went to switch off the electric light and received a shock.” Further you say “I have had no experience of burns by electric shock and therefore I am not able to express an opinion”?—I am sure that I said flash. That word remained impressed on
10 my memory.

Q. Your recollection must have been much better at that time than it is now?—It must have been better then.

Q. Do you say definitely that he said that there was a flash?—The impression made at that time was that there was a flame.

Q. Flame or flash? Flash.

Q. Petrol had not been mentioned to you at that time?—I was asked.

Q. At the time that Kennedy was admitted there was no question of any petrol?—No.

Q. You did not look for petrol?—I did not particularly look for petrol.

20 Q. You did not look for it at all?—I smelt his mouth to see whether he had taken any alcohol.

Q. Beyond that you did not make any special examination?—No I did not make any special examination beyond that.

To COURT: Q. When examining patients I suppose you put certain questions as to how this happened and so on, by way of conversation?—Yes.

RE-EXAMINED.

Q. Was he a stout Inspector?—Yes he was.

30 Q. You say that what you did tell the Inspector was that Kennedy told you that when he went to put off the light that there was a flash and that he remembered no more?—Yes.

ALEXANDER BRUCE. Sworn.

Q. You are the City Analyst for the towns of Colombo, Kandy, and Galle?—Yes.

Q. And Government Agricultural Analyst in addition?—Yes.

Q. Consulting Chemist and adviser on the Scientific matters in regard to estates and other things?—Yes.

Q. You are a Bachelor of Science of the Department of Chemistry of the University of Edinburgh?—Yes.

40 (To COURT: Q. How long have you been doing this?—Over 30 years.)

Q. You are a Fellow of the Royal Society of Edinburgh?—Yes.

Q. Fellow of the Institute of Chemistry London?—Yes.

Q. Fellow of the British-American Chemical Society?—Yes.

Q. Fellow of the Society of Chemical Industry?—Yes.

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Q. Fellow of the Society of Public Analysts?—Yes.

Q. You were for some time employed in the Explosives Department of the Woolwich Arsenal?—Yes.

Q. And you have Mr. Pervis as your Assistant who has been working with the Anglo-Persian Oil Co., in Persia?—Yes.

Q. You were asked by Mr. Cooke to investigate into the cause of the explosion of the section of the Times Building occupied by Kennedy?—Yes.

Q. And also to find out whether 2 gallons of petrol could cause the conditions that were fisible at that building?—Yes.

Q. And if not what quantity of petrol would be required to cause that damage?—Yes. 10

Q. You were also asked I think to report on whether it might have been caused by a leakage of coal gas?—Yes.

Q. And if so what quantity of coal gas could have caused that damage?—Yes.

Q. What was one of the first things you did to find out whether 2 gallons of petrol could have caused that explosion?—I tried to find out the conditions prevalent on that day and before. I am talking of the meteorological conditions.

Q. What particular conditions were necessary to arrive at an accurate conclusion?—What facts were you desirous of ascertaining?—I wanted to know just 'what is what.' I wanted to know what the meteorological conditions were. 20

Q. And to that and what did you do?—I looked up the Observer reports and got it confirmed by the Observer.

Q. And you also wrote in for official figures?—Yes apart from the reports published in the Press.

Q. What did they disclose?—That before the date of the explosion there had been rain. There had been a steady wind from the south-west.

Q. The meteorological reports date from 9 a.m. on one day to 9 a.m. on the next day?—Yes. 30

Q. On the 27th, 28th there had been what quantity of rain?—0·46 inches of rain as registered on the roof of the Surveyor General's office in the Fort.

Q. 9 a.m. on 28th to 9 a.m. on 30th?—1·79 inches actual. To get the rainfall on the ground you add 25 per cent.

(To COURT: Q. Why should that be so?—Because it depends on what the roof is, whether there is a slope, etc. That is what the Superintendent of the Colombo Observatory told me. The only rain guage is on the roof of the Surveyor General's office and to get the rainfall on the ground you should add 25 per cent. 40

Q. On the 28th and 29th it was 1·79?—Yes.

Q. Plus 25% which would be well over 2".

Q. From 9 a.m. on the 29th to 9 a.m. on 30th is ·15?—Yes, plus 25%.

(To COURT: Q. Would you call 2" fairly heavy?—I would.)

Q. Did you also get the humidity figures?—Not at that time. I waited till the 28th July and got that.

Q. The original enquiry was on 16th April 1934?—Yes.

Q. Later you got the humidity figures?—Yes.

Q. What was the degree of humidity on the 29th and 30th from 9 a.m.? —87% of 100%. The average temperature is 80 and this is above the average.

Q. The temperature you were given of the 29th and 30th September 1933 was what?—73 minimum and 82·9 maximum.

10 Q. Considering the situation of the basement, would the temperature there have been lower?—What would you expect it to be there?—The temperature would be lower than the temperature outside.

Q. Because of?—Because it is dug into the soil; the rain had wetted the soil, kept the temperature in the basement down and again it does not get the sun in. In any case it is always lower than the outside areas.

Q. Why was the temperature a significant factor?—It is highly significant in this case because it determines the rate of evaporation of petrol and also the humidity.

20 Q. The temperature and humidity have a direct bearing on the evaporation of petrol?—Yes, or any volatile matter.

Q. How does the humidity affect it?—It prevents the evaporation. It simply lies like a blanket over the liquid petrol.

Q. In your opinion what would the humidity of the basement have been considering the weather conditions?—Taking everything into consideration, you must remember there was a south-west wind blowing sea breeze in that direction, the mileage of the wind was over 100 miles, and for 24 hours; I should say altogether that that basement was nearly saturated with water vapour.

(To COURT: Q. That is to say very humid?—Very very humid).

30 Q. Did you actually work out the quantity of water vapour that would be in the area of that basement?—I did. I took the degree of humidity at 90%.

Q. What did you get?—19·5 lbs. of water.

Q. That is taking the cubic capacity of the basement at how many thousand cubic feet?—At 17,000 cubic feet.

Q. There would be 19·5 lbs. of water vapour in that basement?—Yes.

(To COURT: Q. You mean that if you condensed it you would get 19·5 lbs. of water, Yes).

Q. Is that a very significant fact?—Very.

40 Q. How many cubic feet would that water have occupied by itself irrespective of air?—420 cubic feet.

Q. That is to the exclusion of everything else?—Yes, in the state of water vapour I am talking about now.

Q. In the matter of the area of the basement you were guided I think by what Mr. Reid worked it out to be?—Entirely guided by those measurements.

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Q. And all your figures are worked out on the footing of the net area being 17000 cubic feet?—Some of the older calculation were on 16000 cubic feet.

(TO COURT : Q. You used the word area to include the total capacity?—The total net capacity.)

Q. You also considered the air space of the basement used with reference to the physical properties of soil?—I considered the air space compared with the air space of the sod. I took that as my basic principle.

Q. With regard to the air space available, even though there were racks of goods all round would the actual air space be reduced considerably at all? 10
—No.

Q. You are familiar with Warrington on the physical properties of soil?—He says that sandy soils and clayey soils have the same capacity for holding air and water?—Yes.

Q. Maximum capacity of air and water will be the same?—Yes.

Q. He points out that you could fill a basement with marbles but you get an air space?—Yes.

Q. You worked on the figures of 16000 Cubic feet when you dealt with the air space available?—Not on 17000?—Not always. Sometimes 17000 and sometimes 16000. 20

Q. What quantity of heat would be required to raise the water vapour in the basement to steam?—19.5 lbs. of water would have to be raised to 73 degrees Fahrenheit. To bring that just under boiling point you require 2,710 thermal units. To convert 19.5 lbs. of water at 73 to steam you require 21,620. But at heat units.

Q. You then considered the calorific value of petrol?—Yes.

Q. Calorific value is identical with the British Thermal Units?—Yes.

Q. Before embarking on the Calorific value of petrol, would it be safe to be guided by what is given in the American Manuals on the subject?—They know more about petrol than we do. We have to take what they give. 30
It is difficult to be guided by an entirely American Book.

Q. The quality of petrol there is better than it is here?—I should think so.

Q. You actually weighed two gallons of petrol obtained from petrol pumps in Colombo and did it weigh anything like what the American Authors say it weighs?—That is not a fair question to ask me for I do not know what they weigh?

Q. What did you find 2 gallons of petrol to weigh?—14.3 lbs. I weigh it on 2 occasions. That scale was accurate to a 1/4th ounce.

Q. It should really have been 14.56?—Yes. 40

Q. That is due probably to the expansion of the petrol by a higher temperature?—Yes.

Q. The higher the temperature the less the weight?—Yes.

Q. It is the weight that counts and not the volume?—Yes.

Q. As compared with what the American Books give, you found that local petrol weighed 1.5% less?—Yes, taking it at 14.3 instead of 14.56. The calculation of expansion is 1.6 and therefore it is quite near.

Q. Petrol is not a uniform fluid?—No.

Q. Chemically the smallest quantity of petrol is given as C 7 H 14, and C H H 15?—Yes.

Q. In British Thermal Units what is the Calorific value of 2 gallons of petrol?—Kemp gives it as 18.6 British Thermal Units per pound. Multiply that by 14.3 and you get it for 2 gallons. That is 26100 British Thermal Units for 2 gallons of petrol. That is taking by British Thermal Units as 18000 per pound.

10 Q. Water vapour would absorb 21620 British Thermal Units?—Yes to convert into steam.

Q. Petrol is how many times heavier than air?—You mean liquid or vapour?

Q. Vapour?— $3\frac{1}{2}$ times the weight of air approximately.

Q. Is not 3.47 the actual figure?—Yes.

Q. That being so petrol vapour would spread laterally rather than upwards?—Yes.

(To COURT : Q. You mean it would fuse itself laterally than upwards?—It would not rise.)

20 Q. Liquid petrol poured on cement does it spread itself out rapidly?—It does.

Q. And what area would 2 gallons spread itself over?—1485 square feet, and to a depth of 2 feet over the whole floor of the basement.

Q. What area would 2 gallons of fluid petrol spread over?—1485 square feet.

Q. The petrol vapour in order to form an explosive mixture must be diluted with air within certain proportions?—Yes.

Q. What per cent?—Generally 6 per cent under normal pressure.

Q. 94 parts of air to 6 of petrol vapour and 98.4 parts of air to 1.6 of petrol?—Yes.

30 Q. Those are the extreme points?—Yes.

Q. If the mixture of petrol in the air was richer you cannot cause an explosion?—Yes.

Q. If it was less than 1.6?—You cannot get a explosion either; still under ordinary pressure.

(To COURT : Q. By ordinary pressure you mean?—I mean sea level pressure.)

Q. Taking a mixture of 2% of petrol to 98 of air, two gallons of petrol when converted into vapour would occupy what space?—3000 cubic feet.

40 Q. What is the area of the basement?—The area of the basement is 1485 square feet.

Q. That would give approximately a depth of 2 feet of petrol and air mixture with two gallons of petrol?—Yes.

Q. Spread out over the bottom of that basement?—Yes.

Q. That is certainly not the optimum mixture?—No.

Q. If one puts it as high as 6 per cent, the volume of petrol and air would be considerably reduced?—Yes.

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Q. In practice is it possible to completely vapourize petrol in a short space of time?—Not in a short space of time.

(To COURT: Q. Vapourize what quantity of petrol?—Any petrol I think.

Q. It does not vapourize quickly?—No. It vapourize at first quickly and then takes long.)

ADJOURNED FOR THURSDAY, 11TH OCTOBER, 1934.

11th October, 1934. 11 a.m. to 1 p.m.

VISIT TO THE SCENE.

His Lordship, Counsel for the Prosecution and Counsel for the Defence 10
with the Jurors visited the scene of the Fire, namely, Kennedy's premises
at the time of the fire.

This visit was specially confined to an examination of the cracks on
the walls and the other injuries to various parts of the building.

Mr. Reid and Mr. Hall expert witnesses for the defence explained
what was meant by "pull-out" of the reinforcement wires etc.

Mr. Small who is assisting the prosecution also gave further explanation
of what he stated was his opinion in his evidence in Court.

No evidence was recorded at the scene apart from the different experts
pointing out to His Lordship, Counsel and the Jury the various cracks and 20
other damage done to the building.

Mr. Reid stated that there are three layers of reinforcement over some
of the beams.

In the course of discussion Mr. Small stated that he agreed that the
building had lifted as a result of the heat and that he attributed that lifting
of the building to heat and not necessarily to the explosion.

COURT THEN ADJOURNED TILL 2 P.M.

11th October 1934.

(AFTER LUNCH.)

A. BRUCE—EXAMINATION (*continued*).

In regard to experiments given in books with regard to calorific
value of petrol or any other inflammable vapour is it the practice to use
oxygen?—It is. These are theoretical temperatures as obtained in practise.

The books lay that down?—Yes. It is from 1/3 to 1/4.

Thorpe on applied Chemistry and Kempts lays that down?—Yes.

Mr. Collins' evidence you have heard it, that he carried out his experi-
ments with reference to air?—Yes.

Before the calorific value is ascertained have you got to find out the
water equivalent?—Yes.

What is the water equivalent?—In this case it is the amount of heat that the chamber would take calculating how much of heat your water will take up. You have got to calculate it back to water.

How is the approximate temperature of combustion area calculated from the calorific values?—It is laid down in literature that the heat generated equals the heat of gases multiplied by the specific heat multiplied by the rise of temperature. That is the form of the formula and from that formula you get other formulæ.

The specified heat of a gas is measured with reference to air. It is the rate really at which the gases will take up heat and they differ for different temperatures. That varied with the temperature.

With regard to gas as compared with any other substance the specific heat of substance are taken in regard to water.

That is calculable also?—Yes.

You first calculate the temperature and from the temperature you calculate the periodical pressure by the law of gases?—Yes.

Your calculations in the first instance are for the air in the basement?—Hypothetical air to the basement.

In the basement there are 48·4 square feet of openings?—For practical purposes 45 square feet.

Since you have only a limited quantity of petrol you had to reckon it for the space occupied by the optimum combinations of petrol vapour and air?—Yes.

That is what is known as a stratified explosion?—Yes.

If petrol vapour causes it a stratum of petrol in the air where would the air be in the basement?—On the floor as loose as it can get. Petrol is 3·4 times heavier than air. It is a logical term but is a descriptive term. They use the word “stratified.” They use it in literature of explosions in open spaces not in quarries.

Your calculation also assume that the whole of the two gallons of petrol was evaporated?—Yes.

Can you ever get that in actual practise?—It must be in those conditions. In a laboratory it would be possible. In such conditions as this it would be possible.

When you come to kerosine oil it does not evaporate.

To get the maximum explosive force all the petrol must evaporate?—Yes.

If petrol burnt slowly or exploded suddenly the total number of heat units produced is the same?—If you get a theoretically complete combustion, if you got no smoky flame.

Where it burns slowly if there were effective openings would expect to find any explosion at all?—No, I would not. You can't get a slow explosion when you come to vapour—it must be a liquid. In the state of vapour it is quick.

Were these theoretical calculations carried out under ideal conditions?—No, they were academical calculations—theoretical.

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In actual practise do the books lay down that the thermal efficiency of engine is much less than petrol engines?—Yes. The efficiency of a diesel oil engine goes as high as 36% and air craft engines as high as 27%.

In other words petrol when used for explosive purposes is a wasting asset?—Yes.

Petrol consists of carbon dioxide and hydrogen?—Yes.

In the percentage of how much to how much?—Carbon is reported in literature to be 85.25 and hydrogen 14.75 making a total of 100.

That tallies with the formula C7 H14?—Yes.

Is petrol a definitely chemical body?—No, it is a mixture. It is one 10 of the principal constituents.

Some authority lay down the formula for petrol as C7 H14 or C8 H18?—They are mixtures of chemicals but there are many unknown things in it.

Theoretically by the combustion of 2 gallons of petrol in air you get what quantity of carbon dioxide and hydrogen?—You get 45 lbs. of carbon dioxide, 18.45 lbs. of water, and 165 lbs. of residual nitrogen. It is present in the air and has not been acted on.

By volume you get?—It is usual when you are working with volume to work them at 0 degree Centimeters.

32 degrees Fahrenheit is equal to 30 degrees of mercury, 369 cubic 20 feet of carbon dioxide, and 369 cubic feet of water and 2200 cubic feet of nitrogen.

You have also said that the volume of petrol of 2 gallons is 62 cubic feet?—60 cubic feet would be the nearer figure. If you evaporize 2 gallons of petrol you get 60 cubic feet of vapour.

60 cubic feet of petrol vapour produces 2938 cubic feet of carbon dioxide, hydrogen and nitrogen.

In the process how many cubic feet of air?—There would be 2953 cubic feet of dry air. With 2935 cubic feet of dry air it is possible to make 30 a optimum mixture.

What do you calculate the temperature of the area of air to be?—3035 degrees Fahrenheit. That is the ordinary temperature.

According to my reckoning 19.5 lbs. of water vapour occupying 420 cubic feet were present in that air. That was worked out by me.

You told us on Tuesday 2710 heat units would be required to raise the water vapour present in the basement to be converted into steam?—Yes.

You worked out the resultant temperature after allowing for the heat units absorbed in converting the water vapour into steam. What degree of temperature did you get?

You worked out the resultant pressure in a closed basement and before 40 getting the resultant pressure you worked out the actual temperature after allowing for the heat units absorbed. In the process what degree of temperature did you get?—After making allowance for the water vapour present in the basement and 1½% of water which should be 14.5 I get my temperature in the basement absolute as 11.32 degrees Fahrenheit. That is 671 degrees Fahrenheit ordinarily.

From that you worked out the pressure in the basement for a formula?
—Yes.

What do you get as pressure?—16·8 lbs. per square inches. That is the rise of temperature. That is by this method of calculation.

Have you other methods?—Yes.

The actual pressure exerted is 31·5?—Yes, that is absolute.

You subtract the atmospheric pressure 17·6 and you get the actual rise of pressure at 16·8 lbs. per square inch?—Yes, by that method of calculation.

10 That is for hypothetically a closed basement?—Yes.

In point of fact in that reckoning you have not subtracted what you call the water equivalent?—No.

For the purpose of ascertaining the water equivalent you went on the basis that 1/100 of an inch in depth of the superficial area of the basement would get heated?—Yes.

You worked out the total superficial area that is the flooring, the ceiling, the pillars, the cement walls and plastering on the piers a total of how many square feet?—5383 square feet.

You reduced that to square inches?—Yes.

20 You reckoned the heat absorbed, is how much? The total heat absorbed by the steel and the superficial area, everything is calculated out, and that comes to 112,200 heat units.

In addition to the area of 5523 for flooring, pillars, walls bricks, plastering and piers you also reckoned the heat absorbed by the steel beams?—Yes, 982 square feet.

The total number of thermal units was 112,200?—Yes.

The actual heat units available from the combustion of 2 gallons of petrol is how much?—You mean the original or after making deductions. It is 261.

30 From that has to be further deducted the water equivalent you have given as 112,200?—Yes.

That gives a residue of thermal heat units as 119,665. That when worked out gives an absolute pressure of how much?—22·2 lbs. per square inch. For a rise of pressure in how much?—7½ lbs. per square inch per rise.

(TO THE FOREMAN OF THE JURY: To what temperature of 112,200 does it raise the superficial area of the basement?—I have not worked that out in detail. I gave you a formula. What is the rise of temperature?—We can find that.

40 The temperature was 73 degrees Fahrenheit and this temperature is 342 degrees Fahrenheit after deducting the water equivalent in the basement?—That is the figure I am working on).

(TO COURT: The temperature was 342 degrees Fahrenheit ordinary or 810 absolute. That is the temperature in the basement after the explosion.

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212 degrees is the boiling point of water. It is not very much of a temperature. It is a temperature of the basement at the time of the explosion.

The superficial area of 1/100 of an inch of all the basement absorbed a heat theoretically was raised to 1/100 at 302 degrees Fahrenheit?—Yes.

There is a big difference between theoretical calculations and actual practice?—Yes.

You have a model prepared of this basement in concrete for demonstration?—Yes. It is a model of a 4 gallon capacity. These academical results are not attained.

You say the books lay down in actual practice what fraction of a theoretical result you obtained?—Yes.

In actual practice what is the fraction of theoretical pressure you actually obtained?—It entirely depends on your conditions. It may be frittered away by conditions. But it always less?—It is much less.

Relatively to explosions developed gradually?—Yes.

Would the pressure in that particular basement, knowing there openings there are in it, ever reach its maximum?—Never.

When you say that an explosion developed gradually you are speaking with reference to time in what?—Matter of minutes, second what is it?— 20
Portions of a second.

I started with academical calculations.

When he seeks to apply it in practice?—He started with the plant in the laboratory. Each time he alters his plant he alters his conditions. It is only a guide.

To be followed on by?—Actual practice.

What does the evaporation of petrol depend on?—It depends on the quality of petrol, it depends on the air, the presence of hot gases in the atmosphere.

If petrol was in a closed vessel or an opened vessel or porous body, or 30
hard body, whether it comes from a plain surface you can't say what the evaporation of petrol is unless you know the conditions.

All these things, the temperature, the air the presence of water vapour, the quality of petrol will result in the variation of time taken to vaporize a given quantity of petrol?—Yes.

If the surface were porous would it evaporate more rapidly?—Yes, because there are more capillaries to evaporate on.

You carried out a series of experiments to ascertain the rate of evaporation of petrol?—Yes.

You reckoned the percentage loss of petrol by vapour?—Yes.

At a temperature of 85 degrees Fahrenheit?—Yes.

Humidity 80%?—Yes.

Of what substance you experimented with gave off the biggest quantum of petrol vapour in the shortest time?—Leather.

You used as the standard quantity of petrol the quantity of petrol used in this case?—5 cubic centimeters. By leather you mean unpolished leather?—It was polished on one side and not on the other. It was pressed 40

leather. It was undressed 50%. It is sole samples we had from Madras. It was pressed leather. 50% dressed leather would be sufficient for wearing.

Of that cement basin you produced in 5 minutes what percentage of 5 cubic centimeters of petrol was evaporated?—40%. For cardboard what was it?—66½.

For leather?—72·2.

In 10 minutes how much had evaporated of your cement and sand. This is cement with sand rendering. It is similar to the basement floor. In 10 minutes it evaporates 58%.

10 Cardboard?—77·6.

Leather?—90·3.

In fifteen minutes?—73½ from cement and sand.

Cardboard?—83·1.

Leather?—94½.

You also did it was a linen drill trouser?—Yes.

Washed such as it would be by a dhoby trouser?—Yes.

Washed such as it would be by a dhoby in Ceylon?—Yes.

In 5 minutes the percentage loss after an application of 5 cubic centimeters of petrol was?—62·7.

20 In ten minutes?—75.

In fifteen minutes?—84.

You also ascertained the quantity of evaporation of petrol on socks, similar to the socks said to be worn by Mr. Kennedy on that day?—Yes.

These are the particular socks he used?—Yes.

You applied 5 cubic centimeters of petrol. After 5 minutes what percentage of petrol had evaporated?—54.

In 10 minutes?—71.

In 15 minutes?—79.

You hung the sock up in open air?—Yes.

30 10 minutes later was there still a fairly strong smell?—Yes.

1½ hours later?—A slight smell where the cotton was predominant—that was at the top. It apparently had crept up the cotton. The artificial silk gave it off and the cotton retained it.

(To COURT: The heel is of cotton and the sole is also of cotton. After 1½ hours the smell concentrated on the cotton, but I must say it was very bunched cotton. They were all shreds. The smell was only where the material had bunched together.)

40 The concentration of vapour may have been due to the bunching up, where it was compressed by the string. After 1½ hours there was a faint smell, but on the rest of the sock there was no smell.

You also worked out the ratio of evaporation in a glass vessel?—Yes.

It is much slower than a porous object?—It is much slower.

In five minutes it had evaporated how much?—6·4.

In ten minutes?—12·2.

In fifteen minutes?—16·2.

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That was a slow state of evaporation of all the substances I tried. The petrol was on a plain surface.

You stated that those figures you have given are for a temperature of 85 degrees Fahrenheit and humidity of 80 degrees?—Yes.

Under the conditions as ascertained by you at the Meteorological Institute, which was prevalent or must have been prevalent in that basement. Would the rate of evaporation be much higher or lower?—It would be much lower.

In a petrol explosion it is only the petrol in vapour that counts?—Yes.

Any petrol still left behind in any of the articles of which might have fallen on the ground would not count for the purpose of an explosion?—No.

Your figure for cement concrete of cement flooring of the basement was 40% in five minutes?—Yes.

After trying to sprinkle petrol and set fire within five minutes only 40% of the petrol would have in vapour form?—Yes.

That would reduce in pressure per square inch to how much?—By nearly half, or 40/100.

Is the rate of diffusion of petrol vapour slow?—It is rapid under certain conditions. That is if it is horizontal or if anything below 20 degrees. I tried it at all elevations. It decreased rapidly as it reached the perpendicular.

(TO COURT): I have seen an experiment where there was copper sulphate at the bottom of a cylinder where it was left for many years, and you saw it creeping up year after year. Gases diffuse certainly quicker, and if you have a heavy gas like petrol vapour it does not go up?

As a matter of fact you carried out various experiments with a tube?—Yes, 3/4" in diameter and 60" long.

You had a sponge immersed in petrol at one end of the tube?—Yes the bottom and put in a water load at the bottom to prevent the petrol in the sponge evaporating downwards?—Yes. It was water locked. The vapour could go up but could not come down. When kept in the vertical position was there any smell of petrol noticeable at the end of 24 hours at the end of the 60" pipe?—None. There was no smell of petrol.

When kept at an angle of 45 degrees?—Yes.

At the end of 24 hours was there a smell of petrol?—Yes.

Were you able to ignite it?—No.

In the horizontal position was there a smell of petrol and were you able to ignite the fumes?—After five minutes.

You repeated the performance with a pipe 3" in diameter and 4" long?—Yes.

At the end of 24 hours if kept in a vertical position?—I got a slight smell of petrol; no ignition with a match.

(TO COURT: Air is much lighter than petrol vapour.)

As a matter of fact you reversed the process and you applied a petrol sponge at the end of a 60" tube?—Yes.

When you applied it at the top end in what time was a smell noticeable at the lower end?—In 25 seconds. It had travelled 60" in less than 1/2 a minute.

You then carried out a series of petrol explosions in a 4 gallon bucket?—Yes.

That is the usual type of bucket?—Yes.

Wide at the top and narrow at the bottom?—Yes.

You covered the bucket with a lid?—Yes 1½ lbs. in weight.

These were primary experiments you carried out?—Yes.

10 You began your experiments with an equivalent of two gallons in the basement, of a size of the basement in question?—I started these experiments when the Police inquiry was going on. Sometimes the basement was given as 16,000 cubic feet and sometimes as 18,000 cubic feet. I had a table for both and I have brought the one for 18,000.

What is the equivalent cubic centimeter of 2 gallons of petrol in 18,000 cubic feet basement as applied to a 4 gallon bucket?—For 4 gallons I got 7.64 so that gallons was 3.25 or 1 cubic centimeter.

You tried to ignite petrol vapour in the bucket beginning with that quantity?—Yes.

20 You failed to get any explosion or detonation. You used a burning candle, a naked light. You failed till you got an equivalent of what was added?—10 gallons in the basement. 9 gallons I have got it here as.

The smaller quantities of petrol gave no results?—It burnt the petrol but there was no vapour explosion.

The lid was lifted slightly when you introduced as much as 9 gallons to the basement?—Yes.

You worked out on 13A some of the results of your explosions?—Yes. Testing a full gallon bucket with a lid on top of 1.4 lbs.?—Yes, the bucket was 13" deep—9" at the bottom—13" top diameter.

30 In that sheet you have given the results of your experiments. For your experiment 1.65 cubic centimetres equivalent to 4 gallons in the basement?—Yes.

With an air temperature of 30 degrees centimetres* which is the same as?—86 degrees Fahrenheit. * Sic.

You first experimented with 1.65 cubic centimetres or 13 drops of petrol?—I did not measure it in drops.

You measured it as equivalent to 4 gallons in the basement as worked out by you at 30 degrees centimetres* giving no reason?—Yes.

40 The second experiment was 1 cubic centimetre of petrol, equivalent to how much?—6.15 gallons in the basement.

The result again was nil?—Yes. When I mean it was nil I mean there was no explosion. The petrol burnt but there was no detonation. It was liquid petrol on the surface of the bucket.

As a matter of fact in smaller quantities of .65 cubic centimetres did you get a flame?—You always get a flame because you have your liquid petrol there but it is hardly a flame. It is almost invisible.

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Then you get $1\frac{1}{2}$ cubic centimetres, which is equivalent to?—9.23 gallons in the basement. Then nothing happened. There was nothing except a flame.

You worked up to 1.65?—Yes.

That is the equivalent of?—10.15 gallons in the basement.

What happened then?—I got a bigger flame and a slight explosion.

The lid just got raised up and dropped back on the top of the bucket?

—Yes.

1.75 equivalent to 10.75 gallons in the basement of 18,000 cubic feet gave a slight lift to the lid. It was similar to the previous experiment. 10

2 cubic centimetres equivalent to 12.3 gallons in the basement gave a slight explosion. It was slightly long, nothing to speak about. I will demonstrate that later on.

The actual explosion with an electric current?—Yes.

You worked out Mr. Gray's figures up to 16,000 cubic feet basement.

You reduced the side of a 16,000 basement?—Yes.

1.5 works out as how much?—I am talking of 16,000 cubic feet—8.53 gallons in the basement.

1.75 or 9.72 gallons in the basement of 16,000 cubic feet. The actual experiment was with 1.5 cubic centimetres not with 1.6 cubic centimetres. 20
You also worked it out for a 17,000 cubic feet basement, 1.5 cubic centimetres gave 8.2 gallons?—It may be that.

You worked it out in another form?—Yes.

* *Sic.*

The result was 8.2 gallons to 1.5 cubic centimetres * gallons to 1.75 cubic centimetres in a 16,000 cubic feet basement?—That is a calculation by another method. The two methods are approximately equal.

You eliminated the contents of the pillars, you placed pieces of cotton wool, paper, linen, wood chippings, jute hessian at the bottom of the bucket?—Yes.

How far from the bottom of the bucket?—About 3 or 4", about a hand's 30
breadth.

You added the equivalent of 10 gallons of petrol to that bucket and ignited it and you got a very slight explosion?

What, if any, of the materials took first?—The cotton wool and tissue paper generally caught fire, sometimes it did not and sometimes it did.

Sometimes the linen and sometimes the jute hessian?—Yes. Leather and wood did not ignite.

The cotton wool and tissue paper very nearly always took fire?—Yes.

The linen and jute hessian sometimes took fire?—Yes.

The leather and wood never took fire?—Yes. 40

You told me on Tuesday that petrol spreads rapidly on cement?—Yes.

5 cubic centimeters of petrol spread out on how many square inches?—116 square inches.

In what interval of time?—In four second. I can demonstrate how that is done.

Was that the maximum spread?—Yes. (To COURT: 28 cubic centimeters is one oz. 5 cubic centimeters is 1/6).

You stated on Tuesday that calculating at that 2 gallons would spread on 1485 square feet?—Yes.

That is pretty much the same as the floor area of the basement?—Yes.

Two gallons poured on the basement would spread itself out like a thin film on the floor?—Yes.

There would not be very much for soaking cardboard boxes, leather, skins, shoes?—No. It will just form a film. (TO COURT: A film of petrol will evaporate quickly.)

10 The evaporation which I carried out is not a true evaporation. It lifts itself. Each liquid has a vapour pressure. It gave off a certain amount of vapour and lifted itself. Even in a barometer you must make an allowance for mercury. Petrol vapour acts as a blanket. The first evaporation is rapid and it slows down very rapidly. It is the lighter boiling substance which goes up first.

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12th October, 1934.

From 11 a.m. to 1.30 p.m.

12th Octo-
ber, 1934.

Accused present.

Counsel as before.

A. BRUCE.

20

EXAMINATION—(continued).

The primary experiments of yours suggested your experimenting with more perfect models?—Yes.

For that purpose had for your practical experiments to enter into your reckoning the effective openings in the basement?—Yes.

What were they?—They aggregated 44.6 square feet?—For purposes of a calculation I took it as 45 square feet as they were rather minor.

What is that equivalent to?—in a motor cube of 4 gallons capacity?—It is equivalent to a hole of 0.25 of a square inch.

That is a square 1/2" x 1/2"?—Yes.

30 Could such a tube be inflated?—I tried to prove it to myself and found it could not be inflated. The equivalent of the whole of the basement was represented by 0.25 of a square inch in a tube of the capacity of 4 gallons?—Yes.

Was it a 2" or a 1" pipe?—It was a 1" pipe. There was a great rush of air, and a volume of air.

You had a tyre pumped up to how many lbs. per square inch?—It is dangerous to go above 40 so that I have kept it about 40 lbs. a square inch.

The compressed air was in a motor tube and inside a tyre up to 40 lbs. per square inch. I have had it from 40 to 45 lbs. you might say.

40 When that is suddenly released and allowed to get into a tube of 4 gallon, the 4 gallons is equivalent to how much?—.64 of a cubic feet. Even Mr. Gray agreed with the same capacity.

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On releasing the air were you able to get the tube inflated at all? No what you call inflated. I will demonstrate that in the best way.

You have got a concrete casing model equal to a dimension of 4 gallons? That is what I call a volume model. It is not concrete. It is sand and cement.

There is no metal in it?—No.

The equivalent of 2 gallons in the basement when introduced to that concrete chamber is how much?—Taking the basement in this case at 16,000 cubic feet, it is .36 cubic centimeter.

You exploded it with an electrical spark?—Not exactly. It is electric fuse. 10

Similar to a sparking plug of a motor car?—No, it is not quite the same.

You get a spark from this?—You get a spark from a current. A sparking plug won't do it.

The spark is caused by a fuse wire blowing?—That is it. We failed many times to get this result until we came to the conclusion that this was the only result.

Would anything happen to the cement and sand box?—No, nothing happened. We had made it almost scientifically closed. We had a rubber gasket round it. 20

When any organic substance which itself does not contain oxygen it has got to get oxygen from outside for its combustion?—Yes.

Petrol vapour contains no oxygen?—Yes.

Similarly coal gas requires oxygen from the air?—Yes.

In high explosives the oxygen is present in the explosive itself?—It is in the molecule.

Petrol vapour requires oxygen from the air for its combustion?—From the air or from some other source.

Even so do small quantities of petrol vapour go uncombusted?—Yes. 30 You do not get in under the most perfect conditions. Under 2% of air according to literature.

That is petrol and air mixture?—Yes.

For instance, petrol as ignited in the engine of motor car?—Yes.

What is the quantity of petrol that escapes uncombusted from the exhaust pipe?—That varies according to the engine. Under the most perfect conditions you get 1 to 20% uncombusted.

Do gases increase in their volume with the increase of temperature?—They do.

For each degree centigrade what is the increase in volume?—1/273 of their volume. That is absolute for all gases and the rate of expansion is the same. I have asked Mr. Brohier to bring my volimeter pressure later. This is an universal and eternal law of nature. 40

It is known as Charles' law?—Yes.

It is known as B. Charles' law?—These are the master scientists. We apply it, they proved it.

As a matter of fact you gave me the resultant gases by explosions of petrol?—I did.

The actual volume is not very much greater than the volume occupied originally by the petrol vapour plus the dry air that was absorbed in the combustion?—If you took your petrol vapour in the dry air you get 3000.

You also stated that a temperature produced, you worked out, was 3035 degree Fahrenheit?—Where.

In the explosive area?—Yes. That is centigrade is about $\frac{1}{2}$?—About $\frac{1}{2}$. The 2953 cubic feet is perfect air.

10 The resultant temperature in the explosive area is a little over 1500 degree Centigrade?—Yes.

You say that every unit of resultant gas will get expanded by $\frac{1}{273}$ of itself of each centimeter of rise of temperature?—Yes.

So that a rise of 1500 would be $\frac{1500}{273}$ which is over five times its volume?—Yes. It is 7.86. You must take the absolute. It is 3143 divided by 273. On this temperature giving you, it is temperature arrived at by the latter method of calculation.

The temperature is a little higher than I gave you 1870 degrees. It is 2143 degrees absolute.

20 A little over 7 times its volume?—It is 7.86 its volume.

It is the rise in temperature that causes the explosive power or brings about explosive power?—Yes.

You get the pressure of petrol up to shattering strength in the basement allowing for openings, what quantity of petrol would be required?—It depends on what you entirely want to get your strength of concrete at. My working is about 200 lbs.

30 To shatter that concrete what quantum of petrol is required in your estimation?—I am not quite sure these are absolute facts, as it is almost impossible to get your facts, say about 80 to 120 gallons, but unfortunately there is not sufficient air in the basement. You can't get enough petrol in there to shatter it. It is 35 gallons of the petrol action. For that quantity of air the maximum quantum of petrol that would be exploded in that basement would be 35 gallons?—That is right.

And that quantum of petrol vaporized would not shatter that floor to the extent it is shattered?—It is still less on my figures.

You have worked out the actual pressure to disintegrate the concrete and in tearing it from the steel beams or reinforcement?—Yes.

40 To reckon it you took British Reinforced concrete fabric No. 9. That is 12×9 across, $\frac{3}{16}$ of an " in diameter and 1" in diameter and beams 15' by $7\frac{1}{2}$?—Yes.

The primary cross girders were 6" and the secondary girders 5"?—Yes. I was given them. I did not take them.

Working out the pressure required to shatter, or rather disintegrate it, 1 fabric span force, you get how many lbs.?—1.37 lbs. per square inch.

1.37 lbs. of your unit area?—Yes.

Your area being?—1".

Over one rectangular span it is how many lbs.?—It is 4944 lbs.

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To work that into square inches—the fabrics span is 36", you divided it by 36 and you get 137 square inches?—Yes.

The fabric is 12 by 3?—Yes.

Is there a fundamental difference between the shattering strength of plain concrete and of reinforced concrete?—Yes.

(TO COURT: I am primarily a chemist and I have to do with the allied sciences. I admit that my calculations are academical. I have experience of testing concrete chemically and physically for firms. My figures are academical).

You dont wait for the strength of concrete as it ages it gets stronger. 10
I had one occasion in which I worked out of the strength of concrete but that is what I have taken from standard books. I have done work to check the work of contractors. Some buildings are sub-contracted and firms have asked me to check up the sub-contractors and they give me a block of concrete and I check it. You could not do the physical strength of a piece of concrete say in cubic feet unless you had some extraordinary special apparatus that concrete firms have got. From the chemical you deduce the physical.

Has your opinion been sought on matters such as these?—Not on concrete but on cement and sand ratios. 20

I would find out the component parts of concrete by chemically testing it. I cant say if the mixture is not up what the resultant would be.

(TO THE FOREMAN OF THE JURY): Have you made any physical test of the concrete of the building?—I have not.

As a matter of fact the concrete in this building is said to be standard quality 1, 2, 4?—Yes.

The breaking strength of such concrete is given in all books?—Yes.

Did you work out the adhesion of the beams to the concrete?—Yes, I worked it academically, mathematically. It is the same as any other man would do, a builder or architect. It is nothing. I worked it out myself. 30
I took it from the standard works. We refer to the books and apply it for the purpose. It is impossible for me to prove all the formulae I gave. I took the formulae from the books I consulted. I have got to apply the basis law to physics and Chemistry.

The secondary beams were 15×5 ?—Yes.

That gave how many square inches?—900 square inches.

The primary beams are $7\frac{1}{2} \times 6$? 540 square inches.

You take the area per span to be disintegrated which is added to those two?—1440 square inches.

The British Reinforced concrete hand book gives the adhesive strength 40
concrete and steel embedded in beams between 400 and 760?—Yes.

You take a mean of 600 lbs. as the adhesive strength?—Yes.

The adhesive strength of your concrete to steel to 1440 square inches is 1440 multiplied by 600?—Yes.

That is equal to?—864,000 lbs. per span area.

To make it into lbs. per square feet?—7680.

You divide it by?— $112\frac{1}{2}$. That is the cubic feet to the span. You get 53.3 lbs. per square inch.

TO THE FOREMAN OF THE JURY: The steel beam is the main beam. You have got another beam here $1\frac{1}{2}$ " long and you get a concrete floor on the top. That is all British Reinforced concrete till we come to the next. This is a span. Now you want the adhesive of concrete to that steel beam. You have got the next steel beam $1\frac{1}{2}$ " over their flangs and over that comes your reinforcement British reinforced concrete and you must have that and that and you must disintegrate that without lifting it over. I am referring to the
 10 British reinforced concrete handbook. I know Mr. Reid did not take the maximum figure and that is why it did not agree. If you take the cubic feet of concrete it will take 750 lbs. to bend and break it.

137 lbs. per square inch is that sufficient to break or lift it up from the concrete and rupture it?—No I made it 250 lbs.

Your 137 lbs. you told me was the force required to chatter the concrete floor?—Yes.

That is to say to pull the wires out of the concrete.

(TO COURT: I have just the ordinary knowledge of mathematics. You have got to apply your mathematics. This is not high mathematics.
 20 It is ordinary arithmetic.)

The adhesive strength of concrete to steel is given in the books from 400 to 760 lbs?—750 lbs.

All that you have which is worked out at 53 lbs. to a square inch is given in lbs. per square inch of a rectangular space working out from that fact that according to authorities cement to steel is 760 lbs?—I did not say that is the maximum. That is calculated on young cement.

In the matter of explosion you stated yesterday that small intervals take place before certain forces come into play and that the intervals are fractions of a second?—Yes.

30 The result of an explosion was to blow up the ground floor in several places to demolish the basement wall separating it from the intake chamber completely?—Yes. If one adopts a sequence on this occasion what would go first?—The brick curtain wall. It is a matter of common knowledge.

A $4\frac{1}{2}$ " brick wall would ordinarily go first?—Yes.

If there was an interval of time between that wall going and the other forces exerted on the roof would there have been any damage to the roof.

(TO COURT: Is that within your province?—Yes, it is based on physics.

Have you seen experiments conducted with explosives?—I have seen experiments conducted with high explosives.)

40 After the wall went first what would happen?—If the brickwall went first, the pressure would have been released to infinity and the residual pressure would not have been sufficient to do any damage to the ceiling. That is open.

Therefore inversely you say the floor having gone, the inference you can come to the effect on the floor and on the brick wall for practical purposes it must have been simultaneous?—It must have been.

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And judging from the result even after the explosion what in your opinion is the cause of the damage?—That would be in two parts, first, where was the position of the explosive, and the nature of the explosion. Very probably it was gaseous.

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(To COURT : By gaseous you mean petrol vapour?—Anything in the state of vapour or gas.)

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Coal gas explodes when it is present mixed with atmospheric air in the proportion of?—From 6 to 29% with air forms an explosive mixture of coal gas.

We had it from Mr. Hall that the girders there should have trapped 10
1350 cubic feet of coal gas if there was a leak?—Yes. What quantity of coal gas will be required to produce pressure sufficient to break up that basement, the ceiling of the basement?—Are you talking of a closed basement or a gas tight basement.

As it is?—It is a very difficult question.

Take it as a closed basement first?—In the neighbourhood of 330 cubic feet of coal gas could have done it.

(To COURT : That would produce a pressure of what?—Nearly 200 lbs. per square inch. I am quoting literature. After allowing for the water vapour in the basement. It is perfect air.) The reason being that you 20
require the water equivalent because coal gas being light it is under the roof. The petrol vapour being heavy it acts as a pad over the air and all the time the air is getting heated. If the petrol is down the coal gas will be up there.

You can compare pressure if you bring them down to a common unit. I certainly would require to make allowance for the heat absorbed in the roof where the explosion is a stratified ceiling explosion. It is not so necessary in the case of petrol. I don't think it will make much difference. I would put in some coal gas to make a difference.

Have these things been worked out for gases?—They have. 30

Coal gas?—Thorpe's applied chemistry volume 2 gives you a table of coal gas and air mixtures.

The proportion of gas by volume is 1/6?—Yes.

1/6 is equal to what percentage? to 16.6%?—That is in every 1000 cubic feet of air the formula gives it as 166 cubic feet of gas.

The 166 cubic feet of gas would give a pressure of 91 lbs. per square inch?—Yes.

Glasgow coal gas is given as 96. Different gases vary. You can't increase your air in proportion?—You need to double the air to make an explosion. 40

With 330 one would get double the pressure?—You double the pressure.

Glasgow coal gives 192 lbs. per square inch?—Yes. Oldham gas it would be 182 lbs.?—Yes.

In what time would it be possible for a leakage of 300 cubic feet of gas to occur?—In a 1/4 of an hour through a meter; through a bye-pass 3 to 4 minutes, and through a 3" pipe it will take less.

How many times its volume?—It depends on the quality of the gunpowder. It expands to 700 times.

Were you present when Mr. Gray carried out his experiments on the law?—I was.

The first was with petrol with a primer?—Yes.

Then there was a crackling of the tin due to the gases being produced by the primer?—Yes.

That shows that the gas produced by the primer have an appreciable check in causing a certain internal pressure?—Yes.

10 For the rest of it you say Mr. Gray used 1·6 cubic centimetres of petrol.

That is the equivalent of how many gallons in the basement?—That is 8·2.

You saw the effect of the explosion on the chute?—Yes.

The sides had bulged?—Yes.

What in your opinion is that due to?—I consider that due to the compressed air inside the chute.

Finding its way through the chute how?—Through the bottom end. The compressed air found its way through the bottom of the chute.

Have you reckoned the rate of flow through that opening leading to the chute?—Yes. (To COURT : That is the air consequent on the explosion.)

20 You worked out the speed per second of 2032?—That was worked at 33 lbs. per square inch which the press quoted as Mr. Collin's evidence.

That gives how many miles per hour?—1386 miles per hour.

What is the speed of a tornado or typhoon?—It moves at 100 miles an hour.

The speed at which the resultant gases from the explosions escaped into the basement would be over 13 times of the speed of a tornado?—Yes.

The force of gales has been worked out?—Yes.

The Tay Bridge disaster was caused by a gale?—Yes.

30 That gale was worked out at 35 to 60 lbs. per square foot. It was gusty.

Such a force necessitated people lying down at least to prevent their being swept off their feet?—Yes.

Had anyone been in the basement in the explosive area with 2 gallons of petrol exploding what would have happened?—He would have been finished. Nothing would have been left of him.

The line of exit of pressure is where the force is. That is not necessarily the explosive area. We explained that the explosive area was the floor. It might have travelled at 1500 miles an hour. If he was anywhere near the wall he would have been dashed against the wall.

40 You remember the explosion at Prince Street the day Lord Chalmer's died?—Yes.

The electric tram-ways sued the Gas company?—Yes.

That case was settled?—Yes.

What was the effect of the explosive there?—It shattered and broke it up.

You saw the pipe that is left there that carried. You were told that there was a similar pipe which is no longer there. All the cables went

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to the switchboard. If there was an accumulation of gas by the switch board would that have gone up the pipe?—Yes.

Coal gas being how many times lighter than air?—It is about .3 of air. It is given different ratios.

Would that gas if it was coal gas be ignited by a spark caused by a flash from the tumbler switch?—Yes.

Would any gas so ignited tend to strike back whence it came?—Yes.

That would make it go back down that pipe?—Yes.

If there was an explosive mixture at the bottom of the pipe would it cause an explosion?—Yes. 10

You told me yesterday that two gallons of petrol would be sucked up by a cement floor if it was put on the basement?—Yes.

It would cause a thin film?—Yes.

I take it one could not cover the area or sprinkle petrol in any proportion than the area that it was spread out?—No. If you had them on the floor.

You could not for instance with petrol spread petrol of a gallon in the whole of the basement and walls of the basement which would be much more extensive than the ground area?—Yes.

The circular area of the basement is bigger than the floor area?—Yes. 20

That will leave nothing for the ground floor?—No. You have the superficial area there.

If one saturated a heap of skins with petrol and set fire to it would you expect the skins to be left behind?—It depends on the intensity of the fire?—It might be on the conditions. I think it will be fairly well burnt if you sprinkle them with petrol.

You experimented with petrol tins to ascertain at what point soldering round the handle would melt?—I did.

In what temperature would you get the soldering melted?—347 degree Fahrenheit. 30

Which is the equivalent of?—1750 degree Centigrade.

That is a considerably lower temperature than even could have been caused by two gallons of petrol in this area?—Yes. 347 degree is not a furnace temperature.

Two of the girders at one end near the intake chamber were badly burnt?—Yes.

Had that actually been oxydized?—There was oxide on the outside.

What temperature is required to cause that oxidization?—It is below the melting point, about 2000 degrees fahrenheit.

There are furnace heats of various grades. 40

You subjected a petrol tin with 3 cubic centimetres petrol and kept it on wood shavings to be burnt?—Yes.

That was from 4 to 5 minutes in the actual fire?—It was a small domestic fire.

That was the result ascertained?—Yes.

Originally had it red paper on it?—It had red paper. The shavings were from a packing case.

You left it for 4 or 5 minutes and took it out and both the handle and the screw cap had got unsoldered?—Yes.

The whole of the thing was burnt away?—Yes.

(To COURT:) I kept it 4 or 5 minutes on the fire?—Wood shavings burn very quickly and I thought the tin would explode but it did not explode. My original idea was to find out whether the tin would explode. 3 cubic centimetres in that tin is the equivalent of how much in the basement?—It is equal to 16 gallons in a 16,000 cubic feet basement. That is by the measuring glass. These two measuring glasses were filled up by you before 11 o'clock to show what you explained yesterday that the petrol vapour prevented the ready evaporation of the petrol in the tubes?—Yes.

(To COURT): They cannot diffuse up. If you kept it on your desk you will see the evaporation after several hours.

The rate of evaporation is extremely slow. The vapour keeps it down.

In September last year and in October the petrol in Colombo sold by the Shell Company gave a particularly offensive smell?—That was the opinion of the motoring public. It was expressed in the Press.

For sometime it did not get back to the old standard?—It is not smelling so bad.

20 Walker's sold shell petrol?—Yes.

CROSS-EXAMINED.

Q. You call yourself the City Analyst?—Yes.

Q. For a retaining fee you do all the chemical work of the Colombo Municipality?—That is the way about of putting it.

There is no such post as City Analyst?—I am called the City Analyst in the Courts.

Q. Is there such a post?—I know I have the post. There is such a post if I have it. I have an agreement with the Municipality. I am accepted in the Courts.

30 (To COURT): What you get is called a retaining fee?—Yes.

Q. You are free to practise privately?—Yes.

Q. In that capacity you told us you are consulted by people of various firms?—Yes.

Q. Are you the only chemist who practises privately in Ceylon?—Yes.

Is there anybody else?—I believe there are some who call themselves so.

Can you name them?—The other day there was a man who claimed to be consulting expert to the Soap and perfume manufactory. He is a man called Raja. He tries that sort of thing. He lives at Maradana.

Q. You were consulted about this by Mr. Cooke when?—About April.

40 About the time the proceedings commenced in the Police Court?—Two days before that.

Since then you have been doing a great deal of work?—Yes. I think Mr. Campbell came to see me about Mr. Kennedy. He is a naval architect and a friend of Mr. Kennedy.

I have heard the evidence of Mr. Collins.

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Amongst other things you said that he had not allowed in making his calculation for the presence of certain humidity in the basement?—Yes.

As regards the presence of humidity in the basement you are guided by two factors, the amount of rainfall that had prevailed immediately preceding the fire and the direction of the wind?—Yes and the observatory reports.

You gave us the figures of the rainfall?—Yes.

The highest was 2" ?—About 2".

You know that this week we have had heavy rain.

These figures of rainfall are taken from 9 o'clock one morning till 9 o'clock the next morning?—Yes. 10

For the day 7 to 8th October do you know the rainfall was 4.63" ?—I don't know but I will accept your figures.

For the 8th to 9th October it was 6.3" ?—I will accept it.

And for the 9 to 10th October it was .26" ?

That is a much higher rainfall than you had in the days immediately preceding the fire?—It is.

Do you know the humidity on the 10th was 80% ?—It might be.

As a matter of fact do you know that on the 7th to 8th October the humidity was 98% ?—Which year I am talking of the same period, this week?—Yes. 20

8 to 9th 88% ?—Yes you say.

Despite the large rainfall the humidity dropped? You forget the drought preceding the present days. You don't follow me to logical conclusions or you would not have asked that question.

There was a drought preceding the fire?—I could see that.

You were supplied with those figures by the Observatory?—I was.

Indicating that there was a drought preceding the fire?—There was no indication of a drought in the letters I received.

On the days on which rainfall figures were supplied to you there was no rain for 5 days? They do not say anything about the previous months?—A. 5 days do not constitute a drought. 30

12th October 1934.

Proceedings of the afternoon session i.e. from 2.10 p.m. to 4.30 p.m.

ALEXANDER BRUCE.

CROSS-EXAMINATION—(continued).

Q. On the question of rainfall I gave you figures of the rainfall for the periods 7th to 10th October this year and you agreed that those figures are probably correct?—Yes.

Q. They total 11.19 inches?—Yes. 40

Q. The figures for the 3 days preceding the fire were: 27th to 28th Sept .46"; 28th to 29th 1.79"; 29th to 30th .75". They total 3" against the other figure of 11.19"?—Yes.

Q. You said that you were also guided by the prevalent wind at the time?—Yes.

Q. You told us that the prevalent wind you ascertained at the time of the fire was south-west?—Yes.

(To COURT: Q. Did you take the direction of the wind also as a factor?—Generally speaking.)

Q. You said in examination-in-chief that you took the figure of 90% humidity in the basement on account of the rainfall, the possible fall of temperature, and the state of the wind?—There is action on temperature; the drop of temperature and the prevalent wind are factors.

10 Q. Is it correct that the chute door faces south-east by south?—Yes.
Q. So that so far as that particular entrance is concerned it would be 67 degrees outside the range of the wind?—Yes, direction of the wind. There is such a thing as ricocheted wind as well.

Q. Would you agree that in those circumstances the direction of the wind would hardly be a factor?—I would not agree because there is such a thing as ricocheted wind.

Q. You did not refer to ricocheted wind at all in your examination?—I was not asked. There is such a thing as a draught.

20 (To COURT: Q. In what way does the wind come in?—The wind might be blind matter. My point in bringing in the wind was that it came from the sea and being a south-west wind it would be moisture laden which is not so in land wind. I did not work out the quantity of air you get from the sea.)

Q. You told me that the direction of the wind was south-west and that the chute door faces south-east by south?—Yes.

Q. The basement would not get anything of that wind?—If it comes in and ricochets, still it would get some sea breeze because its origin is from the sea.

30 Q. I am asking you as an expert the effect the direction of the wind would have on the basement?—It would have a very great effect. The whole Fort was laden with moisture.

Q. The fact that it was south-west and that the chute door faced 67 degrees shows that you would get very little wind?—Not a very little.

(To COURT: Take the north-east—at that time do you have a dry atmosphere?—The whole place would be surrounded by dry air.)

Q. Now this figure of 90% which you took was an assumption? You assumed the humidity to be that?—It was an assumption. A smaller assumption than I might have taken.

40 Q. An assumption having regard you say to the rainfall, the state of that wind, and the reduction of temperature in the basement?—And the Observatory statement of humidity.

Q. The Observatory statement of humidity?—87" on the 29th and 30th.

Q. What would humidity at 100% represent?—Practically that you are on the point of rainfall.

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Q. A chamber such as the basement with 90" humidity would not I suggest be a good place for storing skins or leather goods?—Not from my point of view.

Q. In fact if you stored skins or leather goods in a basement of that description with that amount of humidity I suggest that you would probably get a coating of fungus in one night?—Not one night. I say that on the night of the fire that was the humidity. I do not know what the humidity was on other days.

Q. Actually for a cubic capacity of 16800, openings amounting to 45 square feet is very little?—Yes. I would not call it well ventilated. 10

Q. To arrive at the amount of pressure which two gallons of petrol vapourised would give, you first took the weight at 14.3?—Yes.

Q. And then you took it at a certain calorific value of petrol?—Yes. I took 18000 British Thermal Units per pound.

Q. You said you got that figure from Kemp?—I did.

Q. I am reading from Kemp 1933-1934 page 1440 "The humidity composition of motor spirit is approximately 15% hydrogen and 18% carbon" and still you took 18000 British Thermal Units per pound of fuel?—Yes.

Q. Why did you take 18000?—Don't forget about the inferiority of 20 the petrol.

Q. You said you took the figure from Kemp?—I said so.

Q. If you took your figure from Kemp you would not have got 18000?—I did. I deduced it from Kemp.

Q. Then it is Kemp revised by Alexander Bruce?—I deduced it from Kemp.

Q. The case for the prosecution is that this petrol was bought on the 23rd August?—Probably the petrol was bad then. When it was imported I do not know.

Q. You have no definite information when what you call the inferior 30 quality of petrol came to Colombo?—I have no definite information.

Q. Still you reduced Kemp's figure from 18600 to 18000 on the supposition that it must be inferior?—On the mechanical inefficiency of my own car.

(To COURT: Q. When was that?—In August or September.)

Q. Could it not have been the fault of your car?—The Garages said it was and tried everything but still it was bad.

Q. Would you agree that if you took Kemp's range of 18600 rather than 18000 the difference would be as follows: For 18600 the figure is 266910 Thermal Units: For 18000, 261,000. So that there is a difference 40 of 5910. You were suggesting that this was rather a high figure and that that was for American Petrol?—I would almost say aviation petrol.

Q. Are you familiar with the Handbook by Cross on Petroleum, Asphalt and Natural Gases?—No.

Q. Are not gasolene and petrol the same?—Gasolene is a high grade petrol particularly aviation petrol.

Q. Speaking of gasolene it says (Deputy Solicitor General reads that passage on gasolene where the limits of calorific value are 120,000 to 135000 British Thermal Units per gallon). If you take the lowest limit there, *i.e.*, 120,000, and convert it into an English gallon you get 144,111 British Thermal Units?—I do not know.

Q. Will you work it out?—No, because I have not got my formula here.

Q. I have had this worked out and I am asking you whether it is not right?—I say I do not know and I am not prepared to work it out. I want formula for it. I do not know why I should work it out.

10 Q. You do not know the formula of the equivalent of an American gallon?—No.

Q. Your figure at 18000 works out to 261000 British Thermal Units for the two gallons of petrol?—Yes.

Q. If you took Kemp's figure of 18600 you get 266910?—I have not worked it out.

Q. Will you work it out please? (Witness works it out and states that on the slide the figure is 266.)

Q. Converting to gasolene you get 288,222? Will you accept that figure?—I have not worked it out.

20 Q. Will you work it out? (Witness does so from the following formula : American gallon, .83268.)

Q. Will you agree with that figure?—Imperial gallon .8328. And you agree that the American gallon is less than an Imperial gallon?—I do not agree. The American gallon is larger in capacity, and different from the Imperial gallon.

Q. Having reached this figure of 261000 British Thermal Units you first reduced a certain figure for the humidity?—I did not first of all deduct the figure for humidity.

30 Q. Then what did you do?—I deducted it for the weight of the petrol. I weighed that petrol first.

Q. You weighed your petrol and got the total British Thermal Units of 14.5 lbs.?—Yes.

Q. Then what did you do?—I took my weight of 14.3 and I found the difference. For 14.5 it was 261000. For 14.3 it was less 1.1/2%.

Q. Your main deductions were for water vapour and water equivalent?—Yes.

Q. In making your deductions for humidity you first calculated what 90% humidity in that chamber would work out at?—Yes.

Q. And you arrived at the figure of 19.5 lbs. of water?—Yes.

40 Q. I understood you took into account the amount of heat that would be used up in converting that water into steam?—Yes.

Q. You first raised that amount of water to 212 degrees which is boiling point?—Yes from 73.

Q. And the figure you got was 2710 heat units?—Yes.

Q. Then you multiplied that same amount of 19.5 by 970 which would be the amount needed to convert it into steam?—Yes.

That amount was 18910?—Yes.

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Q. The two figures total 21620?—Yes.

Q. This quantity of water, 19·5 lbs. in what form was it present at the time of the explosion?—Water vapour.

Q. When you raise water vapour from 73 to 212 do you get steam.—No.

Q. Why not?—Because it is still water. You do not get steam until you have broken down the latent heat.

Q. I suggest that the factor of latent heat does not enter into it because you are starting from water vapour?—No. That is not so.

Q. You started with 19·5 lbs. of water in vapour form?—Yes.

Q. I suggest that when you raise that amount through 139 degrees and reach boiling point your water vapour is then present in the form of steam?—You are wrong. 10

(To COURT: Q. Water vapour at the boiling point of water is not steam?—No.)

Q. You did not start with a liquid?—No. Ask an Engine driver to drive his engine with water vapour even at 212 and he will say he cannot do it. It must be steam.

Q. Once you raise water vapour to 212 degrees what next must you do to produce steam?—You must heat it further and break down the water vapour into steam. 20

Q. To what amount would you have to raise it?—970 is the latent heat of water.

Q. How do you get that figure?—It is a published fact.

Q. You will not accept the suggestion that latent heat factor does not enter into it at all because you start from water vapour?—No. Before you get it into steam you must apply heat till you get it from water vapour at 212 to steam at 212.

Q. Can you quote authority in support of that?—I should think it is well known in literature. If I have the opportunity I can.

(To COURT: Q. Unless you overcome the latent heat it is not steam?— That is so.) 30

Q. You presuppose the heat in that chamber to be 19 at 19 lbs. in vapour form?—Yes.

Q. As regards the allowance you made for the water equivalent, do I understand you to mean by that, the amount of heat which the walls and surface of the pillars etc., absorbed?—Yes.

Q. You say that the amount of heat so absorbed by the basement was not available for an increase of pressure?—Yes.

Q. Your calculation was based on the assumption that the walls of the basement and pillars absorbed the heat to a depth of one-hundredth of an inch?—Yes. 40

Q. Within what time did that take place?—I cannot give you a measure of time. It might be what you would call instantaneous.

Q. You yourself criticised that word instantaneous?—Yes, but that is what you called instantaneous.

Q. Would you say it is a matter of split seconds?—I did not say split seconds. I said fractions of a second.

Q. I suggest to you that this question of water equivalent arises only where you are considering an explosion in a sealed body?—That was my deduction.

Q. Allowance for water equivalent should really be made in the case of an explosion inside a completely sealed body?—More or less, yes.

Q. The idea is that there is a certain increase of pressure there but there is no room for expansion in a sealed chamber?—In a sealed chamber there is no room for expansion.

Q. It is for that reason that you make this allowance really?—No.

10 Q. In the case of a sealed chamber or some sealed receptacle which remains intact after the explosion there is no room for expansion?—It gets compressed.

Q. Some of the heat is dissipated and taken up by the walls?—Yes.

Q. It is in such a case that a deduction for water equivalent should really be made?—That is so. That is always done in laboratory experiments.

Q. Is it correct that all experiments with petrol are carried out in sealed chambers?—More or less.

20 Q. It is where you carry out experiments of that sort that you make allowance for water equivalent?—You determine it. You do not make allowance.

Q. More I suggest that the conditions are very different?—Yes, but you still got to make allowance.

Q. On your own showing you had openings amounting to 44 square feet?—45.

Q. Your evidence was that almost simultaneous with the explosion the side wall must have gone?—I said that the ceiling and wall simultaneously fell down.

Q. The falling down of that wall enlarged a space at once?—It did.

30 Q. Having regard to the presence of 45 square feet of openings and the fact that the wall gave way. I suggest that there is no reason to take the water equivalent into account at all?—I do not understand your deductions. They are wrong.

Q. You admit that allowance must be made for water equivalent in a laboratory apparatus?—Yes.

Q. I suggest that in this case it is totally different?—There is some difference.

Q. Here there were not only openings but the basement burst and the wall gave way?—Yes.

40 Q. So that you have different conditions?—You have different conditions, but the pressure develops and as it develops it absorbs heat and as it is absorbing heat the pressure goes out.

Q. You told us that there is a certain absorption of heat by the basement walls and pillars?—Yes.

Q. That is what you call water equivalent?—Yes.

Q. That absorption you said takes place to a very small degree and at a very small fraction of a second?—Yes.

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Q. I suggest to you that before that happens the heat energy would be taken up with the pressure?—You are debiting all your heat to your gases; I distribute it. You must distribute your costs.

Q. Then why take the entire basement area and deduct a total amount on that account?—I took the whole superficial area.

(To COURT: Q. I believe for that purpose you took everything that gave you a superficial area of the absorption of heat?—Yes.)

Q. From where did you take that?—To be just, from the prosecution.

Q. If you were dealing with a sealed chamber which did not give way as a result of the explosion, I suggest you would not have had a higher water equivalent?—I will show you where these things are worked out, where it is said that it is not 50% but 60%. 10

Q. In conditions such as these?—No but

Q. In making your allowance you made no allowance for 45 square feet of openings?—I made no allowance.

Q. You made no allowance for the fact that the intake wall gave way and took a part of the pressure of?—Yes. You are taking it at slow motion.

(To COURT: Q. Would you take a higher figure of water equivalent if you work it out in a sealed chamber?—It all depends on the circumstances. Every apparatus has got its own water equivalent. Every one who does it has to work it out himself. You cannot take others figures.) 20

Q. I suggest that having regard to the state of the basement, the water equivalent within would be negligible?—I do not agree.

Q. I suggest to you that in any case you have made far too high a deduction?—It is a calculation.

Q. You have deducted on that account so large a figure as 112000?—50%.

Q. Do you seriously say that half the heat generated was absorbed by the walls?—Yes. I can read you an article.

Q. Do the conditions in that case approximate to the conditions in this case?—Would I be correct in saying that these cases are cases of sealed chambers?—I must verify it. It will take half an hour to do so. (Witness reads one paragraph from that article, and marks it in blue and hands it to His Lordship.) The whole heat cannot be debited to the gases. 30

Q. The nature of the container should be taken into account?—This book does not say what the nature of the container was.

Q. Your experiments are carried on in steel?—So far as my experience goes, sometimes steel, sometimes glass, and sometimes copper.

Q. Hardly concrete?—Never concrete.

Q. The absorption of heat by concrete would you say is less than iron or steel?—Yes less than iron or steel. 40

Q. You gave us that the resultant temperature from explosion was 375 degrees Fahrenheit?—Yes in the explosion area.

Q. Does that represent the 261000 heat units generated?—No. It will represent only up to 1.1/2 per cent deduction. It is less 1.1/2 per cent.

Q. Then you said that after deducting the heat that was necessary to convert 19.5 lbs. of water into steam the resultant temperature was 11329 Fahrenheit?—Absolutely.

Q. That represents a great difference from the 3035 figure?—Yes.

Q. As a matter of fact the comparison is between 3035 and 671 ordinary?—Yes.

Q. Can you explain how that original temperature was reduced to that figure; almost 1/5th?—Yes.

Q. The resultant temperature from the explosion was 3035 degrees ordinary and you said that that was reduced to 671 when you made allowance for water vapour etc?—Yes.

What were the deductions?—It is calculated according to Kemp's method, page 223, paragraph 2.

Q. How did you reduce it to that?—I will have to read that paragraph (Reads it).

Q. Then do you say that the original temperature was reduced to almost 1/5th by reason of the presence of the 19.5 lbs. of water. No that is only one part. Explosive area occupied was 3020 cubic feet. Net area of the basement at that time was 17023 cubic feet. Then I deducted petrol vapour 59 cubic feet. That brings it to 17000 cubic feet. If I take off my explosive area 2962 cubic feet you get an air area of 14038 cubic feet outside the explosive area. Then I explained that I had 229 lbs. of explosive gases and residual matter. That was calculated as having a specific heat of .375. The dry air or perfect air weighed 1806 lbs. That gave me 1060 lbs. of dry air multiplied by .237.

Q. From where did you get .237?—From the tables. It was worked out from Kemps.

Q. From what temperature?—That was 73 I think.

Q. That was the original temperature of the basement?—Are you certain of that?—Yes.

(To COURT: Q. You say you applied Kemp's method of calculation?—Yes on this occasion.) (Shown table giving the value of specific heat for 573 degrees Centigrade as .23.)

Q. What temperature did you take to get the figure of .237?—From extracts of Kemp you find at page 219 the specific heat varies with the temperature. If you take the nitrogen it is, .170 plus .0000872 for one degree; oxygen 0.1488 plus 0000763. Then if you leave out nitrogen and oxygen you get 22 at no degrees.

Q. At what temperature did you take that specific heat?—I said 73.

Q. Yes but on your figures what does that amount to?—I cannot find it in this book. (Kemps), the specific heat of air.

Q. I suggest to you that you put it too high?—I do not agree. (Witness refers to page 148 column 3). It is neither constant volume nor constant pressure.

Q. The volume remains the same?—No, it changes and goes as quickly as it can outside the exit.

Q. That is after the explosion?—No during the explosion.

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Q. My suggestion is that at 753 degrees centigrade you get .23. 750 degrees Centigrade is 1350 degrees Fahrenheit. I suggest that there is something wrong with what you have taken?—You are reading from a book for Students and Engineers. I am reading from an Industrial Book.

Q. You suggest that that statement is wrong?—It has got a different interpretation. It is an Internal Combustion Engine.

Q. In an internal Combustion Engine there is no escape?—No; it is absolutely closed.

Q. Then will you show us how you got this?—It is not of great consequence.

Q. You said you made your calculations on the basis that this was a closed chamber?—Yes, but remember I do not stick to it.

Q. You don't say where you do not stick to it?—When you want the pressure up you close the basement.

Q. You stated that all these figures are for a hypothetical case, *i.e.*, a closed chamber. We will take it at that?—A. The heat units used in water vapour—water in basement at 100 degrees Centigrade is 19.5, with a specific heat of 4.3. That gives me a total poundage of 1308 1/2 lbs. with an average specific heat of .265. That was neither constant pressure nor volume.

Q. Volume was constant; that is your own premise?—Yes. (Witness continues: The heat units available from two gallons of petrol is 261000 and you subtract 1.1/2%. The net heat available is 235465. Now I divide that by the weight of the gases multiplied by the average specific heat. That gives me 671 degrees Fahrenheit. That is how I got that figure.)

Q. You admit that depends for its accuracy on the .237 at 73 degrees Fahrenheit?—(No answer.)

Q. I am suggesting to you that an original temperature of 3035 would not have been reduced to 671 merely as a result of the alleged presence of 19.5 lbs. of water?—I do not agree. It is wonderful the way these temperatures go down.

Q. You remember you told us that as regards water vapour you increased it from 73 to 212 and you deducted the amount of latent heat?—Yes.

Q. Is it correct to say that when you apply heat to water it expands?—Yes.

Q. The resultant expansion would also result in a certain increase of pressure?—It would.

Q. Did you take that increase of pressure into account?—I do not remember now.

Q. Can you let us know?—I do not seem to have it in my notes. I have other methods of calculation.

Q. You agree that the expansion of that water vapour results in an increase of pressure but you did not take that increase of pressure into account?—I did not.

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Q. To go back, as regards this water equivalent, I suggest to you that it is almost universally deducted in laboratory experiments? Is that correct?—Yes.

Q. And laboratory experiments are usually carried out in bombs or spheres?—Yes.

Q. Sealed?—Yes.

Q. When the explosion takes place there is no room for the resultant pressure to expand?—No.

Q. It is held in?—Yes.

10 Q. Now, where you are taking the consequent temperatures is it correct that to begin with there is a sudden rise?—Yes; not sudden: a little gradual.

Q. Then it begins to drop?—Yes.

Q. Do you judge by taking readings at particular intervals?—Yes, if you are clever and quick enough.

Q. All that means a certain amount of time?—Yes.

Q. And in the process of time the heat that has been generated inside is also being absorbed by the walls of the sphere?—Yes.

20 Q. In those cases you have to make allowances for the absorption of heat by the walls of the apparatus on account of the amount of time that elapses?—Yes.

Q. The time factor then you will agree is very important?—Yes. The longer you keep it the hotter the apparatus would get.

Q. In this case the explosion was momentary?—We come back again to time.

Q. And time in your own words was a fraction of a second?—Yes.

30 Q. Therefore I suggest to you that the time available for the absorption of heat was not sufficient?—There was no time at all? Absolutely not. During the expansion of the lower pressure of the draught there is a relative order of magnitude and it must be deducted.

Q. And where all this happens even in the fraction of a second you deducted in this case as much as 50% of the total amount generated?—Well you will find in Thorp.

Q. Thorp I suggest is dealing with a totally different kind of case; experiments conducted in laboratories?—The conditions are entirely different?—They are different. In regard to that water vapour I am calculating everything at pounds and not cubic feet of heat. I have put it all in pounds. That is following Kemp.

40 Q. The question was whether you took into account the increase of pressure which resulted from the expansion of water vapour, and you said No?—I am correcting myself; because I converted it into pounds. Water in basement at 100 degrees Centigrade. Then I deducted the water vapour as a gas. That is in my text.

(To COURT: Q. Gas is the same as water vapour?—Yes in working.)

Q. You admitted that there was an increase of pressure resulting from the expansion of water vapour?—Yes but I am correcting myself. I

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did take it into consideration because I treated the water vapour in the basement as a gas.

Q. But did you consider the expansion of that gas?—Not separately. I come to my total gases in the closed basement as 1308. I followed Kemp's method.

Q. You referred to certain experiments whereby you tested the rate of evaporation of petrol off various substances?—Yes.

Q. How did you carry out these experiments?—Most of it by weight? Yes by weight.

Q. In the case of card-board it gave such a high degree of evaporation— 10
66% in 5 minutes?—Yes.

Q. That increased in 10 minutes to 77·8 and in 15 minutes to 83·1?—
Yes.

Q. Of the four substances on which you experimented, leather came first; cardboard 2nd, cement 3rd, and wool the lowest?—Yes.

Q. What weighing apparatus did you apply?—Chemical balance.

Q. You will admit that anything like accurate results are difficult to obtain?—I do not.

Q. There would be certain evaporation?—Yes.

Q. Let us say you saturate a particular piece of leather with petrol 20
and wait five minutes and then you commence to weigh it?—Yes.

Q. In the course of weighing evaporation continues?—Yes.

Q. So that very accurate results are in the nature of the experiment difficult to obtain?—The time factor may be inaccurate by say 1/4 minute. I am giving five minutes.

Q. That margin of error. 1/4 minute you admit?—Yes. I used a counterpoise.

Q. Apart from the time factor there is another factor which affects the accuracy of the experiments. Take the case of the evaporation of petrol from sand. I understand you made a sand bowl?—Yes. 30

Q. You would put a small quantity of petrol in that?—Yes.

Q. Weigh it?—Yes by volume.

Q. And after a certain interval of time you would weigh that bowl again?—Yes.

Q. In proportion to the bowl the petrol weighs very little?—Yes.

Q. The bowl weighs much more?—Yes.

Q. It may be several hundred times the petrol?—Might be.

Q. You admitted that in the time factor there might be an error up a 1/4 minute. There may be a possibility of an error in the weighing itself?—
I did not put down my first results. I did my preliminary experiments 40
first and then did my final experiments after that.

Q. Where you get an error in the weighing itself that would come off that very small quantity of petrol?—It would not matter very much.

(To COURT: Q. I understood they were put by your counsel to show the relation to each other?—Yes.)

Q. Then you also made an experiment with a five foot tube; 3/4" in diameter?—Yes.

Q. It was kept perpendicular; you got no smell?—Yes.

Q. You would have to multiply the height of that tube by as many times as the area of that tube is contained in the area of the whole basement?—That is another hair split.

Q. You took this 5 feet tube 3/4" in diameter. There was a sponge water sealed, etc. You kept it perpendicular and at that height and you smelt no petrol for 24 hours?—Yes.

Q. I say that you must take the area of the cut section of the tube and divide the total area of the basement by that figure and multiply the height by the result to get anything like what are the actual conditions?—I do not know what you are talking about.

Q. Then as regards your experiments with some buckets, the lid of each bucket was 1·1/2 lbs. in weight?—Yes.

Q. The lid was not held down?—No.

Q. What was the area of the lid?—169 square inches.

Q. The lid was not held down and therefore a pressure of 1·1/2 lbs. would have just lifted it?—Yes.

Q. A total pressure of 1·1/2 lbs. over an area of 169 square inches is very much smaller per square inch?—Per square inch it is .0114.

Q. A pressure of .0114 lbs. per square inch would raise that lid?—Yes.

Q. That is a very small pressure?—Yes.

Q. In this experiment of yours you said that the pressure is gradually developed?—Yes. when you have an explosion.

Q. I suggest that here you can never have an explosion because directly that very little amount of force is developed the lid is raised and the pressure escapes?—A. In what conditions then could you get an explosion?—In other words then you cannot get an explosion in the basement.

Q. The conditions for your experiments were not ideal for the purpose?—I would say that it is not ideal.

30

ADJOURNED.

After the adjournment of Court, Mr. Bruce gave a demonstration outside the Court-house, on the verandah, with a fully inflated motor-car tyre connected to an inner tube. They represented the explosive area and the basement, the basement having an opening which for the purpose of his experiment took the shape of an eyelet. The air from the tyre was then released. And though it filled the inner tube it went through the opening immediately.

15th October, 1934.

15th October,
1934.Proceedings of the morning session *i.e.*, 11 a.m. to 1.30 p.m.

40

ALEXANDER BRUCE.

CROSS-EXAMINATION—(continued).

Q. I would like to refer to that experiment you demonstrated on Friday evening?—Yes.

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Evidence for
Defence.(n) Alexan-
der Bruce.
Cross-exa-
mination—
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mination—
continued.

Q. To begin with would you agree that the rate of flow of air from the container to the other tube was comparatively slow?—It was. The experiment was not perfect.

Q. My suggestion to you is that it was of no value at all because it had no relationship to the conditions of the basement at all. You agree that in the basement it was a very sudden explosion. This was a case of release of air from the container to the other tube at a comparatively slow rate?—No. I would not say so.

Q. Compared with the rate of flow to the basement?—You might say it was slower than in the basement. I will admit that.

Q. You will also agree that all the air had to be concentrated at a point and had to go through that point?—Yes, like a funnel.

Q. Again in your experiment the air had to go through that one point and that point alone?—Yes.

Q. So that I suggest that you can draw no inference at all from the fact that there was no explosion when you carried out that experiment. It bears no analogy at all to the actual conditions in the basement?—I would not say that at all. I had a high pressure and I took it down to atmospheric pressure. That is what really happened in the explosive area.

Q. You took it at a comparatively small opening?—Not a small opening. It was relatively sufficient.

Q. The point of entry bears no comparison to the area in the basement within which the air could rise?—It bears a comparison, but as I say the experiment is not perfect.

(To COURT: Allow me to point out my lord that the ratio of the explosive area to the basement was 3?—So that that is the ratio of 1 is to 4.7. I could not get a vessel to hold that quantity of air nor could I measure it: so I let it go and put in 5 times more air than I required.)

Q. I suggest to you that the important factor is the rate at which the pressure rises. In the case of the basement the suggestion for the prosecution is that there was an immediate pressure of air?—I say again that the experiment was not perfect. But I think it was a very good analogy.

Q. You referred to an experiment with a model?—Yes.

Q. That was a model which you prepared?—Yes. It is a volume model.

Q. The roof of the basement, i.e. that slab, was 4.1/2 inches?—Yes.

Q. Did you reduce the roof of this proportionately?—No; only the volume inside.

Q. So that the only comparison between this model and the basement is that it bears some relationship in point of volume?—That is all.

Q. You made no allowance for the contents of the basement?—Yes the pore space. That was led in evidence by Mr. Hall that even if you took the solid contents of the boxes, shoes and other things it represented so much and it came to no material number.

Q. If you answer my question it is better; that is you made no allowance for the contents?—I did not because it would make no material difference.

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Q. You know that the case for the prosecution is that these 2 gallons of petrol produced an explosive mixture in a pocket and then exploded?—One or more pockets?—A. Where were the pockets.

(To COURT: Q. Two gallons at 17,000 cubic feet would not give an explosion?—Yes.)

Q. If you had two gallons of petrol you must have 1.6. That is what is meant by pocket?—Yes.

Q. A relatively small volume such as this box represents, is not conducive to such an air pocket?—You put merely a small cubic capacity and you put a certain amount of petrol which would diffuse; it may be a diffused pocket, due to the petrol vapour being heavy it must come out.

Q. My point is that that is not conducive to the formation of a pocket like that, whereas in the basement a pocket of that kind may well have been formed?—I cannot agree to that. (To COURT: Suppose you put 2 gallons of petrol there (shows) will it diffuse to a restricted area of 3200 cubic feet or will it diffuse the whole area?—It would be quick but not instantaneous.)

Q. It could not hang about there for 15 or 20 minutes or half an hour?—No.

Q. You are assuming that the petrol was poured on the floor?—I do not care where it was poured.

Q. If a person was setting fire to his stock he would sprinkle it about in the stock?—On the most inflammable part of his stock.

Q. And the evidence was that the shoes etc. were on racks, and therefore the point of diffusion would depend on where the petrol was sprinkled?—I do not know how high the racks were.

Q. He can just go and sprinkle the petrol on these things; he can just pour it?—You mean up to his height.

Q. You stated that in your opinion 80 to 120 gallons of petrol were necessary to shatter the roof of the basement?—I explained that that must be modified.

Q. You said that it was impossible to produce an explosion in that basement by means of petrol?—By that quantity of petrol.

Q. No. By petrol, because you say that you wanted at least 80 to 120 gallons to produce the necessary pressure?—Yes.

Q. That is you mix 80 to 120 gallons in that basement you will not get an explosive mixture?—Yes.

Q. You said that the maximum quantity of petrol which mixing with the air in the basement would form an explosive mixture is 35?—Yes.

Q. But 35 gallons would not produce sufficient pressure to blow the roof out?—That would depend on the . . .

Q. The pressure you took for that purpose was 200 lbs. per square inch?—Yes.

Q. You said that 200 lbs. per square inch was necessary to blow up that roof of the basement?—Yes.

Q. What is the calorific value of gas?—400 by contract.

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mination—
continued.

Q. In fact it varies between 416 to 480?—450 is about the average probably, I do not know.

Q. You stated that the roof of the explosion could have been shattered by the explosion of 330 cubic feet of gas?—Yes.

Q. The calorific value of gas—What is the estimate that you would have to take?—I am quoting from Thorp.

Q. Did you work it out yourself?—No.

Q. Then how did you work it out?—From Thorp. From another coal gas experiment.

(To COURT: Q. What is the pressure produced from that?—He gave 91 to 96. Q. But is it coal gas in a restricted area or in an area in a larger extent?—The experiments carried out were in the ratio of 1/6 to 5/6th; 1/6th being coal gas and the rest of air.

Q. That is the mixture?—Yes.

Q. Do I understand this figure of 330 to be merely this. You say that you can get an explosive mixture of gas within these limits; 1/6 to 5/6th?—I said that in the experiment 1/6 coal gas is used which is equal to 16.6 per cent.

Q. Of the entire area?—Yes. (To COURT: 16.6 of gas and the rest would be air).

Q. If that is the calorific value how many heat units would you get from 330 cubic feet of gas?—A. In what capacity of air?

Q. In a perfect explosion?—It is quoted that gas could explode from 6 to 29 per cent.

Q. Take the optimum?—That is 26 per cent.

Q. The figure you quote is this. I understood that if you have a mixture of 1/6th the maximum pressure you can get is 91?—96 on one occasion and 91 on the other.

Q. That would give you the proportion of coal gas to air?—Yes.

Q. When you are talking of 1/6 mixture that merely means what amount of coal gas mixed air would produce an explosive mixture?—Is that not so?—A. You are only referring to one experiment?—Q. Yes.—A. Oh Yes.

Q. Now in the case of Oldham gas you had one part of gas to 5 of air?—Yes.

Q. You get the figure of 330 cubic feet by taking a certain pocket of 1800 I think it was?—Yes. I would work it out on that. A. Apart from that method of calculation will you work it out this way?—How many British Thermal Units will be produced if 330 cubic feet of gas were exploded in an optimum mixture of that sort?—You speak of optimum mixture but I do not.

Q. Take your own figure from Thorp and work out the number of British Thermal Units that will be produced?—That is one quotation. It goes from 6 to 29 per cent. 16.6 is by no means the optimum. I can almost double that.

Q. In that mixture how many heat units would be generated?—Will you work it out for me?—Yes. It will be 450 times 330 is it not?—That will be 166 cubic feet in a thousand. 166 into 450 is the answer.

Q. No; in this case you say there was 330 cubic feet of gas actual. I suggest that you get the number of British Thermal Units when you multiply 450 by 330?—Yes you can do it that way. (Witness works it out and gets the figure as 148,500 British Thermal Units.)

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Q. And you say that amount of British Thermal Units would have been sufficient to produce a pressure of 200 lbs. per square inch and blow out this basement?—Yes if I accept Thorp's figures. Thorp's is a standard work.

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Q. But where 2 gallons of petrol exploded and produced 261,000 British Thermal Units you say it would have no effect? That is on the floor; That is a stratified basement explosion and the other is a stratified ceiling explosion.

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der Bruce.
Cross-exa-
mination—
continued.

Q. 148,500 you say would be sufficient?—Yes, because it is stratified.

Q. If you had that on the basement it would spread all over?—Yes.

Q. You say that if you produce 148,500 British Thermal Units it would be sufficient, whereas if 35 gallons exploded and produced 17·1/2 times 261,000 it would not be sufficient?—That is so, because it is stratified.

(To COURT: Q. Might the explosion release more air?—It might suck air in. Of course you would have to slow motion the whole thing).

Q. 35 gallons of petrol mixing with the whole of that 16,000 cubic feet capacity would produce an explosive mixture?—Yes. You are taking a hypothetical case.

Q. You say that in your opinion this damage was caused by a gaseous explosion?—Yes; not localised; distributed gas; stratified more or less; stratified to a high level to get the effect.—A. And that stratified explosion knocked down that wall right down in the basement level?—The brick wall, yes.

Q. Gaseous explosion would include an explosion resulting from petrol vapour?—That would include it.

Q. You then disagree with Hall; his evidence was that this was probably the result of a medium grade explosive and not a gas?—I do not know whether he expressed that as a definite opinion. I think he said that it might be. Then Mr. Hall explained that if you had your high explosive not necessarily on the floor, but high up, it would not effect the floor. He meant higher than coal gas and higher than petrol vapour.

Q. You spoke of the reduction of air space—quoted an authority you remember in your examination in chief?—Yes, the air space in the basement.

Q. And you gave us the analogy of marbles?—If you fill the basement with marbles or sand you would still have a fifty per cent. air space.

Q. I suggest to you that rectangular shoe boxes are very different from a sphere like a marble, and where you have rectangular shoe boxes placed against each other and piled on top of each other, that bears no analogy to spheres?—Spheres were taken because they are packed to the best advantage.

Q. Would you say that rectangular shoe boxes correspond more nearly to the bricks?—Yes, to square bricks.

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der Bruce.
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Q. And where you had about half of his stock packed with boxes like that in the basement?—A. What is the cubic capacity of the stock?

Q. I am only asking you to say whether having regard to the fact that they were packed with shoe boxes there would not be such a reduction as marbles?—You will still get air.

Q. Such air as is inside a box like that could not readily mix with air outside in forming an explosive mixture?—No. Because you have already spread your boxes and shoes.

(To COURT: Q. If you were to throw petrol on boxes there would be more evaporation outside than inside the boxes?—I do not think so. For the capacity the evaporation will be the same. It is a still closed chamber.) 10

Q. You said that coal gas tends to rise being light?—Yes.

Q. And you referred to the possibility of a certain amount of coal gas having gone up that pipe behind that pillar?—Yes.

Q. If coal gas did go up that pipe and behind the pillar it would tend to rise?—Yes.

Q. For instance the evidence is that was the pillar (Deputy Solicitor General taking a hypothetical case) you have your switchboard like this, and the pipe came behind it while the switches were here; if the coal gas came up towards that pipe it would tend to rise like this?—It would tend 20 to rise.

Q. Behind that switch-board and the pillar?—Yes, you will get coal gas behind the switch board.

Q. There would be no tendency for the coal gas at any time to spread forwards?—A. How much space have you got?

Q. You had your pipe in between?—A. There would be a space; I would say for instance an inch space.

Q. Yes, say an inch space. If coal gas came up that pipe it could at no point tend to come outside the switch board so as to get into a tumbler switch?—I do not know about that. It depends on how long it is going 30 to diffuse.

Q. Would you say coal gas would diffuse?—It tends to go up but not absolutely.

Q. At no point would it tend to diffuse horizontally?—No; of course.

(To COURT: Q. In any open chamber if you were to light anything from which there would be a flame would it go right up in a straight line? Is this Court a chamber?—A. This is an open chamber My Lord, and there are air movements.)

Q. The air would be restricted between the pillar?—Yes.

Q. And it would tend to rise?—Yes. 40

Q. There would be no diffusion laterally?—Why should it skip the board. There is more air movement in the ground floor than in the basement.

Q. As a result of air movement some amount of coal gas between the pillar and the switchboard might have been diffused laterally?—Yes.

Q. That must happen before any gas could get into a tumbler-switch? —There might be some; it is possible. Coal gas is not one body; it is a mixture of gases and the hydrogen is the predominant.

(To COURT: *Q.* Hydrogen is more inflammable?—Yes.)

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RE-EXAMINED.

Q. You were asked about the diffusion of coal gas going to the back of the board; as a matter of fact do the wires come through the board to the face of the board?—Yes.

Q. So that the coal gas would tend to follow these wires through that same hole?—Yes the tendency would be to hang about there.

Q. Unless there was a groove in the back of the board the pipe could not be there; the board itself was fastened to the pillar?—*A.* Mr. Obeyesekere says no, he says there was an inch of space.

Q. To allow that gas pipe coming up there must have been a groove coming through the board, or the board would not be against the wall? —Yes. (To COURT: The pipe was between the pillar and the board.)

Q. Then the board could not have been in the contact with the pillar. There must have been a space?—*A.* That is what I think.)

Q. Would the effect of the fans which draw down the air from above cause a certain amount of diffusion?—Yes.

(To COURT: *Q.* If you let gas up through a tube here in this room would it go up in a perfect column?—No, it would not.)

Q. When the gas rises the air that is displaced tends to come down, is it not?—The tendency is to move in an elliptical way; a convex movement.

Q. The lbs. per square inch produced by 166 cubic feet of gas was quoted from Thorpe?—I did. (To COURT: *Q.* 166 cubic feet and then double that to get the pressure.

96 per square inch in Glasgow coal gas and Oldham 91)

Q. One would produce 82 and the other 192?—Yes.

Q. You were quoting from Thorpe; not experiments carried out by you?—Thorpe entirely.

Q. Thorpe is in several volumes?—Yes. 7 or 8 volumes. It is an international book.

Q. My learned friend could not quite understand that water vapour at 100 degrees was not the same thing as steam at 100 degrees?—Yes.

Q. You referred to Bailey; is there such a thing as the latent heat of water vapour?—Yes; it is generally called the latent heat of water.

Q. The latent heat of vaporisation is described as follows in the Mechanical Engineer's Book (reads passage)?—That is a correct definition.

Q. What is the latent heat?—970 per lb.

Q. Kemp also gives the latent heat of vaporisation to convert water vapour into steam as 970 British Thermal Units per pound?—That is a recognized figure.

Q. You were questioned about your use of the .237 as specific heat of air?—Yes.

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der Bruce.
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mination.

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continued.

Q. You were shown a handbook by my learned friend which you said was a student's book?—Yes.

Q. Do standard works give the specific heat of air as .237 from no degrees to a 100 degrees Centigrade?—A. Constant pressure of constant volume?

Q. Constant pressure?—A. Yes.

(To COURT: Q. What are the standard books?—Kemp is one.)

Q. Inasmuch as your use of the .237 and the figures you arrive at were questioned, you have worked out using the constant pressure figure also?—Yes, constant volume. 10

Q. What is the actual rise of pressure?—The rise in pressure corresponds to 21.8 lbs. per square inch.

Q. Whereas .237?—A. 16.8.

Q. Would 21.8 lbs. be further reduced if the petrol had been kept from the 23rd August?—It would be further reduced.

Q. As a matter of fact you experimented with petrol keeping petrol from 23rd August to when?—I only kept my petrol for 33 days.

Q. And what did you find was the loss of weight occasioned thereby?—I kept it in a screwed can and it lost 2.1/2 per cent. in weight during 33 days. If I put it in the sun it would have leaked out more. 20

(Witness then proceeds to give a demonstration in Court.)

No. 10.
Judge's
Notes at
conclusion
of evidence
for Defence,
15th Octo-
ber, 1934.

No. 10.

Judge's Notes at Conclusion of Evidence for Defence.

Mr. Pereira closes his case reading in evidence documents A1 to A27.

At this stage the Deputy Solicitor General moved for permission to call evidence in rebuttal. He stated he wished to call Mr. Ferguson in regard to the statement recorded by him of Mr. Kennedy, a part of which statement Mr. Kennedy stated in his evidence he did not recollect having made.

He then wished to call Mr. Small in rebuttal on the following points of expert evidence given by Messrs. Hall and Reid, which were not put to Mr. Small by counsel on either side. (1) On the question of cracks, i.e. that the cracks were due to the uplift of the building according to Mr. Hall. (2) On the question of the spalling of the stanchion. (3) On the question of the girders having been bent upwards as a result of the pressure. 30

He further stated that he moved under section 237 (1) as he has got to meet matter that has been got out for the first time by the defence.

Mr. Pereira in reply states that he admits that Mr. Small was not asked at all about the uplift of the building and that he did not question him as regards the cracks in the facade of the main building, but that he objects to Mr. Small being called on the ground that he is being called in rebuttal. He 40

further states that this really amounts to ad hoc evidence, and that if Mr. Small is called he would have the right to discredit him by cross-examination, as he has obtained some further facts since he was in the witness box. He has no objection to Mr. Ferguson being recalled.

The Deputy Solicitor General in reply states that it is a matter purely within the discretion of the judge, and that he would not say anything further in reply.

ORDER : His Lordship allows permission to call Mr. Small only on the question of the uplift of the building, i.e. whether it was caused by heat or
10 pressure.

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Judge's
Notes at
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ber, 1934—
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No. 11.

Further Evidence for Prosecution.

Deputy Solicitor General calls :—

G. H. FERGUSON. Sworn—(recalled).

Q. Mr. Kennedy made a statement to you at the General Hospital?
—Yes, on the 7th October 1933.

Q. How did you come to go to the Hospital?—I received a telephone message that Mr. Kennedy was in a fit condition to make a statement . . .
(Mr. Pereira objects. Objection upheld.)

20 Q. You went to the General Hospital?—Yes, on receipt of a telephone message.

Q. Where did you find Kennedy?—Lying in bed.

Q. Was anybody in attendance at the time?—Nurses came in during the time I was there and took his temperature.

Q. Did you ask Mr. Kennedy whether he wished to make a statement?
—Yes, he said he wished to make a statement and to answer any questions which may be put to him.

Q. What was his condition so far as you were able to observe it?—
(Mr. Pereira objects to that question.) (No answer given.)

30 (To COURT : He spoke coherently and sensibly. He was to a certain extent in physical distress : in a certain amount of pain.)

Q. Did he understand your questions?—Yes.

(Shown a statement of Mr. Kennedy at *page 106.) Did he make this statement to you : " I have an idea that I was jammed in between some- where and had my hand around some expanding metal. I do not know if anything fell on top of me or what. I seemed to feel that I was struggling against some expanded metal to get out. I then saw daylight. I went out by the back gate over the chute." ?—A. Yes.

40 To COURT : I took down everything that the accused said accurately. I realised the responsibility.

No. 11.
Further
evidence for
Prosecution.

(a) G. H.
Ferguson
(recalled).
Examina-
tion.

* Page no.
refers to a
page in
document
used in
Courts
below which
it is not
possible to
identify.

CROSS-EXAMINED.

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(a) G. H.
Ferguson
(recalled).
Cross-exa-
mination.

Q. You heard that Ross when he went there on the 9th was warned by the doctor that he was not to say anything to upset Mr. Kennedy?— I heard Mr. Ross say so.

Q. You said he was in physical distress?—Yes.

Q. As a matter of fact he had not his false teeth?—His whole mouth was one big scab?—A. Yes.

Q. And he was unable to get his artificial teeth into his mouth in consequence?—I am unable to say that. I do not remember his having no teeth. So far as my memory goes I cannot remember whether he had teeth or not. 10

Q. Surely the difficulty of a man articulating without teeth would have fixed in your mind whether he had teeth or not?—I agree that a person without his false teeth would have difficulty in speaking. Some people do.

Q. Did it not strike you?—It did not.

Q. You heard Mr. Kennedy say that at the time he made that statement he had no false teeth?—I heard him say so. I think he said he could not articulate well as he had no teeth.

Q. He went on to say, I then saw daylight?—Yes.

Q. That was absurd?—(To COURT: Literally?—A. Literally that was absurd.) 20

(To COURT: I took down what he said and put questions to him and got answers afterwards.)

Q. He said, I seemed to feel that I was struggling against some expanded metal to get out. I then saw daylight?—After the word out there is a full stop.

Q. What he said was that as a result of his struggling to get out he saw daylight?—Yes.

Q. He then went on to say "As I was getting out of this gate I saw Owen passing the gate"?—Yes. 30

Q. Mr. Owen at no time said that he passed that way?—No.

Q. He then went on "He (Owen) was shouting out for me. Owen then caught me by the arm, took me to my car and brought me to hospital?—Yes.

Q. Zain Mahath also made a statement to you?—Yes. On the 5th October.

Q. This passage appears in that statement "I told him (Miskin) to phone the Fire Brigade and the Police. I saw him ringing up. I then went back to the main door. When I got about 2 yards from Kennedy's side iron gate he jumped down from the doorway. I cannot say from what part of the inside of the building he came. I did not notice the iron expanding gates. The whole door way was opened"?—He made that statement to me. 40

Q. The statement of the 29th Sept. is recorded actually by whom?—A. My record does not show it.

(Deputy Solicitor General promises to let the defence know this during the luncheon interval.)

(From 2.10 to 3 p.m.)

15th October, 1934.

(AFTER LUNCH.)

G. H. FERGUSON.

CROSS-EXAMINED.

I have the name of the official who recorded the statement on the night of the fire itself. He is Sergeant 869 Hendrick.

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RE-EXAMINED.

No questions.

(To COURT: Q. When you examined Mr. Kennedy on the 7th October
10 did you know that anyone had stated that he emerged from that door?—
I knew that from Zain Mahat's statement. Mr. Owen also said so.

(a) G. H.
Ferguson
(recalled).
Cross-exa-
mination—
continued.

W. SMALL. Sworn (recalled).

Q. You were present at the second inspection held some day last week?
—Yes.

You know Duke Street?—Yes.

You saw the portion of the building which faces Duke Street. Certain cracks were pointed out at that inspection on the outside wall facing Duke Street. There was no outside wall.

Do you know where the chute was?—I know the place from where Mr.
20 Hall pulled down some galvanized sheeting. That was the wall immediately
above the chute. There were cracks there. The wall in question is a 9"
wall with a door opening from it, and a concrete ventilator opening. That
opened directly into the basement by means of the chute. The explosion
in the basement blew away the other walls and the force of the same ex-
plosion coming up the chute would have a shattering effect on the wall
opposite it. If the wall was a thin one like the wall in question which was
4½" it would have been blown out and the door and the gate would have
been blown out, and in this case the gates itself were blown out, so that we
have sufficient evidence of the pressure which caused that.

30 Q. Would you deduce that the building had lifted?—Not from that
fact alone. The cracks by themselves would give no indications of that
itself.

On the wall by the Main Street certain cracks were pointed out to you?
—There you have the verandah over the floor slab and the retaining wall
and the stanchions coming on the beams and the retaining wall there
carrying the verandah floor. The steel stanchions come up through the
middle of the retaining wall and from the ground floor upwards and is
encased in a large brick box. I produce a plan S1. The solid masonry
there consists of a 13½ or 14" brick wall on the front, and 4½ on the side and
40 4" at the back. These piers are only for effect. They carry no weight of
the building. There is a very hollow concrete light beam above. It is
only 3" in this case. These piers carry their own weight and the weight

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(b) W.
Small (re-
called).
Examina-
tion—con-
tinued.

of the hollow beam. (To COURT: They support nothing of the building) It is these hollow piers in which you see the cracks. The pier itself is built on the verandah floor slab which was damaged by the explosion. Roughly $\frac{1}{2}$ the pier is supported by nothing else but by the verandah floor. The fact that these things are standing on the concrete floor and that the floor had given way is sufficient to count for the cracks.

Do you deduce any lifting of the building from those cracks?—One cannot deduce from these cracks any lifting of the building.

Let us take the corner of the basement, the "U" shape of the basement taking the Main Street Duke Street corner. Did you find any cracks in that basement?—There are no cracks in the basement wall. I know the Duke Street wall. I have referred to two things the wall at the top of the chute and the piers. 10

Did you find any evidence of cracks on the retaining wall of the basement?—There are cracks on the retaining wall where one day's work comes against the next day's work.

Do I understand you to say that these are cracks as a result of the explosion?—They are due to nothing else than that concrete shrinks in setting. Those exist in all concrete work of this kind. They all occur as one day's work comes against the next. 20

Your statement applies you say to cracks such as they were in the retaining walls of the basement?—No. (To COURT: You could not differentiate between the walls of the basement).

All the cracks in the basement are not due to the explosion but existed before. You must not expect one crack like that goes right through the concrete. There must be a certain amount of lifting but it must be very small. There was no extension. There was undoubtedly an uplifting of the building in different parts due to the heat on the stanchions and the expansion of the stanchions. There is no indications of the cracks being due to an uplifting. 30

Did you find cracks in any other parts of the building?—There were cracks in all the floors inside the building; in all the partition walls which are above the walls and there are bad cracks right up to the 6th floor. The 6th floor has the worst one.

Those are due to?—Entirely due to the expansion of the structure under heat. It occurs to me that the heat was greater than any other fire in the basement which was communicated to the building. The steel stanchions would not be effected at all being encased and the stanchions would be subject to heat and expand where they were not encased with concrete. The expansions would not be so great as where the stanchions had no casing. (To COURT: If a stanchion expands it takes everything on it and therefore it will lift the building. If one of the stanchions were raised to a temperature of 120 degree it would require 760 tons to keep it down so enormous is the power of expansion. An expansion would necessarily be upwards). 40

Did I understand you to say that some of the stanchions expanded and as a result that in those positions there was what one might call a lifting

up?—The stanchions will go up in consequence of any expansion that takes place in any part of it.

Among the various stanchions would the expansion be unequal?—Some stanchions would only have fire at the bottom. Some stanchions were heated in their entire length and expanded more. Some of the stanchions were 90' in length.

(TO COURT: There was no means of transferring the explosive upwards to the building except by means of the floor which forms the ceiling of the basement no matter what the force of the building was it would transfer the action of breaking of the floor?—No.

I mean additional pressure would act as a lift until the pressure reached the ceiling. The floor was broken everywhere in the shop).

Once the ground floor gave way any explosive force would have no effect on the retaining walls for instance?—I don't know that. That is a question on explosives. Once the ground floor gave way any explosive force upwards would have to play on the ceiling of the ground floor. The ceiling of the ground floor is in existence. There is pressure on the underside and when there is any pressure on the underside of the ceiling it will transfer it to the building. In my opinion there could have been no lifting up of the building as a result of the force. There would have been a shock which travelled in all directions and dissipates itself. By lifting up of the building. I understand it to lift it up from its level to another level.

CROSS-EXAMINED.

You prepared the claim for the Times against the Insurance Company?—Yes.

There was a claim in addition to the other claims under the head "concussion to the building?—No. I am quite sure.

Will you admit that there have been explosions in that claim?—The claim is a schedule of the damage totalled up.

Did you make up under various heads shock to the buildings?—No. You mean did I prepare a claim to pass it to the Insurance company. What I did was to prepare a complete schedule of the damage done. It is the replacement value. The piers have to be rebuilt and put in.

You could not very well ask the insurance company to pay for cracks if they existed before the fire, could you?—No, not the basement wall.

Not the other cracks?—No.

Did you include cracks in the basement wall in that claim? No. All I did was for replastering.

You do admit there was a shock to the building?—Yes.

As a result of the explosion?—Yes.

The shock before the floor gave way would tend to lift the building?—The shock would not.

The pressure would. Yes, it would tend to lift the floor.

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No. 11.
Further
evidence for
Prosecution.

(b) W.
Small (re-
called).
Examina-
tion—con-
tinued.

Cross-exa-
mination.

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No. 11.
Further
evidence for
Prosecution.

(b) W.
Small (re-
called).
Cross-exa-
mination—
continued.

I put it to you that the cracks are due to the force exerted by the explosion before the floor gave way?—I don't think so.

You will admit that if there were cracks caused by workmen's carelessness any extra pressure on the top from upwards would tend to seal these cracks?—These cracks are not due to any faulty workmanship. It is due to the fact that when put down new concrete against old concrete there is a relative shrinking. Where a face is visible it might be due to accidental circumstances by the boarding which is put there.

Else after each day's level you ought to find cracks?—They are there whether you can find them or not. Some of them are board marks. 10

While we were examining these cracks I understood you to say it was due to heat rather than to pressure?—That is so, but I only say that the fact that you can see them is due to the heat, where the cracks actually were when it shrunk would tend to make it more visible.

Did you indicate at the spot that a previous days work ended there?—I indicated each crack that I noticed.

(To COURT: There was a crack on the wall by Main Street. If they marked the stage of a day's work why should you not be able to show a number of transverse cracks indicating a continuation of new concrete to old concrete?—I should say it was due to layers of concrete being put in. 20 These lines appear at regular intervals where one days work comes against the next days but they are marks of planks Board marks can be recognised. The face of the concrete shows the marking of the board. The concrete was plastered after it was finished. The board marks do not appear through the concrete.

The whole of the plastering has not come off, only in places. The plastering itself would conceal defects of the wall. It conceals the wall entirely. When you heat the inside surface of the wall you are not only heating the inside but the outside and you get an expansion of the wall on the outside. The plaster itself might crack where there was no corresponding 30 cracks in the concrete behind it. The wall on the right as you face it to which the door was fixed was cracked both horizontally and diagonally. I attribute those cracks to the explosive force which went up the lift chute. The pressure rises there in any case. We know a door was blown out and a small wall was blown over the stairway. That is the same force that blew the doorway. Some of the cracks were horizontal and others diagonally but you could not say actually how they would crack. You could not draw a pattern of the cracks.

I don't remember the amount the Times were paid I have not looked up the amount since. I have no interest in it. It is about 90,000/-. 40

RE-EXAMINED.

No questions.

H. HOOPER. Sworn.

EXAMINED.

You are a Sub-inspector of Police attached to the Fort Police Station ?
—Yes. No. 11.
Further
evidence for
Prosecution.

(To COURT): Did you record this. (c) H.
Hooper.
Examina-
tion.

“ After calling the other watcher, I came to the Main Street and blew
my whistle and then saw Mr. Kennedy coming in the direction of the shop
to Main Street ?—Yes.

CROSS-EXAMINED. Cross-exa-
mination.

10 It was 12.25 a.m.

RE-EXAMINED.

No questions.

No. 12.

Judge's Notes of Counsel's Addresses, Verdict, Sentence and Statement of Accused.
15th October, 1934. No. 12.
Judge's
Notes of
Counsel's
addresses,
15th Octo-
ber, 1934.

Evidence closed at 3 p.m.

Mr. R. L. Pereira addresses the Jury.

ADJOURNED.

16th October, 1934.

20 Mr. Pereira continues his address. 16th Octo-
ber, 1934.

ADJOURNED.

17th October, 1934.

Mr. Pereira continues his address. 17th Octo-
ber, 1934.

Mr. Obeyesekere Deputy Solicitor General replies.

ADJOURNED.

18th October, 1934.

Mr. Obeyesekere Deputy Solicitor General continues his address and 18th Octo-
ber, 1934.
finishes at 4.30 p.m.

ADJOURNED.

30 19th October, 1934. 19th Octo-
ber, 1934.

His Lordship sums up.

ADJOURNED.

20th October, 1934.

His Lordship continues his summing up.

Verdict : (Unanimous) Guilty on both counts of the Indictment. His Verdict,
20th Octo-
ber, 1934.
Lordship addresses accused as follows :—

“ Alexander Kennedy you have been found guilty by the unanimous Sentence,
20th Octo-
ber, 1934.
verdict of the jury on both counts. The offences of which you have been
found guilty are very serious ones indeed. I sentence you to a term of Six

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Sentence,
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continued.

Years Rigorous Imprisonment on the 1st count and Six Years Rigorous Imprisonment on the 2nd count both sentences to run concurrently—Six Years Rigorous Imprisonment in all.”

Addressing the Jury His Lordship states :—

“ Gentlemen, it is usual in discharging the jury to tender to them the thanks of the Colony for their services. Those thanks are due to you in this case in a very special manner. You have been called upon to perform a most arduous task; to listen to a difficult case. We have had 34 sittings of Court and you have been good enough to consent to sitting for half an hour beyond the usual working hours, to get through as much work as possible I tender you therefore my own thanks for the great services you have rendered the Colony in taking on this very very difficult case and giving much of your valuable time to it.” 10

Mr. Kennedy the accused, then states he wishes to make a statement, and on being allowed to do so states :

Statement
of Accused,
20th Octo-
ber, 1934.

“ I protest strongly against certain members of the Insurance Companies hobnobbing with the Jury.”

His Lordship says “ I do not think I need say anything on that.”

The Foreman of the Jury makes the following statement : “ My Lord there are two points that I wish to bring to Your notice. Before doing so I would like to express an appreciation of myself and the members of the Jury for the consideration and courtesy we have received at your hands and at the hands of learned Counsel for the prosecution and defence during this arduous trial. The points that I wish to bring to Your Lordship’s notice are that this has been a long case and I would ask Your Lordship to earnestly consider the question of affording us relief from further service for as long a period as possible. 20

The other question—I do not know whether Your Lordship could take any steps in this matter—is over the question of outstation Jurymen’s batta. We have two gentlemen on the jury who have come from considerable distances to try this case, and their position is that they are considerably out of pocket as a result of having to stay every night in Colombo during the Course of the trial. In a short case perhaps it would not matter very much, but it is quite a serious matter in a case that has lasted seven weeks. 30

I trust that Your Lordship will bring it to the notice of the authorities concerned and do what Your Lordship could in the matter.”

His Lordship states : “ I shall see your representations communicated to the proper authorities. In view of the very great amount of time you have served, anyone of you who desires to do so can claim exemption from Jury service for six years if you are called upon to do so at any time during that period.” 40

No. 13.

Summing up by Mr. Justice Driberg.

His Lordship Mr. Justice Driberg's Charge to the Jury in the Kennedy Case.

Gentlemen,

We have come to the conclusion of a long trial, unusually long, but I think you will feel as I do, that at no stage of this case have we ever wasted time, and I think we are very grateful to counsel on both sides for having helped us in this unusually long trial. There is no doubt that when we come to the end of this trial—there are many things which assume considerable importance which at the end of one's examination of the evidence seem in some cases only of secondary importance and sometimes only of small importance.

It is difficult in dealing with a case like this to pre-judge the relevancy and the effect of that evidence. If it is relevant and if it gives you room for thought, that evidence is necessary, and if you are to receive that evidence you must make perfectly certain that you accept that evidence, and that every witness who testified has been given an adequate opportunity of fully giving his evidence. These conditions I think have been fully satisfied in this case. I am sure, gentlemen, that you will join with me in stating how very grateful we are to counsel in this case. It is a case in which one is, more than is usually the case, dependent on counsel. I might say entirely dependent on counsel. It is a case in which one cannot as it were pick up at a certain stage of the case and then proceed. I feel sure that until the very moment when the labours of the Deputy Solicitor-General and Mr. R. L. Pereira ended, that you felt as I did that you needed their assistance right up to that point.

The case has given us, gentlemen, a good deal of trouble and very much anxious thought. The anxious thought still remains. The trouble, or a part of it, is over. And it is very satisfactory that both the prosecution and the defence have been in the hands of the counsel who have appeared. We have had the advantage of having one of the senior and highly experienced officers of the Attorney General's Department prosecuting, and for the defence we have had one who is a recognised master of the art of criminal advocacy—Mr. R. L. Pereira. You and I have had all the advantages which the assistance of others could give. It now remains for you to consider the matter with what help I can give you, and let us earnestly hope that the decision arrived at by you will be a just and correct one.

I propose gentlemen first to ask you to consider the scheme of the evidence led in this case. There is so much in this case—there is such a mass of detail—that sometimes one is apt to lose sight of the case as a whole and see where particular phases of evidence ought to come in, in order that one might judge of their relative importance. Broadly they are these :

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There is first the evidence of motive. But when I place motive first I do so simply because it comes in chronological order. The evidence of motive necessarily precedes the commission of a crime. But I shall have to point out to you that motive really plays a subsidiary and secondary part in this case, but yet it has to be carefully examined. Then we have certain evidence led in connection with the early history of this transaction which it is a little hard to know where one is to place. I am referring to the evidence which has been led—not a very large volume of evidence but still an appreciable mass of it—which was put forward by the Crown as a lack of straightness or directness in the conduct of the accused in relation to this matter, but where it could not be brought to any direct relationship with any objective which he had in mind relating to the incendiarism, if it is that. That evidence would rather I think touch the question of character more than anything else. I am referring in particular now to the evidence which has been led of his representations to the Chartered Bank and to Campbell Bros. when he sought the assistance of the Chartered Bank, that is to say, that Graham of the National Bank had definitely refused to finance the Java business. One other matter is his statement regarding a tannery under his control. I shall deal with them later. I am only mentioning them now because I do not know where you will place them. These might affect his character. In this case I do not think you might have very much difficulty about that. As everybody does in a criminal case you must start with a presumption of innocence in favour of the accused. The accused has gone further, and Mr. R. L. Pereira has done all that he could to place before you the good character of the accused as appeared from matters under your investigation, that is to say, shut your eyes to every thing and look at Kennedy as he stood before the evidence. That would all deal with the question of motive. 10

Then there is the question of evidence which comes under the head of preparation—that is to say, certain acts of the accused which it is said were prompted entirely by the object which he had in view, and which were done with the intention of preparing and paving the way for it. Under that evidence has been led of three particular matters, or rather two really. One is the purchase of the petrol. That is put forward by the Crown as a step in this act of the accused. Then evidence has been led, and this is quite a large subject in itself, that he was preparing evidence of non-existent stocks. That depends very largely on the opinion that you will form of those documents P32 and P39, and the evidence which he has led regarding what he calls his private skin a/c. Now, in dealing with the evidence, on that point one must be very careful to distinguish between misrepresentations of his which were made for the express purpose of giving evidence of non-existent stocks with a view to the burning of the shop goods, and misrepresentations which he may have made regarding his financial position or his assets for the purchase—may be, I am not suggesting the possibility of it though it might go against the accused in some way,—of giving his creditors a false idea of the security of his position, that is to say to lull them into a sense of security, and to induce them to extend time, so that he 40

might get breathing time or space during which he might do the best he could to adjust his position, and no doubt living in hope that times would change and that he would be able to honour and carry out undertakings which he was really not able to do at the time he made the representations, but which he hoped he would be subsequently able to fulfil. When you deal with the letters to Campbell Carters, namely, items coming under T/C. goods, the representations to the Bank regarding the Brush Goods etc., you must not lose sight of them. I will put to you all that I can that has been put by the defence, that those were not non-existent stocks, but
 10 that they were there. I am only for the present putting these to you because I do not know where you would place this evidence. Gentlemen, I must give you a note of warning, if you find that there is something in the accused's conduct, that something which he spoke was not true, be careful to find out whether that was done for the purpose which is alleged in this case, because we are dealing with it, and because it is put forward by the Crown as evidence of preparation, was it preparation or was it the conduct which many a debtor, ordinarily the most truthful of men, might fall into, as a result of the exigencies of the financial situation;—put off your creditors with false hopes and statements? so that you got to regard
 20 the evidence put forward by the Crown as regards P32 and P39—not merely should you be satisfied of its falsity per se, you must be satisfied that it was a step in the ultimate design for the purpose alleged. Of course it may be possible that it was done for one purpose and utilised for another. These are the chief points that have to be decided in this case. So much gentlemen for the preparation. Then having placed before you the evidence of motive, and having placed before you the evidence of preparation, the Crown goes on to place before you certain circumstantial evidence.

Now, in this case, gentlemen, there is no direct proof that the accused set fire to the things in the basement—in most cases of this kind, direct
 30 proof is really never available. The evidence is entirely circumstantial.

You were told by Mr. Pereira what circumstantial evidence was, and there is no doubt as to what the effect of it is. You must take all the circumstances of the case together, and having gone carefully through them, then you might say that your conclusions are absolute and certain, or you might say the inference to be drawn from the circumstances point almost conclusively to the guilt of the accused, and it is up to the accused to convince you that his explanation which he gives you is true. If an accused puts his explanation before you, it is necessary in order to convict him that you should be convinced that his explanation was false. If you
 40 are not convinced that his explanation is true, but if you think, there is a reasonable probability of his explanation being true, then the benefit of the doubt must be given to the accused.

I shall give you an illustration : An accused was brought up on a charge of receiving property recently stolen. After the prosecution had proved possession by the accused, that property has been recently stolen,—the Jury should be directed that they may, not that they must if no reasonable explanation is given, find a verdict of guilty, but if an explanation is given,

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which may be true, it is for the Jury to say, having regard to all the evidence whether the accused is guilty or not, if the Jury though not convinced of the truth of the explanation, thinks that it may reasonably be true, the accused is entitled to be acquitted, because the prosecution have not discharged the burden of proof which rests upon them, or satisfied the Jury, beyond reasonable doubt, that the accused is guilty. This burden of proof always rests with the prosecution and never changes (112 Law Times, page 480).

That is a very concise statement of evidence given by an accused, who finds himself in a position where circumstances tell against him, and where these circumstances call for an explanation, it is not necessary that the Jury should be asked to say "We are convinced that the explanation which is given by the accused is true," but if you come to the conclusion after careful thought and consideration, that his explanation may reasonably be true, whatever doubts you may have in the matter, you have got to give the accused the benefit of that doubt. 10

Now the circumstantial evidence in this case rests on these circumstances.

(1) Accused stood to get money for goods which he did not have—that of course depends entirely on your finding on the evidence regarding the preparation, and of the connection of the documents P32 and P39, and your belief or disbelief regarding that evidence. 20

(2) the next circumstance is that he stood to gain in this way, by getting rid of stock, some of which was 3 years old—it was said.

(3) then there is the purchase of the petrol, which is also a form of preparation, which the Crown puts before you, as being circumstantial evidence.

(4) then there is the evidence of his actions on the day of the fire, how he emerged from the building, and where he was in the basement. The importance of that point was seen by the accused, and you knew how hard Mr. Pereira endeavoured to impress upon you the unreliability of Zain Ahamt's evidence. 30

(5) then you have to consider whether the accused has given you a true or a false explanation regarding his movements about the time of the fire, and

(6) you were asked to draw certain deductions from his burns. That the Crown says, is proof—it is for you to say whether you accept the evidence or not—that there was a smell of petrol on his shoes. I noticed that the learned Deputy Solicitor General said it was kerosine or petrol, and that undoubtedly, is the evidence of Mr. Collins, who says it does not matter whether it was kerosine or petrol. There is against the accused this evidence which you may accept or not. 40

Then having connected the accused with the petrol the Crown puts to you the fact that according to the evidence that the possible cause of the explosion was an explosion of petrol.

Then you were asked to draw certain conclusions adverse to the accused from the time when he was down in the basement, not only the whole of that day, but at the very time of the explosion.

It is also suggested that there was some selection of stock, and that it was never the idea of the accused to burn up all his stock, but that there was a certain selection made of the stocks, which resolved itself in a certain selection made of the stocks, which resolved itself in a certain manner as to the arrangements made for its transit.

10 It was said that 2/3 of the accused's stock consisted of ladies' and children's shoes. The suggestion is that in the basement were things which it was easy for him to get rid of, as it consisted largely of gentlemen's shoes, and regarding those stocks there is evidence that they were hardly older than the ladies' shoes, but we have it from accused that it did not matter so much with gent's shoes as it mattered with ladies' shoes for we have it in evidence that the fashions in ladies' shoes change very often. The stock which the Crown says was non-existent were the accused's stock of skins.

That in short is the circumstantial evidence from which you are asked to draw conclusions that the accused set fire to the goods in the basement.

20 It is my duty to place all that evidence before you, to indicate to you the lines on which you should consider it, and to tell you whether in law, it would be sufficient or not, whether a particular witness is to be believed or not. These are questions of fact which are entirely within your province. The judgment of these matters rests with you. Now I might say that the law allows me to express an opinion, and of course you will have to take the law from me, but on matters of fact you are the ultimate judges.

Now I have told you what is their relative value. It may be that in the discussion of these matters, it will not be possible for any Judge to refrain from giving you his opinion on any particular fact, but I shall make every endeavour to avoid doing so as far as the accused in this case is concerned.

30 You have got according to your oath to judge on the facts. You may attach such importance as you may think fit to any view expressed by me if it is entitled to value: if not let it not influence you. You must do that because the ultimate judges on all matters of fact is the Jury. I will tell you what the effect of certain evidence is, but when it comes to a question of fact it is for you to decide.

40 Let us deal with the question of Kennedy emerging from the Duke Street door. The evidence relating to that—I should tell you that there are certain reasons why some evidence will have to be viewed with great caution, what allowances should be made in certain cases for apparent contradictions. But when you have heard all that, the final question, as for instance, whether you are going to believe Zain Ahamat or not, rests with you. That is what we mean by saying that the ultimate judges of fact is the Jury.

Let me pass on to the question of motive. As I told you, in point of importance, namely that of ultimately deciding the guilt or innocence of the accused it assumes secondary importance. We allow in our courts evidence of motive on the ground that motive is one of the circumstances

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that renders probable or improbable a matter which you have to decide on. The evidence act calls this, "A fact in issue." The fact in issue in this case is whether the accused set fire to these goods. Anything in law which would render the existence of that fact probable or improbable within certain limits can be placed before the Jury. Therefore the evidence becomes relevant. But that is not the last word on the subject. You have got to understand where you have to place this evidence of motive. Now, one thing is absolutely clear, and that is, that if you have a case which is weak on the evidence that is led, you cannot supplement the deficiency or weakness of that case by falling back on the existence of a motive—you cannot eke out a weak case by supplementing it with some motive. If after hearing all the evidence in the case which has been placed before you, and the circumstantial evidence put forward, you find that there is no case against him or even if you find that there is a weak case against him, a case which in itself is insufficient to convict, then you cannot fall back upon motive to supplement that weakness. That is clear. If you were to do that one would get into a position of very great difficulty. Take the ordinary case of theft. The fact of a man being in urgent need of money could no doubt be a motive for theft, but then there are thousands of people in this world who are in the direst need of money who never stoop to theft, and if you had against a man who is charged with theft a weak case you cannot fall back on the circumstance that he was in need of money to supplement a case which otherwise you would not act on. What then is the real scope and purpose of motive in such a case as this?—It only comes back to this: that if you are satisfied—if you have come to a conclusion of the guilt of the accused there is no doubt that the fact of the existence of a motive would strongly support and corroborate the view you have formed, but by itself it will not carry you any further. You must have the case made out of the accused's connection with the fire. If you then find that he had a strong and impelling motive, not a mere motive; that would confirm and corroborate the opinion which you have formed, but if your opinion independent of the existence of the motive is inadequate to return a verdict of guilty. It would not be right to fall back and supplement that by the evidence of an existing motive.

That is why I told you that though important undoubtedly and though it comes first, as it must, it is only a phase of the case that is of secondary or subsidiary importance; not primary.

Now, it is often said gentlemen that where a motive exists the adequacy of the motive does not matter. That is so, because one man might be impelled by a degree of motive which would leave another man inactive or unmoved. It depends upon the mentality of the person the human factor etc. The entire absence of a motive is regarded as a presumption in favour of the accused. You would hesitate to find a man guilty of petty fraud to procure a comparatively small sum of money, if he is a man in affluent circumstances and in no need of money at all. But there are exceptions to it. A spirit of cupidity would make a man do anything to get money. The adequacy of the motive is not entirely necessary nor has the Crown to prove a motive. If a man has committed an offence and there is evidence of it there is no

necessity to find out whether there was a motive or not. But there is no doubt that this case stands on a peculiar footing. And in dealing with the evidence of motive I have no doubt that you will consider not only the existence of the motive but adequacy of the motive—that is to say, whether the conditions in which this accused were such as would prompt him to crime if not compel him to crime.

Now, on this part of the case the evidence has been led very fully, demonstrated very fully. All that you need to bring back to your recollection clearly and precisely so far as his general financial position went, is the
 10 summary which has been prepared of his financial position. That summary gentleman, tells you concisely and clearly the exact position in which the accused stood. Every feature of it has been examined by you. We are able to follow from that the gradual decline in the prosperity of this business after the depression and you are able to see exactly what his financial position was at the end of September, 1933. It has been pointed out that there is nothing startling or unusual in this condition of the business, that is to say, so far as the purely financial basis goes, the accused was working on credit. He had no capital of his own. He was always working on an overdraft which increased.

20 It has been pointed out and Mr. Watkins supports it, that there is nothing unusual in that balance sheet in a business of this nature in times of depression.

There was evidence that accused kept high class goods and necessarily that he is a class of business that will be almost the 1st to be hit in a time of depression. People may go to cheaper places and buy their goods and not go to a place which only keeps high class goods of a high price. And it would be almost unreasonable it is contended by Counsel for the defence to suggest that a man who is in the same position as any other man, and business people are, to assume that because he has come within the grip of the
 30 depression in the same way as many others have, that it will be assumed that he will for that reason harbour the idea of fraud on the Insurance Companies. You have heard that argument and you will give effect to it. As I am dealing with that I might at once recall to you what has been said with regard to the character of the accused.

There is no doubt that leaving aside the cause of doubt and suspicion which we are immediately investigating in this case that he has borne a good character. The fact that he has worked his way up from an assistant in one of the Colombo shops, built up a business of his own largely due to his industry and enterprise, is a matter which redounds to his credit. Mr.
 40 Graham who was well disposed towards him—I could not quite follow that argument of Mr. Pereira against the suggestion made by the crown (i.e. that Mr. Graham gave a good character to the accused as he would stand to lose if Mr. Kennedy was convicted), because I could not hear that suggestion. Mr. Graham who has had dealings with him gives him a good character for reliability. He said he always met his bills: there is no proof of his ever having failed in the payment of his interest or his private dealings

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until even the times of depression 1931 and 1932. He failed in 1933 but there is no doubt that in 1933 the position was becoming very difficult indeed. He had kept his position up to that point, and if it is said of a man that he has succeeded and built up a business and kept faith with his creditors, then every presumption should be made in his favour when he stands in the unfortunate position in which he stands today. So that I think you would start with the presumption—not merely is there a general presumption of good character in favour of the accused, but that he comes before you with a record which is to his credit.

Now the whole of the charge on the point of motive is this ; not so much 10
really the general depression but his position regarding certain particular pledges, that is to say, that he had come to the point when he had given pledges which he had to fulfil, and which he could not fulfil ; that action had been required of him which he was not in a position to perform. That has reference both to the General Account, the No. 2 Account, and the No. 3 Account.

As regards the General Account there is no doubt that he was under a promise on his part and a direction on the part of the Bank, that it should be reduced to half a lakh by the end of the year. Now, I shall deal with that first. It is suggested for the defence that that was a matter which need not 20
have distressed him unduly. And it is said for this reason : Mr. Graham has said very fairly that when he told the accused that he must reduce it by the end of December he meant it, and that otherwise he would not have said it. He really did mean it. He wanted it reduced and he meant that it should be reduced. It is suggested for the accused that though Graham said that, that that need not have disturbed the accused unduly, and that if the 31st December came round and he (accused) could show that he had made an honest endeavour to reduce it from a lakh to about half a lakh, that he was not going to be seriously inconvenienced by any action on the part of Graham. You might fairly conclude from Graham that that is what 30
he would have done. There is no doubt that a bank in that position has got to nurse a debtor if he wanted to get his money back. Creditors too have their troubles and trials just as much as debtors. You might tell a man that he must pay, but if he does not pay you have either got to show him some indulgence—probably treat him a little strictly—but the alternative is to sue him. Now I take it that it is extremely unlikely that the bank would have brought an action on the 2nd or 3rd of January if by the end of December the amount had been reduced by Rs. 10,000 odd, and it is pointed out by the defence that it had been done under conditions of great trial and difficulty. There is no doubt that starting business in Colombo Stores must have been 40
exceedingly difficult and we do not know exactly how it was to be done, but it is to the credit of the accused that in spite of his difficulties he did think of his creditors and reduce it to 76,000/-. If he had done that in January it would have been 2 or 3 or 4 or 5 thousand rupees over half a lakh, and it is not likely that a bank would have put a debtor in Court. After all what could you do if you got a judgment ?

As regards No. 1 account that is the position. He says it need not have caused him any anxiety, though no doubt he would have been distressed.

Then we come to the No. 2 Account. Now there is no doubt that as regards No. 2 they were very definite pledges. There are circumstances regarding No. 2 which it is pointed out by the Crown are such that would have made Kennedy feel that it was absolutely obligatory upon him to send these goods up by the end of September, and the fact that he did not do so, it is suggested by the Crown, is conclusive proof that he did not have the goods. For that purpose one must consider the position was regarding that. Now Gentlemen, regarding this No. 2 account, we have not got the officer of the bank who arranged and allowed that original overdraft. It began if I am not mistaken before Graham's time. It is sufficient to say that it was before his time. Now Graham is very clear on the point, and it is one of the very many matters on which you find that Graham is a witness with very great regard for accuracy. He says he cannot say whether there was a definite agreement that this was advanced against stocks in England—no doubt he was not the manager of the Bank when these arrangements were made,—but he is perfectly clear on the point that there was a clear understanding as far as his relations were concerned, that that was an advance on goods which has already gone. Because he is extremely clear about it. He is very fair to the accused, but he is strict on that point and that is the same verdict that has been passed upon him by the accused in a letter which Graham had not seen. The accused says that it is almost an obsession with Graham. That is what the letter indicates. He says Graham got this idea out of his head. All I told him was that I had only sent the Talagoya skins etc. So that there is no question that Graham is speaking perfectly truthfully as to his state of mind. And equally certain is it that Graham did not like the way in which the accused has drawn the money covered by that overdraft. There are only a few letters gentlemen which give—that dates are somewhat important. Here is a letter of the 11th July P20 (15) written by Graham to the accused, after his return. With regard to No. 2 Account he says this: (Reads from letter "With regard to the overdraft of etc. up to arrival in England"). So that whatever might have been the original arrangement to which Graham cannot personally vouch, Graham can speak to what passed between him and the accused, and what accused told him when he went to England (Reads up to "to be realized,"). That letter clearly proceeds upon the assumption that all that was needed to know how the accused stood in relation to his overdraft, was to know what quantity of skins in England still remained unsold. It is clear that the person who wrote this letter had no notion whatever that any part of the skins covered by this overdraft was in Ceylon. Otherwise he would have asked him (accused) to tell him how many skins there were in England unsold and how many were here, though he emphasized that he had promised to liquidate the overdraft by sale of skins there. Now there would be no difficulty in replying to this letter. I take it that some of you gentlemen know better than I do, that in a well-managed office one

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could get at one's file and get this information in a minute. You know what you have sent and what you have sold; information which, as far as I can see, could have been furnished with the greatest ease. Now Graham said that some of the letters were routine. I take it if a person had an account of 10,000/- and overdrew that account by about 300/- a letter might go to him asking him to reduce it to that limit. But there is no doubt that this is a letter that calls for a reply. There is in that letter also a reference to No. 3 Account. Then he goes on to say (Reads letter "We shall be glad, etc., and the other for less.") Now you remember Graham saying that the balance sheets were the things he wanted. There is no doubt that those sheets did not go to Graham. Two were needed, one for their own purpose and the other to be sent to London. Now, this is not a letter of routine: it is a letter that calls for an answer. Yet that letter went unanswered. . . . Yet that letter went unanswered, though attention was drawn to it on the 15th July. Then a month passed. This letter clearly shows you that Mr. Graham was under the same impression. 10

Then, gentlemen, there is another letter which was read to you—P84 (8) in which attention is called to the statement of skins after one month—that is the letter of the 15th August.

"We shall be glad if you will send us a statement of skins in England. . . . balance sheet." 20

There was no answer to this letter, and it is suggested by the Crown that Campbell Carters & Bros. in England sent a letter which itself suggested that, and there is evidence, to support that suggestion, as regards the dates, that those letters reached the accused before he had an interview with Mr. Graham.

Now Campbell Carters & Bros. are very competent people, and as far as one can see they wanted to be acquainted with what was going on, and Kennedy & Co., as you are aware, were sending them yearly balance sheets converted into sterling which had been enabling them to appreciate and understand the accounts than if they had been sent out in Rs. and cts. There could be no doubt that they had been extending their generosity and good feeling towards the accused. 30

Campbell Bros & Carter wrote a letter to the accused in which they indicated that they did not like the position of things, and it rather looked as if they had the impression that the bank was being kept under the belief that there were sufficient skins in England to cover the overdraft. That letter is P41 (69) in which they stated that they were sending out a Manager, Mr. Lawrence, from the London office, a person who had been here previously and who had the advantage of knowing how things here were, so that he was a manager with a local knowledge of things, and in this letter they said: 40

"If you are faced with a shortfall come into the open. . . ."

That means that accused was keeping the Colombo Bank Manager under the impression that he had sufficient skins for sale in England, and that he had mentioned that the goods were ready for despatch, and he gave

the explanation that the amount was not intended to be covered by the goods.

A letter has been written by Campbell Carters & Bros. that the amounts would not be sufficient to cover this overdraft, but that they were inadequate owing to certain reasons, whatever they may have been, and the accused replied to that with the explanation that he had got adequate security for the amount, in skins in England, but it was not until the letter was received that the accused could have been approached.

As early as the 19th of July the accused had received two letters, one in July and one in August asking him to give a statement of these particular goods to Mr. Graham. He gave Mr. Graham an explanation which you will find reproduced by him in P56. I take it that is what the accused said. He then said he went on to explain his position so far as the letter P56 goes, and that he would be ready to ship the skins against the amount by September amounting to Rs. 18,686/-. These are lots, which we, now, know, are brushed skins which appear on the last page of P32.

Mr. Graham's reply was P41 (3) in which he said he was at a loss to understand his explanation. I suppose, gentlemen, one has to observe courtesy in business transactions, especially if one were to continue with people and I don't know whether you would regard that letter of Mr. Graham's as a polite way of saying he did not explain his position, but that he still continued in the belief that the amount was covered by the skins in England. He was absolutely certain about it, that accused had other skins which he was sending forward, and Mr. Graham says he cannot understand this.

Now you should remember the letter which was produced in the course of this case, in which accused writes to Campbell Carters & Bros. his account of the interview. Is that true or is it not?—What he says there is that it was entirely a misunderstanding of Mr. Graham's that he had not sent all the skins to England and that there were some Talagoya skins. That was, however, not put to Mr. Graham, and so far as we can judge from P56, such an explanation was not expressed in it. It is not an account of the impression he had at the interview. He might have said for instance that he said at the interview that the stocks in England were not sufficient to cover the amount, and that he would be sending them up by September, but that does not appear in P56, but it is set out very fully in the letter to Campbell Carter & Bros. Was that explanation true, or was it not?—Was it an untrue account he gave Campbell Carters & Bros. or the reason for Graham's misgiving and his consequent dissatisfaction with him on No. 2 account. You have got to consider, gentlemen, what bearing it has on the particular motive we are concerned with in this case. According to the prosecution, and the prosecution tells us that under such circumstances as these Kennedy would have sent those skins if he had them. He had to be badgered by the National Bank from about the 19th July to about the middle of August before they could get him to attend to three letters asking him for a statement of the skin account.

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Then it is suggested that he accedes to the request with an explanation which is not strictly true, and he states that they will be going forward to England by the end of September, and when he wrote P56 he never had those goods and the prosecution tells us that the best proof that he hadn't the goods is that he never sent the goods by September, but also you have got to consider it as far as all the facts went, or the request regarding the information on No. 2 account. There is no doubt that at that date the position with the bank was not necessarily strained, or anything like that, but the matters were somewhat graver than that and you are asked to consider whether in the circumstances of a merchant who deals with a bank. 10

A merchant who had dealings with a bank, who owed an overdraft to the bank would where it was in his power, substantially comply with the request in order to keep the mind of his bank manager at rest. Whatever difficulty he had he promised to send these things in September. He had them he said, and he had them in July according to his statement and the Crown says that he would not possibly have refrained from sending these goods if he had them. Those goods we will have to consider somewhat more in detail when we come to (P32). But let me in passing tell you this : that according to Perera he got the brush skins in Monsoon Lodge. They were given there. If that is so and he further says this some of those skins were his. He would not say how many. He won't take upon himself to say that. If he is to be believed, then some to the extent of which he demands, had an existence, but you will have to judge whether you are going to believe Perera or not. What the Crown says that is fiction; and that just as it is said in the case of the T/C. items here was another attempt at creating some real evidence. In fact, if a question was asked, "Where are those skins"? that he may say, "Here they are." Whether it is going to be effective or not is another matter. It was another method of creating evidence to support the situation. That is the position regarding No. 2. 20

Your decision on that point depends on the answer to this question, "Were the relations between the accused and Mr. Graham regarding the No. 2 account in view of Graham's misunderstanding in view of the long delay in answering and responding to Graham's letters,—was the position such that if the accused had those skins he would have sent them off even well before the end of September in order to placate his bank manager?—And there is no doubt that if Mr. Graham had been told somewhere in the early part of September, "Well here you are, here is the balance of skins which I spoke to you about, "Mr. Graham would have dismissed the matter from his mind and would have thought nothing about delay or irregularity on his part. He said he had the skins. There might have been some misunderstanding whether it is English stock or not. He has reduced his overdraft. He has kept his promise and there is no doubt he would hand me over that balance" with a distinctly favourable impression in Mr. Graham's mind, as distinct from what it was. You will have to judge of that gentleman. I have put the point to you as clearly as I could. I have to refer to this again in connection with P32. 30 40

The No. 3 account one can't say very much about except that No. 3 had to be liquidated entirely by the end of December. Now, you must remember what that meant. The amount at which that account stood was Rs. 9,733 at the date of the fire. We can't say very much about that except that he was under the obligation to liquidate that by the end of the year and the fact that there was an overdraft of Rs. 9000 means this,—some of you no doubt are very familiar with the business of transactions of this nature, you know what an overdraft means from your dealings with clients and so on—it meant that he had actually received that amount of

10 money from the bank for the purpose of buying skins so that if he had an overdraft of Rs. 9000 he should either have that amount of skins bought or employed contractors for the purchase of skins. But anyway he should be able to say that he had employed the whole of Rs. 9,833 in making arrangements for the buying of skins. He has in P39 certain figures which are put against No. 3. The whole of P39 is suspect. That I shall have to deal with when we come to P32. But—I do not think I would tell you anything very much about that. But at the same time he has no disposition to utilise these private skins which he had, though of course he said these skins were not of a variety in which No. 2 and 3 were actually

20 made up. There is no evidence to the contrary. We must accept that. So there is nothing very much in No. 3 as regards the exigencies of the situation except what I told you. No. 2 was undoubtedly urgent and there was No. 3 which he had produced to that amount. Coupled with this there is the general financial condition which is evidenced by the balance sheets. There was no doubt that the business was going down-hill and down-hill, and it is very difficult to say that anything would have carried it up except the lift of the depression. What probabilities there might be in his shifting to new premises, is very difficult to say. It might be that by his remodelling his business after that and taking to less expensive

30 lines and so on, he would have made more money. But it is impossible to say. But so far as one could judge the business was going down-hill and there was no doubt that the time would come,—the time of reckoning may come.

But you must not think that because a man's business is going down-hill and even if he got insolvency facing him he would become dishonest. Human nature is not so bad as it is depicted to be. People may have the misfortune in private life to be deceived by others. But each is good in his own way. Human nature is better than people ordinarily give it credit for. The mere fact that he had a failing business might mean that he had his

40 business dissected microscopically in the court. There may be thousands of others in the same position into whose mind the idea of fraud would not for a moment enter. There was nothing to indicate that there was anything reckless in the business. He had been a shrewd man, had worked it up from the beginning. As for throwing up the sponge you are told he was not the man to throw up the sponge. He must have been a man of grit to build and work up this business and no man who built a business of that kind would care to smash it.

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Every man would like to be in a business in which times would change so that he will be able to establish his position. So you will give the best credit and weight to what has been said by Counsel for the defence. It has been put forcibly by Mr. Pereira that it is unnecessary for me to repeat it.

But there is a view which not only entirely dispels it but entirely discounts it: to a certain extent it deprives the argument of a certain amount of force. But says that Deputy Solicitor General, "it is no part of our position that the accused wanted to pull the whole house down. That is not the suggestion of the Crown at all. But it was a prudent and selective destruction of goods." 10

If that is so and you have to judge it, much of the evidence that was led in the case and the very important arguments that were advanced on both sides and Mr. Pereira in particular, on that point, go by the board.

For instance, much stress was laid on the fact that the accused had entered into large commitments, not necessarily large at all, but no doubt commitments from the 1st of October. And I thought at one time that it was suggested that his taking the new shop and all that he spoke about it, was said by the Crown to be a mere blind.

Kennedy had the first intention the Crown suggests of carrying on his business at the Colombo Stores. He was going to work it on as he previously had. He had done it before. He was trying to get rid of his impediments, he was going to start the business unhampered by these brambles that had grown on to him in the course of this dormant and slack period by ridding himself of the No. 2 account of the old stock which had been a long time there and which would be difficult to sell. 20

I suppose, gentlemen, boots like everything else in this world have life. They do not keep indefinitely, and anyway fresh stock it is suggested might be selected more in accordance with the conditions of the times, and so forth. That is the case. If that is the case one need not direct one's attention to that part of the case which has been very fully gone into by Counsel for the defence. There is no doubt that if the case was that he was going to wreck the whole of his business there is not very much force in what has been said, and the circumstances must be against it. I have to come to that in detail. 30

There is no doubt that only the basement had been set fire to. So, as I said, it was more prudent to set fire to the ground floor because it was in the ground floor that this old stock was.

The man who set fire to the basement would not have thought of the upper floor being broken.

The Crown says: "You must not measure the intention of the accused by the results in this case." They say what he contemplated was a prudent burning of the goods in the ground floor. So that I need hardly deal with that part of the case. 40

There seems to be no reason at all for doubting the bona fide of this lease. It is true that the lease was not signed by Mr. Hale, who told you it was purely an accident.

Then of course once the fire occurred it appears to be necessary to enquire why the lease was not signed. There are very many difficulties in

the way. There is a very serious charge hanging over the accused. Neither he nor Walkers would like to sign a thirty odd years lease until these things are settled; and you see his letters. These letters bear the stamp of reality. There is no doubt that Campbell Carters when they heard that the accused was going into new premises, business not being too good, and times not being too good, difficulties about overdraft, etc., they tried to throw cold water over it, but he persuaded them and it was allowed. So that you see that one has not got to see whether there was a sufficient motive for the accused to bring the whole house down on himself, but whether there was

10 a motive which would have induced him to go in for this somewhat restricted incendiarism. That is the case for the Crown. The fact that it is a little hard to meet makes it necessary that it should be examined further as far as possible. He says that he hoped to make £8000 in the remaining three months. Well then, he would have been making very much more than he would make in times of prosperity taking the last three months in the year as the best average. But that does not necessarily mean that he did not hope to make it. I suppose a man in a position like this keeps hoping against hope; keeps buoying himself up with optimistic ideas and deluding himself to the belief that things will be alright, well, he says that he was

20 going to have a removal sale, but at the same time you have got to pay for reduction of prices in individual articles. Then he says he hoped to do a vastly bigger business because he had a larger space. That is also a position which is difficult to judge. It might be said that in London for instance such a reduction would mean good sales, but in Colombo customers are more or less regular customers. In Colombo, I suppose, about 90 per cent. of the people who walk about are Colombo people. But all that is a matter of conjecture. He says honestly, "I thought I would be able to make that." That does not matter very much. That £8000 was not a pledge taken from him. He said "I will do it" and if he did not do it

30 Campbell Carters might say "This is not too satisfactory, but it is not going to get you any further on this immediate matter which we are investigating here." It is on an entirely different footing as regards the promise to send on the goods on the No. 2 Account. That was an undertaking; this was a pious hope. At the most you might say that he was trying to paint things in as rosy as he could for Campbell Carters. That is how the matter of motive stands.

Connected with that are those other two matters I mentioned. I do not want to impress my opinion in any way on the matter, but I am only expressing my opinion, especially as it is not on the question of actual

40 belief, but on the question of its sufficiency. That is about the genesis of the Chartered Bank Account. The thing that is taken exception to there is his statement—no doubt it is a clear statement—that Graham had definitely refused to do a job of business. Graham is a fairly careful person and he says that such a proposition was not put to him. But he says that if such a proposition was put to him, he would have said "no," because he could not do any business conveniently. What does this lead to? The most that might be said is—that was written in the letter to Campbell

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Carters and I need not refer to the letter further. There is no doubt there was a reason; so that he wished to prevent Campbell Carters getting uncomfortable, making too detailed an enquiry as to why he was going to another Bank. He had advantages with the National Bank; he had been given overdrafts; he had the advantage of having a Bank Manager in England who knew him. Campbell Carters were his good relations and Campbell Carters would not have cared. And so he gives an explanation, and the most that can be said is that that explanation is untrue; untrue literally but not false in purpose. That is to say, if it had been the case that Graham was prepared to finance the Java business and yet he would not go to Graham and ask him for that, because he thought that Graham was not going to take that particular Java matter, there might be a purpose in the falsehood. But here he knew that Graham was not going to do it. At the most it would come to this: that it was a departure from truth in order to keep Campbell Carters from making undue enquiries. But there was not, if you might say, falsehood at the base of it (though Graham had not expressly said so) if you accept his recollection in regard to it. He would not mislead you intentionally. Can you fairly turn a point like that against an accused when he is on his trial on a great charge like this and when very serious matters are alleged against him? You might say it is artifice; it is not quite candid. It was intended to keep Campbell Carters quiet and prevent them making too much enquiries, but at the same time for no wrong and improper purpose. It is not as if he wanted to go and start some fictitious business. His Java business was a real thing. It is that which enabled him to keep his head above water, because he had done Rs. 18,700/- worth of business with the Chartered Bank. So that that is not a matter which directly helps you in this case in the slightest way. The most it might do is to show that the accused is amenable to artifice and has been departing from the truth; not too straight in order to make things easy for him with Campbell Carters; somewhat of the same category as his statement in his letter to the Chartered Bank regarding the Tanneries about rebuilding according to plans. It is literally not true. As regards the control referred to in that letter, it depends how you understand this word. That is to say, he had no financial control. But if you are taking the word "control" in the popular sense; if it means "I can get Perera to do anything I want," it is perfectly true. Perera was his biggest purchaser at one time. Perera would know that he was dealing with a man who knew the market in skins, having dealt with him for several years. Kennedy might perfectly honestly be represented to the Chartered Bank as having a Tannery under his control, which would mean that he could get anything done. If you take it literally it might not be perfectly true. Then he says he had plans in mind. His letters suggest that his plans were too fine. Are you going to get any further by dwelling on that point?

We know, gentlemen, that in matters of commerce boosting is a recognised thing, and I suppose he did a little boosting himself. So far as his object was concerned it was not one that would mislead. That is a starting point to remember. You might say that there are no degrees of truthfulness,

but probably there are cases. It was not intended to mislead nor did he intend actually to mislead the Chartered Bank into thinking that he could do things which in fact he could not do. So that if you take it that he wrote that letter, he was perfectly aware that Perera would, if he had money, put up the building. There was nothing dishonest in that so far. I do not say they are irrelevant, but so far as I can see it will be almost better to keep them out of consideration. If they do have an effect they would undoubtedly have the effect of prejudice. What that degree of prejudice is I will not say. That will vary according to the degree of accuracy and absolute candour which is expected in commercial business. That would vary according to the people concerned. I suppose if one was dealing with a class of merchants who would not depart from a conduct of strict candour, that would hold good. But here we have got to deal with serious matters. Let us keep our minds clear of any impression we might have of a man who was in a condition where he was striving to do everything he could to improve his business financially, and also to improve his business, and the most that could be said of him is that in trying to get credit he blew his own trumpet and blew it too loud, and said things that are not strictly accurate.

Now, gentlemen, let us come to the next question, and that is the question of preparation—we come to the question of the purchase of the petrol.

Now here is a matter which has been fully discussed and the evidence has been placed before you, it has been carefully analyzed and demonstrated, and which resolves itself into a question of the belief of the witnesses, and in the long run there is no question that the petrol was bought for the accused by Hossen.

The main question is whether the tins remained with accused, or whether he gave them to Perera. Now as regards the purchase by Hossen, Hossen is undoubtedly a most unsatisfactory witness, but one has got to see whether he is a witness who has intentionally misled you, when you consider all his evidence as a whole or whether he is a muddled incompetent witness who was incapable of giving an accurate account in the first instance of what he was aware of, or whether he is one from whom you could get information only by the process of absolute extraction. Now Hossen came and told you a lot that was obviously inaccurate but one asks oneself where all this evidence leads one to.

As regards the time he denied having gone back to ask about the deposit.

There were other points on which he was undoubtedly inaccurate. For the accused, it is suggested that he made no secret about the purchase of petrol is proof that there was no sinister purpose in the purchase of the petrol. He says he went to Monsoon Lodge at 12.30. Why does he say that? He says he left the Kolonnawa Installation about 9.50 a.m. Has he any purpose in saying that? I find it hard to understand why he made it 12 and why he did not say he went in the morning to the office, because a man who intended to take leave would go and ask for leave in the morning at his office and not at 12, and as it might fit in with the probabilities, the

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accused got back to his house for lunch, but we don't know what time it was, but anyway he adhered to his statement, and he adhered to in it the fact that there is evidence that the petrol had come on his order long before that. He said so in answer to a number of leading questions.

To what extent does it really help us in this case. Now it shows how very careful one has to be in accepting the evidence of witnesses because they might be unsatisfactory in the manner they gave their evidence or, they may have made contradictory statements.

Now I have no doubt that if Hossen told Siriman Fernando that he was a man from Kennedy & Co. he would have been corroborated by anyone else, you would not have believed the unsatisfactory evidence of his regarding the time he went, and the contradictions on all those points, and finally when you are left with his testimony I would not have you accept it because it might be fairly urged by the Crown, that this is a man with no regard for accuracy, and he has said that there was no secrecy regarding the purchase, but we know that on that point, which is the vital point of the evidence, that Hossen was corroborated by an independent witness and that witness is Simon. 10

Now there is the argument of Mr. Pereira for the defence which I have no doubt is entitled to very great weight, and you must consider it—he said that there was proof positive that there was nothing sinister in the purchase of the petrol—he purchased it not for any sinister purpose, but for some purpose which he had in view. Hossen, accused says, followed him from the time he was at Smith Campbell's and he was with him all these years, and I take it if he had told Hossen, go, and buy this petrol, and do not say for whom you are buying it, he would do so. 20

There is a class of persons who are utter fools when they get into a witness box, but who are very prudent when dealing with business. You find that they are naturally garrulous when once they begin to talk.

The suggestion is that it entirely negatives any sinister purpose of the purchase of the petrol. 30

The Deputy Solicitor General points out and there is also force in the argument, and these are matters which can be said both ways; he says that the possibility of Hossen being asked for whom he was buying the petrol never occurred to Hossen, and ordinarily would never have occurred to the accused. If you send a man to a petrol installation and ask him to buy some petrol the probabilities are they would hand it over to the man who asked for the petrol and in this case it may be so. It is suggested that he would not go into all those particulars, but he would say "Go, and buy some petrol and come back." In testing those arguments to which would you attach greater weight, to the argument of the Counsel for the defence, that Hossen mentioned who he was or where he had come from to Siriman Fernando, and this is strong proof, it is said, that accused had no sinister purpose. As a matter of fact the disclosure of his identity came together in a chapter of incidents. 40

Ordinarily Siriman Fernando would not have asked him those particulars, but if it so happened that the taking away of the petrol was delayed

first by the fact that there were no two petrol tins at the depot, and that they had to be sent for from the Kolonnawa depot, and then there was a further delay that is in Hossen not wanting to make a deposit, but he goes back to accused, that leaves us with the conversation and once Hossen mentioned he was from Kennedy & Co., they then began to talk, otherwise it might be that nothing might have been said. That is how the case stands, but I was just examining for myself the evidence of Hossen to form some opinion as to whether he was of the class of witness with whom we are afflicted in these Courts from whom you can get nothing, unless you

10 ask them questions, and pump it out from them.

Incidentally he was asked by myself or, by Counsel, who was the last person to leave the shop and he said "myself."

Now you have got Kennedy's evidence and Ogle's evidence that the accused is the last person to leave the place, and that he keeps the key. Was it going to be believed that Hossen however honest he was, would be allowed to take away the key of the shop. I suppose that it would be kept in concealment or in the safe at the bungalow. Here is his answer to the question that was put to him.

It has been said that Kennedy is usually the last person to leave the place? I am the last person. I do not know whether Kennedy is the last person to leave. Then he goes on to say—

20

To COURT: Kennedy is usually the last person to leave the shop.

His attention was drawn to the fact that he was not the last person to leave, but Counsel wanted corroboration that Mr. Kennedy was the last person to leave, because there is nothing strange in trying to show that Kennedy was the last person to leave, but he would not even accept the suggestion that was put to him.

I then intervened and put him the question. . . .

I put it to him "Is not Kennedy the last person to leave the shop?"

30 and he said "I am the last person to leave the shop."

I do not think he intended to mislead you as to that for it is utterly untrue as we know that Kennedy is the last person to leave the shop. But is there a purpose in his saying that? But these witnesses will come and say utterly reckless things and stick to it.

We now come to the other matter and that is the disposal of the tins. Here again, you come to an absolutely pure and simple question of fact that you have to decide—the truth of the witnesses on that point. That is to say the accused and Perera.

Now, you remember the evidence and I need hardly recapitulate it.

40 It might be a coincidence but coincidences do occur. It was said that on the very day Kennedy purchased this petrol he was visited by Perera at Monsoon Lodge and accused told Perera of his purpose, namely, of using petrol to remove stains and Perera told him not to. On that point there is the contention that its improbable. I myself put certain questions to Perera on this point when he was in the box. I do not want you to think that there was necessarily any purpose behind any question I put. I put

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the question for information. When Perera said that Kennedy had always consulted him about the use of petrol, I put it to him: "Did you not think that Kennedy knows the effect of petrol on leather as you do?"

Well, there is the evidence on that point and you have got to see how that evidence came before the Police and the Police Court. We are not obliged to, we need not know, how definitely the Police came to know about it, but we know that information did reach the Police and Siriman Fernando was taken to Kennedy's new shop and asked to point out the man who had bought the petrol. Then there is no doubt of the statement of Siriman Fernando having been made and the Police immediately set about their investigations for purposes of verification. 10

It is said there is some discrepancy in the accounts that are given by Kennedy and Perera regarding what transpired when this petrol was given over. Perera says that he told Kennedy the skins rot if he uses petrol on them, but accused denies that he did anything in the way of consulting Perera about it. He says he had used petrol before and on that point there does not seem any reason to doubt petrol as a cleanser especially in removing anything in the nature of grease, which is a particular action of petrol, and which is a matter of common knowledge, and there seems to be no reason for doubting accused if he says that he has used petrol before, but in this case the question is whether petrol would remove stains, not grease or anything like that. But there is the fact, so the accused says, that on what Perera told him he said "Well, I won't use it." He made up his mind he would not use it and Perera liked to have the tins and he was given them. 20

There is nothing intrinsically impossible in that. If the accused was another person he would have said "I told Perera to put the petrol in the car and give the tins." There is no evidence of that. He had given expanded metal doors to him before and Perera was an extremely useful person for Kennedy. Is that true or not? 30

When the Police got information of this they sent Inspector Stewart and straight away he was questioned and there is no doubt that on or after the 5th October that Perera then said, that he had 2 tins of petrol from the accused and he said that those 2 tins were with him. As a matter of fact one tin was in his car and the other tin was in his garage. So he says. Is he speaking what is true or what is false? The crown points to the fact that he has assigned a date which makes the version untrue. Now, you have got to examine that with some care.

The petrol was bought on the 23rd August. Perera unmistakably stated that it was in July and he even fixed its being in July a little towards the end of it by reference to the day on which P32 was written which is fixed by date 3rd July. That statement is uttered and he was emphatic about it and it was not a mere conjecture as to a date but a date fixed with reference to a particular event. 40

Well, you have heard, gentlemen, all that Mr. Pereira has said on how perfectly honest witnesses might make mistakes as to dates. He has given you many instances, some of them are good, some not so strong. And that

a person can be perfectly certain as to an event but completely uncertain as to the date is perfectly clear.

I would be certainly sorry if I am asked to say when I first visited Kennedy's shop for the purpose of this case. As regards dates people cannot remember them. Some people who have a memory which is phenomenally uncommon about events knows that happened when people came to visit them. There are some people with very excellent brains who cannot remember things like that. When events are past events are passed. It depends a good deal upon your habit. What is it in this case? It is a
10 difficult point to decide.

Ask yourself in the first instance whether Perera is an honest witness who is speaking to facts or whether he is not, and if he is not that, then he is a witness who is not merely coming into the box and romancing but a witness whose false evidence has been procured and arranged. That must necessarily be so because if it be the case that the accused took those two gallons of petrol into Kennedy's shop and used it as suggested, then every word of what Perera is telling is false. He never went there, he never advised Kennedy not to use the petrol; Kennedy never gave them to him. He never took them away. So the whole thing is false.

20 But the question is, if he is a witness of that kind would you find an error regarding the date? If he is a witness whose evidence has been so procured by force brought on him to support the accused, you must assume a state of facts as this—that accused as soon as he was able to give his mind to things—and there is no doubt that he must have started thinking very very keenly as soon as he got over his immediate physical distress—that he was told about the tins, nothing improbable in that, numbers of people must have known it, and that he got—he could not have done it himself because he was in hospital—that he must have got someone to go to Perera and say, “Look here Perera, I am in difficulty and you must help me.
30 You must come into Court and say, or if you are asked by the Police you must say this, ‘Oh, I remember going one day to Mr. Kennedy's and he had two tins of petrol. He wanted to use it for skins. I said do not do that. He said very well if I do not want the petrol you can have it. I told him I wanted to have some tins and I took it. That is what happened.’”

You must suppose that he had been tutored to say that. Then the question is if he had been tutored to say that would he have made a mistake regarding the date? You come to that one point. There are arguments on both sides. Mr. Pereira tells you that here is a test of the truthfulness of the witness. Both arguments that of the crown as well as Mr. Pereira's
40 are good. Which is better in the particular circumstances of the case is for you to judge.

Mr. Pereira says here is truth positive that the man was not coached because if he was coached to come and say a prearranged story he would have remembered the salient parts of it and Kennedy would not have forgotten when he bought the petrol and he would have been very very careful to tell Perera the correct date that would fit in with the story. If a thing is to serve its purpose the date is essential. There is that argument.

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There is no question about it. It was put very forcibly. There is a great deal in it.

Mr. Obeysekera uses an argument which is also a good argument and one which the crown often has to. Because as he tells you. He has mentioned cases. One knows it from the history of crime in England where persons who have carefully prepared the way for a crime have entirely given themselves away by one blunder or admission. You do not want cases to be cited to you gentlemen. Particularly that is so because if every-one did everything perfectly it is very rarely that you would be able to detect false evidence. You are able to do so because there is usually some mistake 10 and the crime does come to light because there is some point a man has not prepared for, something which he should have prepared. Well, that is the point.

You cannot decide it without the opinion that you form of the people in this case, the opinion that you form of Perera. The opinion that you form of Perera will have to depend not only what he has given in this connection but with the evidence in connection with P32 and P39.

This is purely a question of belief. It is a very difficult matter gentlemen, and I know it. But you have to decide and you must decide, because there is no doubt that at that point you come to a matter upon which you have 20 got to have a clear-cut opinion. Because if the accused gave away the petrol to Perera, and Perera had them, there is nothing in the case, and the case for the prosecution has been struck at its very roots. Therefore the matter is of enormous importance in the case and you will give it your careful consideration. I have put to you the two arguments for the one side and the other. More that has been said on behalf of the crown might be that the circumstances were such as did not favour complete preparation; that is to say that the chief actor Kennedy was out of it and that some person had to do it on his behalf; that there was not much possibility of direct communication between Perera and Kennedy, and it would be suggested 30 to you as against the argument advanced by Mr. Pereira that the conditions did not favour a very complete and thorough coaching of Perera in the circumstances of the case, and that the interval may have been short. We do not know exactly the time accused was told of the final arrangements. No doubt he was seen by Mrs. Kennedy but we do not know what passed between husband and wife. But anyway it is pointed out by the Crown that the conditions were not favourable for Perera being thoroughly coached for the case which he had to meet. Of course it may be that Kennedy himself was uncertain as to the date. Whether that is likely or not I leave it to you to judge. But assuming that there was no misapprehension as to the date, 40 as to whether the date could have been fixed by any record I am sorry I did not ask him. Of course papers have been destroyed. We do not know whether he used to keep an Attendance Roll in the shop in which case we might have been able to check the presence or absence on that day of Hossen. But most of the books have gone. Well gentlemen, that is how the case stands. Mr. R. L. Pereira stressed the way in which Perera gave it up—his openness and candour in the matter. He said that Perera goes about and

that he likes to take petrol with him and not pay higher rates in outstations when he goes about. That is supported by the fact that he had other petrol tins in his garage. There are some people who have not a single petrol tin in their garage because there is no occasion for it. But there is no doubt that Perera had.

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Now the next question is the preparation of P32 and P39. This is a very important phase of the case and I shall have to summarize it as much as I can. One does not know what one is to omit in a case like this, because one does feel sometimes that one might be omitting something which might
10 be of use to the prosecution or the defence. If there is any point in which I am wrong I shall be deeply grateful to Counsel if they draw my attention to it. Now gentlemen, as regards P32 the first thing to note is the impression you will form of P32. Suppose this came into your hands; you know nothing about it; what impression will you form?—Especially if you see the original. Could you form any opinion except that in the first place it is a record of the Wewelduwa Tanneries?—If you are asked to whom this file belongs you would say unmistakably to the Wewelduwa Tanneries. Then if you are asked about the goods referred to in the first page, can it seem anything else than that it is a list of the goods belonging to the Wewelduwa Tanneries
20 which were with Kennedy & Co. for a specific purpose; either on consignment or on purchase. But any way who is the proprietor? The proprietors are the Wewelduwa Tanneries. As a matter of fact the accused in one part of his evidence says it does mean it, but he says that is not the best way to bring in the real meaning. You are asked by the Crown to say that P32 was a document which was brought into existence for the purpose of supporting P39. Now though undoubtedly it formed the material upon which P39 was based, there may be doubts as to whether P32 in its origin had that purpose. I emphasise the words “in its origin.” Then let us see what the prima facie evidence is as regards P32. P32 was available to Mr. Kennedy.
30 P32 was not produced before Mr. Ross. In fact before Mr. Ross the accused took up a curious position. Whether it is in the position which he would have taken up if only part of the goods had been destroyed, namely, the goods in the basement, we do not know, but there is no doubt that he was faced with a position of very great difficulty when he found that the fire had entered to the destruction of his entire stock. To Ross he said that he had kept no record of the purchase of these articles. Taken literally it would mean “no proof of purchase,” but taken in its larger sense it might mean “I have got no secondary proof.” Now there is no doubt that if P32 was bona fide, it would have been proof to a certain point. P32 shows that these
40 are existing goods and that he bought them. So that P32 might have been used to support P39. But we have the fact that it was not. And we have got some evidence—it may be difficult evidence to judge on—but you have got to do so as best you can. But fortunately you got on this point the evidence of Mr. Ross. I think there was another quality about Mr. Ross which is worth noting in this connection. He struck me as a man who would not like to say anything to the prejudice of anyone without being certain of it; in other words scrupulously fair. You have got his evidence and it is

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supported by the evidence of Superintendent Koelmeyer of the C.I.D. that Mrs. Kennedy had a reluctance to pass over P32. Taken at its reducible minimum it would mean that she was reluctant or unwilling or did not wish to part with it, or suggested that it was not necessary to them. Now the inference to be drawn from that is that there were certain reasons—if you believe the facts of course—Mrs. Kennedy denies it and it is a pure matter of a Jury's belief of witnesses which I cannot lead you on at all—All I can do is to draw your attention to the people concerned. I told you that about Ross. If you think that Ross is a person of another temperament—namely, careless or one who would pass judgment without thought, give it that effect. As regards Mrs. Kennedy there is her denial. Do not rule out her evidence simply because she happens to be the wife of the accused. A man might under certain circumstances have to call his wife or daughter to support him. You must consider it carefully. But it may be that where you have got evidence of an interested party conflicting with the evidence of a party disinterested, you might incline to the evidence of the disinterested party. You must judge the evidence as carefully and as fully as you could and give full effect to it if you believe it, just as you would in regard to the evidence of another witness. You have got to be careful gentlemen. In one case you might have a witness utterly impartial and entirely unconcerned with the results, and that is Ross' position in this matter; he is a valuator, and he has got no personal interest in it, nor has he any business interests. On the other hand it might be said that a wife would naturally support her husband. But you cannot reject her evidence on that ground alone. 10

Then we come to this that at the time the claim was made the accused did not put forward P32; that much is certain and that he did not wish to put it forward is certain if you accept the evidence of Mrs. Kennedy. What then were the reasons for that? I shall deal with that after the adjournment. 20

ADJOURNED FOR LUNCH. 30

AFTER ADJOURNMENT.

I told you gentlemen, that the evidence is that of the evidence of Mr. Ross and Mrs. Kennedy that there was at least no desire to place P32 at the disposal of the Police and it would also necessarily be that at that time, it was thought, that they would get advantage by P32, that does not mean that P32 was made for that purpose. In this case there is a passage in the evidence where in cross-examination it was suggested it was only in the form of a suggestion, that P32 had been shown to Mr. Watkins but Mr. Watkins made it clear that he had not seen P32 so that I must take it that P32 was not there, we don't know, but at that time so far as we can judge there was no intention of supporting the claim of P39 by P32 otherwise when P32 was found, it should have been for that purpose. P39 is a catalogue of skins, but here is a document which shows you that as far back as 13th July had he these skins in my possession. It would at any rate establish the existence of the skins. Now P32 consists of two parts, there is a part of 40

it which deals with the T/C. skins which were the skins which Kennedy said were his private property and, there were the brushed skins. Now the opinion which you form of P32 and Perera's connected account will probably influence your judgment, when you have to consider whether Perera is a truthful witness regarding the disposal of the petrol tins, and I will tell you why P32 was written by Perera at the request of the accused. If it is a genuine document in the sense it is a list showing it entitled the Wewaladuwa Tanneries 13th July 1933 Messrs. to Kennedy & Co. skins for touching up must be ready by August 1933. That means that the skins were received by the Wewaladuwa Tanneries and that they were ready for shipment in early August. I don't think that part of the case where these brushed skins about which Kennedy wrote to the Bank were the skins which he was going to send in complete liquidation of No. 2 overdraft by the end of September.

The Crown said those skins never existed, that it was fiction. The Deputy Solicitor General gave you the reason. The demand by the bank for the shipment of skins by the end of September was so urgent and the circumstances were so exceptional that the suspicion which Graham had and, the demands which were made of him that if he had the skins he would have sent them, and if he didn't send the skins he did not have them, for that was really his point of view and what he said about the fiction part of it.

The second part was fiction. The skins were never sent. There were no brushed skins which were referred to in P56. Then this was written to create evidence. Of course if he had the skins there is nothing in this except regarding the discrepancy of the date, because in July, Campbell Carters & Bros. say they were never brushed, Perera says this was a small job, it was a matter of a few days, and he did not charge for it, so that if you accept the case as regards the skins which were to be sent up at the end of September which was presented to you by the Crown and that Kennedy was only marking time till the end of September, then you must come to the conclusion that Perera was a party to the fabrication of false evidence. If that is your conclusion on that point that will no doubt influence you on the point whether Perera did take the two tins of petrol from Kennedy.

You see, gentlemen, the enormously important part which the tins play in this case, because if you say that Perera took those tins of petrol from Kennedy and took them to his house and put one in his car then there is nothing to consider in this case and the case fails, and you come to the conclusion of critical matters. I shall endeavour to put the case before you as strongly as I can and I leave it to your judgment, but your belief of the evidence of Perera as regards the tins doesn't rest on your conclusions of that incident alone. It will largely depend on that, but it will also be coloured by the conclusion you come to regarding the brushed skins. If P56 was false and there were no skins to be sent and it was only to mark time till September came Perera then is a man whom Kennedy could utilize for creating a false document and Kennedy probably used him he being kind of heart and because of his good-will towards him. He would

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be what is called a corrupt man, and he would have done it if he was asked to do so, but if you hold that the brushed skins did exist then there is no doubt you are led to a train of thought in a number of ways because of your belief of Perera, if you believe Perera on that point—you need not necessarily believe Perera about the petrol tins, but you will be reluctant to disbelieve him. Then accused has clearly himself to blame for the charge of fabricating evidence trusting at any rate to the brushed skins which would act largely in his favour regarding the T/C. skins. I left off my consideration of the point of view to consider what might have been the original intention of P39 that one gets in the hope of making a claim, you have got very good evidence that it was intended to be a support of P32. 10 if they wanted to support it by P32, but before we go further, I will have you refer to the private skin transactions and as that plays a very large part in P32 I suggest that you should consider it from that aspect.

Now again you are on a point on which testimony is sharply divided. The accused says it is true, it may be, that it has become involved by my manner of dealing with it, you will have to deal with every aspect of it—it might be inaccurate—but on the one substantial question whether the stocks existed is it the absolute truth they existed. Now the only question for the present is did such stocks exist. Now on that point the contest has waged keenly in the evidence and in the arguments put before you by Counsel. I don't think there is anything that has been said, which can be said that it has not been said. 20

I shall come to that. Did this private skin stock exist or not?—It is an important point. If they did exist then there are possible explanations of P32 which though literally untrue may have been made for a purpose.

So you have now come to a point where you have to make up your mind definitely one way or another. Here again you see one of these important landmarks in the course of your examination of this case. You got to note them. You got to know their bearings in order to know where it leads you too, and you really know that by making up your mind as to what that landmark represents, what it stands for. 30

Now, as to the existence of this stock you have got a mass of oral evidence. You have got the evidence of accused, of his wife, which I told you to consider carefully, and you have got the evidence, and its a large mass of evidence, of employees of the accused, who speak to the bringing over of Kennedy's skins from Monsoon Lodge to the basement after the arrival of Kennedy in Ceylon.

Now, I do not think it necessary that that evidence should be read to you. It has been led before you, it has been detailed to you by Mr. Pereira it has been reproduced by Mr. Obeysekera and if there is anything in the details that would help you I would go into it but I do not think it does, and in omitting the reference to the details I am doing nothing that will prejudice the accused, because I will tell you what my reason is. Because if the only evidence in this case—suppose there was no P32 in this case, no documentary evidence of any kind, no letters to support, and suppose you had to find out upon the oral testimony in the case whether skins were 40

brought from Monsoon Lodge to the basement after the arrival of Kennedy in Ceylon. You have witnesses of various classes speaking to it, different stations of life and different positions in the firm. You have got the evidence of the head of the firm one of the earliest assistants Ogle, Sangaram in the basement, John and Claessen, supported by everyone of his staff.

Suppose that was the only evidence. If that evidence were to have come up before a civil Court. Let us assume that this is a claim for damages for recovering the money due to fire and it was contested by the Insurance Co. in a civil court. The court might say "Though there is oral proof by those people we will not allow a claim unless you can produce the receipts other than a mere statement by the employees that you have got this, and possibly in a civil action that evidence might be rejected. But if you are trying a man in a criminal charge entirely different considerations of evidence prevail. A civil court can say I am not satisfied with your proof. I reject it. It may be true, but I am not going to allow a claim over a lac of rupees unless you can produce documentary proof. But when it come to a criminal charge you have got to prove the thing to conviction, and therefore I say that if there was only that evidence it would be hard in a criminal case to reject that and find that the accused did not bring over that stock. Therefore you come to this; That its difficult to decide the existence of that private stock in Monsoon Lodge on the oral evidence alone. And if that oral evidence stood alone I would advise the jury, "Well there is a mass of evidence. It is true it is the evidence of his employees and employees are apparently men who are devoted to the accused, but at the same time you cannot rule it on that ground. If there is no evidence to the contrary I would advise you to accept that evidence and hold that he had the goods." But it is not the case we have got here. The Crown has not only to meet that case, the Crown takes upon itself to say there are certain intrinsic improbabilities in this. In the first place its not likely that such a skin a/c could have ever existed and ever have developed to those proportions, nothing that could have assumed these enormous proportions of Rs. 85000/- worth, in Monsoon Lodge, when it was brought over. It does not matter whether 80,000 or 90,000. Both represent a valuable stock.

The Crown says there are circumstances connected with that, and the evidence relating to the acquisition of those stocks is evidence that is entirely unreal. That we have to consider.

Then the Crown says, "We have a means of testing this claim by documents because the claim that these private stocks existed does not depend on the evidence only of Sangaram and others in which case it will be difficult for us to attack this evidence. This evidence is based upon P32 and that evidence we can attack and show to be false, and that P32 is a document that has been created for the purpose of evidence, untrue document created for that purpose. So that in those circumstances though the oral evidence would be in favour of the accused there are as regards the stocks strong tests to be applied, that it will be almost unsafe to go on the oral evidence in that case. You may say what is the use of considering whether Sangaram or John is telling the truth about the skins that were

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brought there—can they give us an idea of the amount of skins brought? It may be 30 bundles, 40 or 50 or like that—when we have got certain features of the case for the prosecution to which we can apply certain tests from which we can ascertain whether the existence of the stock is effected or not; in other words there are certain matters which will respond to that test.

Take P32. Is that a genuine document that existed? If that is a false document are you going to believe that there was a stock because Sangaram and others say so? If it stood at that it would have a very great effect indeed if there is no evidence to the contrary. It would be hard to accept that because it comes from the employees of the accused. What can be said for and against the existence of this private stock? 10

Now, it started a long time ago and it has been not increasing without deductions, that is to say, he has bought and sold, and when he says that this was his stock at the time of the removal from Monsoon Lodge about 17th July, this represents I take it the results at that date of his private trading in this separate line.

Now, the Crown says that this is entirely a fantastic story; that there is no reality in it whatever. That is for you to judge. In the first place it is suggested why should he do it? 20

It was not until 1931 that he started a separate account for skins. Before that his business in skins had been very considerable, and it was a very successful business. Take 1929. He made a gross profit of Rs. 49000 in skins, in 1930 a gross profit of Rs. 45000/- in 1931 a gross profit of Rs. 44236. At that date he had no separate finance for skins from the bank.

Now, it might be said that if he was doing his skin business on ascertained ear-marked overdrafts that he might side by side with that do some business that was not referable to that overdraft; that is to say just as he had done a general skin business he might do that, but the money that was coming into it goes into this general a/c and it might be the skin a/c of Kennedy & Co. but entirely apart from the particular overdrafts that had been drawn—overdrafts which he might postulate were on particular indents which had supplied particular skins. 30

This private a/c was started and existed at a time long before any separate a/c for skins, separate overdraft for skins was started that was in 1931. With the No. 2 a/c where was the necessity for it? It has been kept separate as skins supplied by accused spoken to by Mrs. Kennedy. It is for you to judge the truth of it.

One reason would be that he brought into it the money of others than himself, and that might be a good reason. He brought in his wife's money and he brought in Miss Kennedy's money. Miss Kennedy's money was rather a large sum. For 10 years she put all her earnings into the purchase of more skins. Rs. 250/- a month of her earnings for a period of 10 years has gone into the skin business. There was also a little more private money that Mrs. Kennedy brought with her, and all that went in, and this was done. 40

I can readily understand a man who was doing a business in skins as Kennedy & Co. having a venture into which he took his family; a business not dependent upon the risks of the general business and so on, but a separate and distinct transaction which he carried on as an investment given to members of his family—to put money into a thing that gave a good return.

The difficulty says the Deputy Solicitor General on this point is this: that this separate skin a/c is one of such enormous importance in this case that it was almost obligatory in this case to call everyone of those who contributed the money into it and one was Miss Kennedy and she was not called.

It was not a matter so much of Kennedy saying that he had a skin business of which he was an owner. There was a skin business of which Mrs. Kennedy and Miss Kennedy and Kennedy were the owners and each of the others had the same right in vindicating the rights of their business as Kennedy himself. That is one line of attack that was made on that—the absence of the evidence of Miss Kennedy and another suggestion is how is it that no documentary proof of that can be reproduced.

Now the accused has pursued a course of business which in some ways, might, from the point of view of the prosecution be said to be of an advantage to him, but which from another point of view might not be. He has not been in the habit of keeping all his papers and documents in his office. He says he does a considerable amount of his work—it may be perfectly true—in his house. He takes home every day his Code Book. He says his stock of skins private and of Kennedy & Co. were in his Rough Stock Book that he kept; that the summary of P39 he takes back every day. He gives an explanation which may be perfectly true. He says that cables came very often to his bungalow. There is no reason for doubting that he does a good deal of his work in his house. He might have to refer to his stocks and so he takes some papers with him. He says he takes his stock book and that he keeps a safe there into which he puts documents. He is a careful man. Because you remember P39 and P32 were kept in his safe. That denotes an unusual amount of care. I have not been in business myself, gentlemen, and I do not know whether most merchants in Colombo take home their papers and put them into a safe but whether that is so or not would be best known to you gentlemen. Anyway it argues an extreme degree of care. It might be said “Is it not rather strange that he cannot produce a scrap of paper, a memorandum, a document, or anything which would show the contributions due to each party?” It was a family business and Mrs. Kennedy says that they were trusting to the accused to do everything. That undoubtedly is a reason but it might be suggested in spite of that, that a member of a family who handles monies of others of his family would make a record or have something to prove, not even how much was due to each party, but the existence of that separate business. The case against that is that the partners were the accused, Mrs. Kennedy and Miss Kennedy; that his wife trusted him entirely. His wife naturally would. Then there is the comment of the Crown of Miss Kennedy not being called.

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That may be a misfortune to the accused, but there is no doubt that it detracts from proof of the fund. Then there is one curious feature in that I asked the accused "What happens to the proceeds of the skins where you export skins to England?" and he said they go into the account of Kennedy & Co. The shorthand note I think has it in the form that all proceeds go to Kennedy & Co. account. That introduces a complication into this private skin account administration. Because if the proceeds of sales of private skins go into Kennedy & Co. then we know that there are no drawings out from Kennedy & Co. for any personal purpose other than those stated in the books; except such as is drawn by Kennedy as his own share of the business. So that if Kennedy personally and Mrs. Kennedy and Miss Kennedy had to get back into their private skin business the proceeds of any skins sold in England, they could only get it to the extent to which Kennedy could receive out of his drawings. He has never drawn up to 2,000/- a month. That 2,000 would be paid to Kennedy & Co. This is a very important point. Because he had no private account except that household administration account in the P. & O. Bank. So that the sales of the private skins went to Kennedy & Co. Then in what sense were they private? If he was able to take that out again for his private skin purposes he could only do it to the extent of his drawings 10

(At this stage Mr. R. L. Pereira interrupts and states that there is no evidence that it went to his private skin business.)

(His Lordship reads from pages 369 and 372 (Record) on this point.)

Q. You say that if a particular parcel of skins from your private stock was sold the proceeds would go in the first instance to the credit of Kennedy & Co.?—A. Yes.

Q. Do I understand you to say that you adjusted your accounts by putting skins into your private stock of skins?

Q. Would your books show that you had been buying skins with the company's monies to replace your private stocks?—A. My rough book will. My books which I kept for dealing with dealers." (Deputy Solicitor General refers to the same page.) 30

You see, so the position is this. It may be alright but it is so complicated. Goods are sold to England and comes into Kennedy & Co. Then the money cannot be drawn out of Kennedy & Co. as such. That much is clear if Kennedy is to get that for any purpose—for the purpose of buying more private skins, he can only do so to the extent to which he can receive out of his Rs. 1000/- or Rs. 750/- that he draws a month. But it is adjusted in his stocks. But then we come to the explanation which Mrs. Kennedy gave. She gives you an instance of the private skin a/c how it was done in some cases by writing the skin account of Kennedy & Co. and taking it over and putting it to the private a/c. Are you disposed to accept it or not. So far as that explanation goes there are certain other tests to be applied. But of course there is absolutely no record of this. Then as regards the stocks you must remember this, though it is a little alien to what I am doing now. When we speak of Kennedy's stocks and their being written down and transferred from Kennedy & Co., to the 40

private a/c that those are not matters in which the Auditing Firm—I mean Mr. Watkins, can sponsor in any way because Mr. Watkins was never shown a stock book. He was only given stock sheets. So that evidence depends entirely on oral evidence and as it so happens, it is unsupported by any document or memorandum of any kind. But of course you remember what they say—it is a case of husband, sister and wife; complete trust; everything left to Kennedy; our ship will run home and we will have a good profit. But the Crown says that these are very good reasons for believing that this is all fiction. That the private skin a/c is brought for the purpose of this fictitious claim. That is one means of testing the reality or not of the private skin a/c. There is another matter which is circumstantial. It might lead you to the strong view or it might not, that is, as to the question of the insurance of those skins.

You have got the fact that at this time and prior to the 17th July before the stocks were brought over from Monsoon Lodge the skins would only be covered to the extent of Rs. 50000/- but supposing we take it at more. (See page 139 (Record).) Of course it is not a matter that could be found out exactly because the general stock had been insured together with the furniture and it was a matter of determining the proportion, but on the 17th July when he says the private stock was brought in there according to P32, a policy is effected for Rs. 125000/-.

What is meant by trust goods is another question, but that is not necessary for my purpose. What I want to tell you is this: we find at Monsoon Lodge which he occupied, the general stock there had been insured, and Mr. Ogle says that the stock that came out three months before was not taken into the Times' because there was no room for it. He insured his general stock that was there. He insured his household furniture for Rs. 4000/- but not his skins. Let us see what his explanation is because it has to be carefully considered. He pointed out, and so far as the fact goes, he is right there, that any skins he bought on the overdraft he is not obliged to insure. There is some conflicting evidence on the point, but he says he was under no obligation to insure this. Do you think it was a sufficient reason? That is why in that statement so far as it goes, he is correct that he was under no obligation to insure them. He would have been absolutely guilty of a breach of faith with the bank if he did not insure them. If he had insured his goods for Rs. 4000/- is it likely, asks the Crown, that he was under no obligation to insure them, though most people would do it. Would he insure his own goods for Rs. 4000/- and not insure the very valuable things in the basement, though there is evidence that the conditions in the basement were safer against a fire than presumably a house, presumably, I say because a point is made that it was built of concrete. Of course there are arguments both ways. If there was a reason whether in a bungalow there was less danger of fire because even though it might and, the possibilities would be a complete destruction of the things, but these fires are rare. The store might take fire at night and if it was a slow fire it might not have been discovered till morning, but in the case of a bungalow the case of a fire going undetected is less probable but at the

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same time you must remember that a person who will insure them or not will depend on who that person is. There are many people who have nothing to do with commercial explosives who never think of insuring their goods. They never attach the slightest importance to it. You are aware of those who have got to do it, and they are persons of regular business men in commerce and trade and with such people it would become, if I might so call it, a habit, but you have got this fact that though the personal property of Mr. Kennedy was insured for a very large sum of Rs. 4000/- from what he told you, he lives very carefully, he put his belongings at Rs. 4000/-. This is not a very high amount for a bungalow in Colombo but yet he did not insure these things. What has been said for him, and the Crown says, the evidence is strong proof, that there were no such goods. 10

Now here are one of the matters which will incline your opinion one way or the other. We have it in evidence that the skins were brought from the bungalow to the Times in bundles of 20, 30 and 40 so that these are matters which the crown urges there is no proof that they existed. No document was produced of any kind. He says one of the largest contributors to the business was Miss Kennedy and then Kennedy's failure to insure them. Then that is the position regarding the skin stocks.

The accused has said that Campbell Carters & Bros. knew that he had a private general account, whether that meant that they knew that he traded in skins apart from these overdrafts nobody knew better than Campbell Carters & Bros. who had set him on his feet, but nobody knew Kennedy had his skin account that, he, owned skins and not as Kennedy & Co. There was one reason which may make you doubt it, and that was he was offering to Campbell Carters Bros. in which he referred to them as T/C. skins, skins which he had obtained from outside suppliers. What is simpler than to say my own skins, my separate skins. The point is not very important except in connection with one letter and that is P66. 20

I now come to P32, the question from which I diverged in passing from these things. Now he says and, I don't think he says he did not say it before, because he was not asked it, where were the skins. It was not on No. 2 or No. 3 account. There is evidence of Kennedy that it was made when he wanted Perera to note them, that he might remember them when it was sent for dyeing. 30

Now, gentlemen, I will ask you whether you do not think there could be only one meaning to be attached to P32. Regarding the genesis of P32 how did it come to be in existence. Now you have got an account of that in the evidence of Perera and of Kennedy. Perera's account for one thing is that he wanted to get Kennedy out of any difficulty. He said Kennedy asked me to write it and I wrote it. He wanted the name Wewaladuwa Tanneries written on it and he goes even one better than he was asked to, he cuts out the printed heading of his note paper and pastes it on the file. That is Perera's explanation, but from Perera's view it was a harmless document. Perera reproduced the purpose of it, but he says he wrote it to Kennedy's dictation, he copied them and destroyed the memorandum. Kennedy says he was under the impression that Perera 40

took them away, and I hope you will try to understand it because it is an important feature in the case, because it is difficult to appreciate or rather in the first place it was difficult to understand. In short Kennedy says this was a list of skins that he intended to be given to Perera to be dyed.

"I got Perera to make a list made of the skins I intended to hand over to him. That is list P32."

The further evidence of his suggested that he did so in order to impress this upon Perera. Now I found it difficult to quite follow that this was a special process Perera had to adopt, and Perera had to be given a list before the skins were given to him in order that he might get the factory into condition for work and that is to say that Kennedy's position would be this I will be sending you in the course of a month or two a large amount of skins and you will have to make arrangements for dealing with them. I don't know what you will require further apparatus, but I give this to you in order to make you ready to deal with them, but this is not the case, and if this was so, it was a list made by Perera to and given to Perera so that if it was a list of work that would be a document that he would keep with him when the stock was passed to him but the document was not given to Perera and further that is not the case of Kennedy. His case is that he wanted this man to write it as being an aid to his memory. There is no doubt that writing a thing down it is better than if one makes a mental note of it. What is the possible reason for Perera to keep a mental note of things sent to him to be done. It is not the case that the list would have been taken by Perera. Perera says he tore up the memorandum. Whether that is true or not it is for you to judge. This account is not too satisfactory.

I have summarised the evidence on the point. I think I have summarised it accurately. I am most anxious that I should not make any error. And the difficulty that one encounters in dealing with this case is not so much on what you will say but how much you will omit because with 32 days of evidence it must necessarily follow that I must condense my evidence to some extent.

I think it is not necessary for me to read that evidence over to you again. I am open to correction if that summary has not been reproduced correctly. You have heard that evidence. I think your memories will help you.

It was not a matter of passing reference to one or two questions. It was a matter which we went through fully to put it to Kennedy. I even went to the extent of asking the accused to draft out what would be a proper memorandum to make such as P.32 purports to be, and we gave him the best opportunity to explain it.

He was cross-examined on it by the Deputy Solicitor General. He was cross-examined with proper regard to the difficult position in which the accused found himself. There was the best opportunity of the accused giving an explanation to it.

Well, I told you gentlemen what his explanation was, that it was written so that Perera might become familiar with the goods. Now, was there a reason for that document being drawn up in that form?

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Let us see what Kennedy had to say regarding what he would have done had the offer of the T/C. goods contained in the telegram P66 being accepted by Campbell Carters in October.

Now, this one thing is certain that the letter P.66 said " We control stocks from outside suppliers " then it went on to give figures of the last 3 items, and then " not financed by us ". Then it went on to give the 1st 3 figures of T/C. items in *P23 ?

Suppose for a moment Campbell Bros had asked Kennedy " Will you let us have a full statement of all stocks which you control from outside suppliers ", could not *P23 have been sent on with a covering letter to Campbell Carters. I asked accused whether he sent it. I am a little doubtful regarding the answer but what he said for certain was that he had sent particulars of the items from it but not the document itself. But if you went on to ask why a document like P.32 should have been drawn up there is quite a sufficient answer to it. Campbell Bros wanted to know " you have sent us particulars of 3. We should like to know what you control ". P.32 will give you complete information on the point. Here was a document by the Wewelduwa tanneries showing stock which he held for consignment or sale. 10

There apparently was a reason for Kennedy keeping up the impression that these things belonged to outside suppliers. When you use the word " outside suppliers " you must remember that that word will look a little artificial. It might mean Kennedy himself; not Kennedy & Co. But the distinction would be rather a fine one in certain circumstances which I will tell you. 20

If Campbell Bros knew that Kennedy was doing his own business then I see no reason why P.66 should have taken that form and why he should not have said, " We hold our own skins." But there comes this difficulty that if he was sending skins on that basis Campbell Carters had to get a lot of money from him. It remains to be seen whether Campbell Carters did not believe the possession of it. Rather than sending them here is Kennedy telling you in clear words that his object in adopting this name was that he might have control over the buyers. There is nothing improbable if that is so. 30

That leads to something more. (Reads from page 402 (Record) of record). He stated when questioned about the telegram P.66 " I did not want to disclose to Campbell Carters Bros that the stock was actually mine ". That is a plain statement which is followed by words which have no meaning,—and there was a very good reason for his stating that,—" by these words I mean Campbell Bros and myself " which makes nonsense of the previous statement. " I did not want to disclose that the stock was actually mine ". By the words " us " I mean controlled by us. Is that a statement, correct or misleading? So far as we know he did finance himself. But the important point of it is that he did not want Campbell Bros to know that the stock was his. So he had a reason for doing so. Let me read these passages to you (page 403 (Record) of the record is read). 40

Credits are opened in order that he might buy, not in order that he might forward skins that was already his own when he was liable to Carter's and Co. (Reads from page 408 (Record) of the record).

So that you see he had a reason for it.—call it what you like, deception, misrepresentation.—or keeping away from Campbell Bros the fact that these goods were his own. The important point is this: We are commenting upon that. We are not trying the accused for lack of candour as regards Campbell Bros and Co. and for his seeking to get the full price for those. If he consigned it as outside buyers' goods the whole price would
 10 have to go to the outside sellers. As I say we are not trying him for any deception on Campbell Bros and Carter's. We are only dealing with these positions so far as they reflect or prove an intention that these stocks are non-existent.

Now, here you come to a matter that requires some thought. This aspect of it is probably put by me a little more fully it may be than the accused himself would have cared to have done. I am not speaking of Counsel. Because there is no doubt that accused would be extremely reluctant to make any admission of any conduct that came from such a high standard from Campbell Bros. This would not necessarily mean that
 20 Campbell Bros would be done out of their money, but it would have been very doubtful if Campbell Bros would have known the distinction between Kennedy and Kennedy and Co.

But he wanted to represent it as goods of another that he might get the whole price to have the distribution of it. He might apply it to the payment of his debts, but it would be applied as he thought right.

These are the T.C. goods private skin goods. Can they be applied to Kennedy & Co. except personally by Kennedy. It must be that when they came to a different situation created by the depression none of them raised any objection. If it is the fact that they were entitled to those
 30 private skins it was just likely that they would have used the whole of it for the establishment of Kennedy and Co., on a sound footing.

Well Gentlemen, what I want to show you is this, that P32 might have taken that form for a purpose, and that that is a possible purpose. This much must be said in support of it; that if Campbell Bros. had said "Now let us see what stock you have got from outside suppliers" P32 or a copy of it would be sent. Does it necessarily follow then that those stocks do not exist? It may be that that document was used for that purpose and might have been primarily devised for that purpose. Then came a situation when Kennedy knew that he had to prepare—this is the case for
 40 the prosecution—some proof of stocks in the basement to this fictitious value. He falls back upon that document and takes from that document particulars which he incorporates in P39. The necessity for that would be this, or rather the advantage would be this, that quite apart from P32 itself, the mention of those items in P39—I am speaking particularly of those first three items in P39—would be open to the criticism that it was something imaginary; that he might say to Campbell Carters "Here are the goods I offered in P32," So that though P32 might primarily not

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have been a document for the insurance Company, the details might have been taken from P39 if a fictitious claim was made. I worked it out in some detail because it appeared to me on the case for the prosecution itself that P32 was not an advantageous one, and Mrs. Kennedy did not want to tender it. Under those circumstances I found it very hard to see how P32 would have been thrown in for that purpose. For a very important phase of the case remains if the charge is true, namely, that a wholly fictitious stock was to be written up and a record produced for the Insurance Company officials when the claim was made. As far as we can judge it is difficult to see how accused could have had any real confidence in the success of that claim. Or it may be that he did not put forward P32 because when the claim was made it was made under circumstances where he was a suspect. If you took the case as put by the Deputy Solicitor General what did happen was something that accused never anticipated. If his projects went through, so it is said, there would have been a fire not of very great magnitude, a fire which was confined to a basement, a slow fire may be which consumed the basement and then found too far damaged to be restored, and a claim put in for the skins, which would have been mostly for a sum under 1/3rd of the general stock, because 2/3rds were ladies' and gentlemens' shoes, and it is suggested that it was never intended that the things of the ground floor were to be burnt. Very well, then did he not think that if he made a claim for the destruction of the things only in the basement, that his P39 would go through? I do not know gentlemen what the methods of conducting business of insurance Assessors and Companies is now, but there is no doubt that Insurance companies are very reluctant to question claims; there is a tendency not to do so because it produces a feeling of distrust against Insurance Companies. At the same time they do require proof and I find it hard to think that any Insurance Company would have allowed the claim for P39 on P39 alone. I mean, probably without saying anything which passed through their minds, they would put it upon a very safe ground and say "Where is your proof?" We are extremely sorry if you have been unwise to keep no proof whatever; it is true your stock books have been destroyed;" It may be that if he was able to put up proof from outside sources to fifty per cent of the amount claimed, the Insurance Co. may have taken that as a bona fide claim and allowed the whole. They might not have had any reason to doubt his genuineness. But he had nothing. Is it that he put forward nothing because when he did put forward the claim he put forward a claim which was under suspicion at the time it was put forward, and for that reason did not tender proof, or was it that he had no proof whatever to tender? I find it hard to understand how he could have hoped to have got any vigilant insurance manager to allow it without proof. But that is a matter of speculation. Of course ordinarily if a man makes a claim you require proof. If he were to say that his proof was not available by reason of his loss of books it may be that an Insurance Company may say it is an unfortunate case because the fire has destroyed the man's books as well. But this we know, that when he put his claim

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forward before Mr. Ross, he did not think of putting forward anything else other than what was available to Ross, and what S. A. Perera said, and the Balance Sheet of 1932. It may be that Insurance Cos. would accept such claims in the absence of circumstances of suspicion and where the insured can tell them "Well, you cannot ask me to produce proof because the very thing against which I have insured has destroyed my proof". You must accept my claim from what you think of me as a man. I have been a merchant in a good way, been working up in big business; people trust me; I am going to a new shop and starting business there; 10 it is not to my interest to go burning my goods, and it is idle for you to ask me to produce proof when part of my loss is the destruction of my books". Whether Insurance Companies would have allowed that or not I cannot say. But if he had any proof he was not going to send it. It is either that or he had no proof. One thing is clear that he did not want to put forward P32. P32 he might have got through if he found an Insurance Company in a generous mood, but if he put forward P39 before them any Company would have pricked up their ears at once. If they allowed it without proof they would have done so out of policy. But if they found that they had a point upon which they could attack a substantial part 20 of P39 to the extent of Rs.98,000/- why, they would not be fair to their Companies if they did not take a point on that. Because the goods on the face of it were not his, and if it was said that he was liable to be reimbursed for the reason that he was under liability to Perera, here at once was presented a point upon which the claim could be checked, because it could be disproved from Perera's books. We will allow for the moment that though that does not exclude trust goods, that the claim could have been made. But assume that the Company was disposed to yield to the claim of Kennedy there being no suspicious circumstances; no reason to suspect anything unclean in the matter. It becomes simply a question of a man 30 making a claim and saying "I cannot prove it because my books have been destroyed". Under these circumstances if he put forward a document which enabled him to say that he had goods of Perera with him, they would surely have called upon Perera to show whether those goods of his were with Kennedy. If that was done the thing would have failed at once. Perera had no books and his consent could have only been obtained if he consented to go so far as to welter in perjury. Two fires coming at the same time would have been too much. He would have come forward and said "I wrote this at the instance of the accused; I never had Rs.98,000/-; Here are my books". It may be as a I say that 40 this was written for the purpose of showing Campbell Carters what stocks he could control, to send them on his offer P66. From that what do you infer? That stocks existed or not? The Crown view is that no stocks existed, and that that was nothing more than to keep Campbell Carters quiet for some time, by showing them that there were big things coming forward in the future, and that he could control outside suppliers and send them a great deal if they waited till October. That is his explanation. The Crown says he selected October because the 29th September was the

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date fixed by him for the fire. But if it stood by itself and considering the fact that it was somewhat misleading was it likely that it would have been asked by the defence that he could have invented P32 where the stocks did not exist at all, but immediately we are concerned with this point, if P32 was devised for another purpose the material might have been taken into P39 which was a list of stock which Kennedy might take to Ross and say here is a list of the stock which was burnt in the fire. Without proof will you accept it or not. You come back to this, as to whether he had a private skin stock or not, this is one of the things what might help you to decide. I don't think that it will necessarily help you to decide except to find that he gave you evidence of fictitious stocks and that you don't believe there was a private skin account. If there was one, there is nothing in this at all. You will remember, though, the points I have mentioned which I will not recapitulate. The documents are of no account, the proceeds of the sales being paid into the general account, and being adjusted in the stocks. That is possible in regard to P32. I have already dealt with the brushed skins earlier in P32, but you will remember what I told you, to apply your minds to the question as to whether Kennedy had stocks which were non-existent, your belief or disbelief of Perera, where he speaks to these things and if you think Perera has not spoken the truth, and if you find that Perera has merely lent himself in order to create false evidence in writing up the list of brushed skins and Perera would come forward and support the story which was given to him so that the matters are interconnected there. 10

As regards the figures of the skins I think there has been a little variation in the figures but may I give them from another point of view; the total in P39 is 146059/47. The T/C. items amount to Rs.98,455/03. That leaves a residue of 47,604/44. Then the despatches mentioned in P32 and not entered in P39, the latter ones, amount to 21507/57 that brings the residue down to 26096/87. Those are all non T/C. items in store at the time. Then if you subtract that from the 14000/- the residue is what you have got to put down to fictitious skins not coming under the T/C. designations. We know that the brushed skins were valued according to various valuations so that broadly speaking the fictitious items, are made up of T/C. items so that your opinion of those two will decide the question whether there was a private skin account stock or not. 30

Then, gentlemen, let us pass on to the circumstantial evidence on which the Crown relies; the first is one which was already dealt with and that he stood to gain money, and that he only wanted to get rid of inconvenient goods and gain money for non-existent goods. He says he would have been able to get rid of these stocks, that they were three years old. Then there is P32 and P39 which I have already dealt with. 40

Then there is the question of the petrol tins, and the circumstances relating to it which I have also dealt with. Then there is the statement of Kennedy regarding his movements about which there has been some controversy in this case and that question is one of primary importance, and whether he has given a true explanation of his movements on that day,

and when considered that explanation narrows down merely to whether he emerged from the basement or not. The charge against him is that he was in the basement and that he set fire to the things in the basement, and you have to consider whether that is true and whether he has given a true account of his movements. For that purpose I will have to take you through the evidence of Zain Ahamat and you will have to make up your minds whether you will accept that evidence or not. There is one circumstance which was not put before you,—but I shall refer to that when we come to consider it,—that is the evidence regarding the scientific descriptions.

Now we are going for our present examination on the basis that the building was in a ruined condition immediately after the explosion, in the condition it was found by Mr. Merry and Mr. Ferguson. If you do not accept it that it crumbled down at one time or that the floor gave way at one time, but I think that is clear on the evidence of Mr. Merry and Mr. Ferguson and Mr. Merry that it crumbled after the explosion and in the condition it was that if a man came up from the basement he could have emerged from the basement alive. The defence say it was not possible that he could have gone through the Duke Street Door, the most is that he would have worked his way to the extremity of the windows and got over the sill, and that is if you find that it has a bearing on the assumption that the explosion caused all those effects but if they did not the things are different. Now supposing we have got no exact proof, but that we assume that someone who had gone there five minutes after the explosion and who had been able to say when I went there the section of the floor between the switch stanchion and the wall towards the side of the chute had gone through, but no one can tell you this. There is no one who can tell you that he went there 5 minutes after and that the wall between the switch stanchion and the side of the chute had given way but suppose one witness in whose veracity, you had the complete confidence, such a man came and told you I saw a man coming out of the Duke Street Door, then what would you do. Would you disbelieve him in spite of all the claims he had to be believed or would you say that the wall came down after he came through. That is the position. When you are dealing with these points I say keep strongly in your minds what I told you at the beginning of the case that if you have any doubt you should give him the benefit of the doubt, if a doubt exists.

Let us test this evidence. I trust I have made it clear, and there is evidence which you might believe or disbelieve that the accused did emerge from the Duke Street Door, and then you cannot say that the wall came down for the first impulse of the explosion. We know, Gentlemen, that after the fire this place was drenched with water from the hoses. Let us see the evidence of Zain Ahamat which compels you to the belief that you are bound to accept the case. I don't think gentlemen, it is necessary for me at this stage to go into Zain Ahamat's earlier movements. It was necessary that it should be put before you before the fire had occurred. It is not necessary that the Crown should put in a programme of the

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movements of everyone so that you might have the facts at the end or that you have to consider how many of those facts are necessary so I don't propose to take you into the earlier stage.

As regards the witnesses generally I was about to observe he (Zain Ahamat) has received his little criticism, as a matter of fact it was said that he was offered a job by Mrs. Kennedy at the Colombo Stores.

Mr. OBEYSEKERA : I merely asked him if he was offered a job by Mrs. Kennedy. That is all.

HIS LORDSHIP : If a charge was made against Zain Ahamat it is now withdrawn.

As regards his character generally it was brought out that he was a creature or decoy of the Police. He had apparently earned his pension being a successful man I take it to have retired with a pension, and we know nothing against the man. 10

You have seen him in the witness box. So far as we can judge what his motives would be in this matter I suppose he probably felt well disposed towards Kennedy who has been occupying a substantial part of the Times building and it would appear that he knows him well, and Kennedy apparently treats these people well. There is no reason why he should be against Kennedy, but at the same time he had a duty to his employers, the Times. So we have no reason for thinking he is a prejudiced witness or other than an honest witness. 20

But with the most honest motives he can be inaccurate and we will then judge of his accuracy and see how far we can accept his opinion on this point.

The early part of his evidence—I do not think it helps very much. He was there talking with Mrs. Kennedy while Mr. Kennedy went in and Hossen went for the soda.

Mr. Kennedy went into the place, apparently the door was open until Mr. Kennedy closed one shutter preliminary to his beginning to leave, before he went to turn off the switch. 30

But as the case has now been presented before you there was nothing suspicious, nothing done in the ground floor that had to be concealed.

It is no part of the case of the Crown that goods on the ground floor were set fire to. The fire on the ground floor may have been secondary.

The damage on the ground floor has been greater than the basement and the goods had been packed more closely in the basement than on the ground floor.

Of course if there was nothing wrong being done on the ground floor there was no reason why the door should be shut, and there was nothing that Zain Ahamat could observe. They were waiting till Mr. Kennedy came out. Then occurred this explosion. He did not allow Mrs. Kennedy to go in, told her it was dangerous. Then he goes round puts up the watcher and in coming back he sees what he saw. He sees a certain occurrence the truth of which is strongly challenged. 40

His evidence in examination-in-chief on that point is on page 213 (Record) of the record. (Reads from that page (Page 214 (Record)))

beginning with "I opened the door of the despatch Dept.....
I went to the centre of the road."

From this what do you conclude? He said he saw him jump out of the Duke St. door. There is only one door; there could be no confusion about it. Having jumped out of the Duke St. door he turned towards Gaffoor buildings. That is, turned to his left. Then he would be facing towards Gaffoor buildings. He may go to Gaffoor buildings or he may turn and get on to the verandah of his own shop, or he may come on to the main Street door. He says "I came ahead." Because if it is true he
10 could not see what the accused did after that. All he is able to say is having jumped out, and he must have jumped out at right angles to Duke Street, he runs up Duke St. He went ahead and accused may have come on.

Now, there are many matters to be considered in that. Of course, from the particular statement which is said to conflict with what he made before.

If Kennedy got out of that inferno, and an inferno no doubt it was, by the Duke St. door do you think that when he went along Duke St. that he would have got on to the verandah of his own shop where there were cracks on his verandah and fumes coming up, which Owen said there
20 were, or would he not have got on to the road?

You try to reconstruct as well as you can the scene. We can fairly reconstruct it. We have got Mr. Owen's picturesque description which may be accurate for all that according to him he was feeling his way along first on the outer side of the building. And we know certainly at the main door to a very great extent and a lesser extent as you went towards the Duke St. end of the verandah there were fissures, on the floor it was more likely than not, if not flames, and smoke was emerging from those fissures.

Owen says that he was almost choked and that was the only time he went into the building. That is the account. So that in examination-
30 in-chief that is what he says.

The fact is that there is no express conclusion to be drawn from that passage in examination-in-chief of Zain Ahamat's that he necessarily went out and over to Duke St. till he got to Main St.

But you will ask yourself what the probabilities are. You cannot decide a matter on probabilities. You must have express evidence of a thing that occurred, but it may be true. But where we have matters coming up for judgment which are very doubtful and where we have to exercise our thought a good deal we must in some cases turn to probabilities and find out whether it is likely or not. Very well.

40 The point is of some importance because the presence of the accused in the verandah is suggested now,—I say "now" not because of any variation but because the accused gives evidence now for the first time,—he says he must have got out, though he says he cannot give any express account of it, apparently from either the end or the intermediate doors near the Duke St. side because he was met at the turn, when Owen was at the turn facing away from that end; in other words coming towards the

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Times he heard the footsteps behind him, felt a man behind him and then found that it was Kennedy.

Well, Kennedy if he was there and emerged up that spiral stairway must have come from the side door of the entrance. But that is the evidence on that point.

Now gentlemen, that evidence having been placed before you I noticed the statement which had been made to the Police.

I might tell you what the law on this matter because we have certain other evidence of Police officers too which has been used in this case to the extent to which they can be used.

The power of using that is left with the judge because it is a thing which must be used with caution. One cannot for instance direct attention to little verbal inaccuracies and contradictions which may be the subject of a debate because statements recorded by the Police are not always statements which are recorded with that accuracy and fulness as in Courts of law.

Recording of notes by an investigating officer as he is going along, going along, the quality of those records will vary very largely by the particular person who made them.

You may have seen as we all have in cases a record made by the Reserve Sergeant on duty is sometimes in faulty English sometimes uncommonly good notes, in my opinion. They cannot be all of the same quality. They must vary a good deal with the persons who records them but they could be used by the judge for the purpose of guiding the inquiry. He might put questions which might direct the inquiry on those lines and also illicit information; you can also use it for the purpose of showing that a witness gave a different version to the Police on a different occasion. But you cannot use it as proof of the truth of what he then said. The evidence that you have got to act on is the evidence that has been given before you; not the evidence given before others. You might think it an anomaly but it is clear law of our evidence and a good one. But you can use it to this extent; if the question of the credibility of a witness is before you you can say "You are telling me something here today, but you told something else to a Police Officer, therefore I doubt your statement here". But you cannot act on the statement he made there. So that is really the purpose for which these statements go in. And now, here when you come to Zain Ahamat if you think that he has made previously a statement that is contradictory, let us say that he has said that he saw the accused coming out from the front door, and if that was relevant, and here he said he saw him coming from the back door,—you cannot say that you believe his statement that he came from the front door, and act on it, but you can say you have given a different version before and I cannot believe what you say just now.

When Zain Ahamat's evidence was given I saw these statements to the Police and I could not put them to the Police and I could have put them to the witness myself but it was of such extreme importance and enormous importance to the case that I thought it best that the jury should have every statement made by Zain Ahamat.

What weight ought to be attached to them you will judge. How you will deal with them I will give you as a matter of law. And so I handed it down and I told Mr. R. L. Pereira that he could question Zain Ahamat on a statement that appeared here. I had to mention two statements for this reason. One was the statement that was—I won't say contradictory—but which certainly did not support what was said here. I was in some doubt as to how I should act. I might have kept it to myself and never put it before the Jury at all, and you would never have known of it. But I thought it better gentlemen, as this was a point of such importance

10 that you should know what he has said.

I was dealing yesterday gentlemen with the evidence of the exit of the accused from the building. I mentioned to you that there was evidence given before the Police which was at any rate not consistent on the face of it. I think that passage is at page 221 (Record). I shall have to give you the evidence fairly in detail. Now these are the two statements: (As the original is not available Mr. Ferguson states he would go and bring it immediately) The statement to Hooper reads "After calling the other watcher I came back to the Main Street, blew my whistle. I then saw Kennedy coming from the direction of his shop towards Main Street." That is the

20 first statement. That was made that very night. Then to Ferguson on the 5th October (His Lordship reads that statement). Now that doorway referred to means, as he demonstrated to you the other day, the Duke Street door. Now the question is whether you are prepared to reject or doubt—I won't go so far as to say reject, but even to doubt his later statement that accused jumped out of the Duke Street door. Gentlemen, when we use statements which are made to Police Officers they could only be used by the Court for the purpose of proving that a witness made a different statement. It is sometimes an important guide in determining whether what he says is true or not. This question of its being used is left

30 to the Judge and one has got to use these earlier statements with caution and care. Necessarily they are not all of equal value. A statement may be made under certain circumstances in which it would not be of the same value as when made under different circumstances or at a different stage. The value to be attached may vary with the capacity of the officer who records it. For you obviously cannot attach the same value to a record for instance made by a Reserve Sergeant as you would to a statement recorded by a Senior officer of the Police. So far as the capacity of the recording officer goes, Ferguson is far better qualified than sub-inspector Hooper; certainly it is better if it is done by a senior officer of the Police.

40 But there is this important point. That night when a fire occurred somebody comes in and he takes down a statement. The relevancy of the thing cannot possibly appear to him then. It could not have entered the mind of Hooper that there was anything in how accused emerged from the building. Then the words are "I then saw Kennedy coming from the direction of his shop". You must remember that that statement had to be interpreted and that Sergeant Carolis did the interpretation. Here is the expression 'coming from the direction of his shop'. To a certain

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extent it is vague but in idiomatic English we know what it means. It does not mean emerging from his shop, but you see him coming from a certain direction which leads to the inference that he came from his shop. If you see a person coming from the direction of his bungalow you would not say that he came from his bungalow but that he came from the direction of his bungalow. That gentlemen, is the meaning of the words 'direction of the bungalow', to those who know the precise words in English. But whether one could take this as meaning what it should mean according to proper usage of words or whether it is a general statement taken down by Hooper at a time when no idea of the importance of how the man emerged could have crossed his mind at all, is a matter for you. At that stage he had no idea that there was any suggestion of foul play in it. There had been an accident; the man comes from the spot and he speaks to the explosion, and he sees a man coming from his shop. According to strict and correct usage of words in English, assuming that they have the same knowledge of it as you and I have, then it would mean that he did not see him emerging from his shop but that he came from a direction consistent with his coming from his shop. What discounts that is as suggested by the Crown that these things are of no importance. Is it likely that Hooper being told this, would have asked him "I want to know how you got out of your shop". There is no relevancy in it at all and he would not have asked him that question. He might have only been concerned with a feeling of sympathy for a man who had suffered an accident. But when Zain Ahamat is examined by Ferguson he stands on an entirely different footing. Ferguson knew the importance of the various phases of the matter, what points were necessary and what were not, and one must take it that it was a statement got for the purpose of eliciting points, which Ferguson thought were important. To Ferguson it was a matter of importance how accused emerged from his shop. Hooper probably never thought of it. Still there are the two statements and I was very anxious that they should both go in. I followed in this case what is invariably my practice in criminal cases, and that is, that if I find something in the Police notes which I think would be of use to Counsel I invariably allow Counsel to have the use of it. But when we use these statements, we must use them with care and caution. Then we must take it that Zain Ahamat undoubtedly said this to Ferguson. Is it true or is it false? The point is of great importance in the case as I told you.

Now it is as a general rule safe, if you have got some evidence before you, not to reject it without a reason. If it is not inconsistent and there is no reason for doubting the honesty of the man giving the evidence, one would say "This looks true". In this case there are certain reasons advanced by Counsel why that evidence should not be accepted. I do not think Counsel for the defence found it necessary to go so far as to suggest that this evidence was deliberately perjured.

(Mr. Pereira states that that was his suggestion.) I had the impression that it was suggested that it was possible that this man had been speaking recklessly, and speaking to things that he did not see, that is, that he saw

Kennedy in the neighbourhood there, and as some men will do, converted an inference into a statement of fact. That does happen with witnesses gentlemen. But you have got Mr. Pereira's submission emphasised now, before you.

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10 But I put it to Mr. Pereira and you have got Mr. Pereira's explanation. We have witnesses who are not intentionally dishonest but still speak falsehoods. As I said before a man who has said a thing once before and then had contradicted himself, then one would ask one's self why he should have invented it. If he invented it he has no immediate purpose of his own. It is true he is an employee of the Times. If he had been tutored then there must have been someone who was interested in this.

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20 Counsel is perfectly entitled to state that a witness is a perjurer without stating what his reasons are. Counsel says that evidence is clearly perjured. It is not for him to say who has suborned him. Then Counsel asked you to consider to yourselves whether this man was a liar, or not, and how his evidence is effected by other witnesses. We then come to an important portion of the evidence and, you must keep your minds in the condition they ought to be until this verdict is arrived at by you. The accused has given evidence before you for the first time in this Court, but I might mention that his evidence was not available in the Police Court. A man is perfectly entitled to reserve his evidence for a higher Court. The state-
30 ment he has made to you I will not go into detail. According to the accused he stood by the switch and there was a blinding flash which he was not aware at the time had done an injury to his face, but he found himself on the ground. He can recall the burns on his ankles and striking one foot against another. He then battled through the flames. You might be able to picture to yourselves accused fighting his way through flames, and in places where he got through he was struck by the flames and eventually he got himself out and hears the voice which he supposed to be the voice
of Owen's and he meets Owen outside the building. The statement does
30 not pledge him to the exact point from which he got out but if you take that statement as true then the place from where he emerged would be one of the windows parallel to Duke Street. The accused was examined at the Hospital by the officer in charge of the investigation of this case, Mr. Ferguson.

40 The position regarding statements made by an accused to a Police Officer under our law is this. A statement which is a confession made to a Police Officer cannot be proved against the accused unless it is made in the presence of a Police Magistrate. If a statement of guilt amounting to a confession was made to a Police Officer, it cannot be proved against him but if the statement is exculpatory it could be proved and it doesn't become a confession by reason of the fact that the accused would be giving evidence at the trial. It might effect his case but it is not a confession. The statement that accused is said to have made to Ferguson is not a confession—it is an exculpatory statement that he was at the switch board and inferentially

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he was not in the basement. He was knocked down and knew nothing more. That is not a statement of guilt but it is an exculpatory statement. The statement is admissible; it has not been objected to, but exercise the greatest care in giving effect to it. You cannot act upon that statement as made by Kennedy as being true; all that you could accept is when he comes here and tell us you this thing occurred in this manner—Then he knew that he had made a statement before that statement which is in conflict with this. Then you can say we are not prepared to accept the statement which you made to me because you made a contradictory statement. You cannot go further. You cannot allow your minds to be influenced because the accused has admitted that he got out of that door. This aspect is important and you will have to examine Zain Ahamat's evidence and decide whether that was true or not. The accused's evidence was put in. And Zain Ahamat's evidence is there to negative and contradict what the accused says. The accused has made a statement before. Zain Ahamat's evidence remains unaffected by the contradictory statements of the accused before you in the witness box. Then what else is there to discount Zain Ahamat's evidence. Now before I go on to that I have to say a word—it is a matter on which accused relied—he should have mentioned it at that time. You must remember that Mr. Pereira does not admit that you can give full effect to the statement made by accused to Mr. Ferguson. He does not admit it. He says that accused was not in a fit condition, he was not in a fit state to say anything at the time. I cannot recall what I told Mr. Ferguson. The defence supports that suggestion from the fact that when a few days later Mr. Ross sought an interview with the accused at the hospital he was told not to upset and agitate him. There is evidence, gentlemen, and it does not necessarily mean that he was not in a condition on the 5th October in which Mr. Ferguson says he was. Mr. Ferguson says that the accused was anxious to make a statement. Mr. Ferguson says he was not sure whether accused has his false teeth or not. We don't know whether Mr. Ferguson knew very much of the accused and it may be that he did not notice whether accused had on his false teeth or not. On the question of his wanting to make a statement there is again a question of fact which you have got to decide. Mr. Ferguson tells you that he put the question in that form to the accused. It was never suggested that Mr. Ferguson had intentionally written down anything that he should not have recorded, and in answer to me Mr. Ferguson said he took down the statement in accused's own words. Mr. Ferguson is not a junior officer of the police force. He is a senior officer of the force. We must take it that a person in his position would not fail to realize the importance of recording a statement accurately. There is his statement that he realized the responsibility and recorded the statement as carefully as he could. Again that is a statement of the accused and you must look into that statement and see whether you find anything muddled or confused. This is what he said I have an idea that I was jammed somewhere. . . . I then saw daylight. I went out by the back gate over the chute. Just as I was getting out I saw Owen passing out over the gate.

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I think there is very little doubt that you will have to select between your belief of Zain Ahamat and the accused in this case on that point. So according to accused that is where he met Owen.

Now, is that a statement which bears on the face of it any evidence of confusion or is such a statement as would be made if that was really the fact. That is to say that he had got out as suggested from the basement wall just tumbled down and there was the expanded metal door. We can't know and we don't know in what position that expanded metal door was immediately after the explosion. The next morning it was found quite
 10 away from that across the road almost. Was it moved or not moved? At the inspection I tried to get out as accurately as I could from Zain Ahamath where the expanded door was when the accused emerged and according to him it was more or less on the ledge of the building or partly over, because I remember trying to find out from him whether the accused had jumped over it or stepped on it, on to the road.

But any way the fact is that according to him it was there. So there was some expanded metal door. In what position it was originally we do not know. That is what he told us. And I will remind you gentlemen. I have read the whole of that myself. He went on to say, "I cannot say
 20 from what part of the inside of the building he came. I did not notice the iron expanding gates. It was just as he jumped on to the road that I spoke to him."

It is perfectly true that in this statement he says he did not then notice the iron expanded gate, but that gate was there. But whether it was there when accused went through or not, whether it was flung across the road at that time, we do not know. But Zain Ahamath says the expanded metal gates were there when accused got through the doorway.

Well, now which of these stories is true? There is that point which Perera mentioned just now in the course of his address and he puts it to
 30 you as a reason for discarding the evidence of Zain Ahamat that whereas he was given a detailed account of the accused jumping over the expanded metal he told Ferguson he did not notice the expanded gates. They were down. They did not exist as gates of course.

Now, to come on to what is the more important test of the truth of Zain Ahamat's evidence, and that is, how is it effected by the evidence of Mr. Owen? On the point of probabilities gentlemen I told you yesterday that from that point of view if Owen is speaking truly when he says that he met accused on the verandah then it was not likely or probable that the accused had emerged from the back gates, because if he had been as he
 40 says contending with flames, smoke, within the buildings and if he "saw daylight"—I think it was a very accurate phrase for the man to have used as a figure of speech—but here there was darkness, smoke, flames, and outside was the clear sky above him; that if he had won his way out of this terrible situation he would have been on the road, and would not have voluntarily come back again to the verandah in the condition in which the verandah was.

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For that purpose let me just draw your attention to one of the early witnesses in the case, though I should like to read to you a passage of Owen's evidence on the point.

He was sworn for the statement he made at the scene and he says there. (Reads from page 227 (Record) of record). He said there was more smoke than flames. He said more of heat, but I would not read any more because this sufficiently conjures up a picture.

From what you see of the damage, the fractures on the verandah, there seems to be no reason to doubt that that is the condition in which it would have been. Very clearly, later, when he was examined more in detail, he said that he was walking on it with difficulty and I think that is safest thing to do for if it was dark and here were small crevices some of them big smoke coming from it, a man would have walked with great reluctance and care. 10

I put the argument because it occurred to me in the course of the case. I do not know whether any point was specially made of it but I am giving that evidence in favour of the accused, and if he had emerged from the doorway nothing would have induced him to come back again. Which is it? Of course for that you must believe Owen, but there is Owen's evidence so opposed to that of Zain Ahamat and also the statement of Kennedy made to Ferguson. Well that is an important point gentlemen and you will have to consider it, but as I told you this is all based on the hypothesis that the place was in the condition in which it is now. If it 20
it was not, then all our arguments go by the board, all our labours are in vain, and the thing would work both ways. If the floor between the switch and the entrance to that part of the building did not go down immediately, the accused must have worked his way from where he was, after having fallen down, the floor fell through afterwards in which event he might have been able to go through to Duke Street without even coming from the basement. That is if you assume that all this occurred within 30
the same time and that the floor was intact and the staircase was unobstructed and not covered by a fallen wall.

I threw out the suggestion in the course of the case—but I quite understand it that there is no evidence—but then one might say there is no evidence one way or the other.

There is a fair assumption that everything occurred at the same time. On that point there is certain expert evidence. On matters like that I doubt if you can have any expert evidence. If it had not occurred then it might be said that the accused might have walked from where it was to the outside unobstructed by anything. I qualified it with an "if." Well, but leave that out of consideration because after all it is all conjecture. 40

Let us take the case put by the parties. Mr. Pereira puts his case upon that basis that accused never did and as a matter of fact never could have emerged from that door. And let us go upon that evidence because that is evidence which we have been dealing with in the case, and that is we will assume that when the door was blown out at the same time the pillar between the switch fell through and the wall tumbled over the staircase. All things occurred simultaneously. That is the case which has been put

before you and let us consider that. And for that purpose you must consider Zain Ahamat's evidence and you must make up your mind which evidence is true. There is no doubt that is a point of extreme importance.

It will be claimed for the defence that there is no reason why you should disbelieve Owen. It is claimed for the prosecution that there is actual reason why you should not disbelieve Zain Ahamat, that to Zain Ahamat all these people are the same. If he owes a duty to any one it is to his employers, the Times. Of course if you believe that he is not responsible for what he is reported to have said to Ferguson and if you accept the statement he has made here then Zain Ahamat is speaking what is absolutely false. There is no question about that.

You remember that in the first statement the accused brings Owen into it too. He says, "I then saw Owen passing the gate . . ." Now that is how the matter stands.

Now, gentlemen, there is one point which I will go back to and that is the statement of Sub-Inspector Hooper. I began making my observations about it thinking I had it here. (The statement of Zain Ahamat to Sub-Inspector Hooper is handed over to his Lordship.)

Sub-Inspector Hooper has taken a very long statement. It is a very detailed statement regarding what happened before he met Kennedy who was waiting with Mrs. Kennedy and so on, and what he did when he heard the explosion. And how the lights went off and then he goes on to say this, "I then saw Mr. Kennedy walking from the direction of his shop towards Main Street." There is significance in the words "I then saw"; that is to say, that he did not see Kennedy at all when he passed the point of the door, but saw him after that. Give this, gentlemen, your most careful consideration, and I trust that the conclusion you come to on that point will be the right one because no doubt it is of great importance.

Now, gentlemen, I was going as far as possible in chronological order, and I did not deal with the question of the petrol tins earlier because that was found after the fire. But let me deal with it now because it is of considerable importance. We shall then pass on to the burns on the accused and so on. Now what is the evidence? There is no doubt that they had been moved and placed on the verandah. Not one of the lesser officers connected with it now like to take the responsibility of saying that they did what would have been an extremely sensible thing, namely to take them to a safe place in the verandah. But I do not think it can be seriously doubted by you that that suitcase contained both tins of petrol, and that one was not in it at the time it was first brought to light. Now we know that one tin contained petrol—about a liquor glass full—and one can assume that that had been used, according to the prosecution. But there is no doubt that the other gives room for much thought. The evidence is that there was no petrol in it and no petrol was found. It contained some watery fluid and some dark stuff. It could not be analysed, but it was not petrol. Now we have had another fact which seems to have been agreed on. Messrs. Gray and Bruce both say that it is extremely hard to rid a receptacle of petrol. You remember what was said about explosions coming from a flame lighted in a

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car can, and both are agreed that the only way to get petrol out of a petrol tin is by steaming. We have got the testimony that it is not easy to get petrol out of a tin. In any case this much is certain that there was no petrol in that tin for the purpose of this act, assuming that these were the tins taken there by the accused. Because you further heard the evidence that even if you wash the tin out, you will not succeed in getting the petrol out, there would be something left. So that we are faced with the fact that the implements used by the accused consists of two tins in association, and they are of great importance. If one tin was found in another part of the building the Crown would not be hampered with it; they may have two different origins. But you must take it that both those tins, on the evidence I think— you will not follow my opinion in the least—that both tins were in that suitcase, because you remember the points shown you by the Deputy Solicitor General when those tins were examined. 10

There was the suggestion that after they had been put in and separated by the packing that the surface that were towards the centre showed less traces of being exposed to fire than the outside and so on. In any case without going into refinements and niceties, you must take it that in the circumstances in which they were found, the two tins were in the suitcase before the suitcase broke up as a result of the fire or the wrecking. The defence of course asks you to regard it somewhat in this light, that it is suggested that they could not have been possibly associated for the same enterprise. There is no doubt that there is a good deal of sound reason in that because if accused put himself to the trouble of taking petrol securely packed, assuming for the moment that that was his suitcase, I take it, gentlemen, that he would take the maximum amount; if his suitcase could hold two tins of petrol he would take two tins. And if we take the suggestion that he never parted with the two petrol tins which Hossen brought him, then there is no reason why he should not have taken the two tins to the shop. If that is so what explanation can be offered of the innocent petrol tin? Well then, that tin could never have contained petrol on the day of the fire or even some time before. Was it taken there from Monsoon Lodge? Of course one can conjecture many things which might explain it, but whether it might sufficiently explain it or not one cannot say. 20

Nor do they want to put such conjectures forward. But we no doubt have to work out these things and find solutions to mysteries, probably we do not succeed. But the plain and ordinary conclusion to be drawn—one draws the necessary deductions from facts as they are proved—is that the innocent tin could not have been taken to the shop by the accused. If it was a tin that never contained petrol it might have been taken for packing or holding the other one in position. But if you merely deal with the ordinary and plain inference which can be drawn, then no doubt the normal inference is that that tin was not taken there, because as I told you if Kennedy was availing himself of a suitcase for the purpose of taking his material to his shop—if he took two tins, then he would have made arrangements to take two tins away from the scene. The Crown says that the two tins which he arranged to take from the scene were these two tins. 30 40

Then how can we place the innocent tin in this place? Against that is a certain body of evidence which could explain it and which is consistent with the peculiar contents of that suitcase. If there was some person who was going by car or train up-country, who for some purpose or other had two tins of petrol in his possession which he could not take with him, and which he thought he would put into a suitcase and keep somewhere, and call for it some day—tins which are not of immediate use to him—it is possible that he left them in Kennedy's shop. In other words, a man getting rid of some of his own lumber. That is sought to be supported by certain evidence which has been led. There is the evidence of Mannan and it is supported by a circumstance. He says that there was a gentleman I think he said a European—who came and gave this suitcase, and that his name and address was put on a tag which was attached to the suit-case, and that it was put away. They would oblige a customer by keeping a suitcase of his. I do not know that that is wildly improbable. A man might not care to go to the extent of booking a room in a hotel, but might leave it in one of the stores in Colombo where it would be looked after till he came for it. Anyway that is what is suggested. Mannan says that he is one of the Ladies Department Staff which is above, and that on this day he had come down because there was a press of work, and that he remembers selling some shoe laces to the person who left the suitcase there, and he points to the Cash Memo Book which supports his statement, that that is an isolated cash sale by him in a department in which he does not work. That evidence has its value. It empowers Mannan to say "Here is a circumstance which supports my evidence" and when a man's evidence is supported by a circumstance it is of very great value indeed. Now gentlemen, the Crown says that it is unreal and fantastic. It is for that reason that I ruled that it was admissible. There was no question about it, and I think the ruling in my opinion is right because of the particular circumstances of this case. Where I allowed the evidence to be led by the accused that such things are done, it was because it seemed to me that if the defence were to suggest that a person leaving a suitcase is preposterous, and is never done, where such an opinion is allowed to go in it proves that such a thing is not done. There is the evidence of Mr. Owen which does not really touch the point. The evidence of Mr. Brougham is nearer what occurred in this case. He says that there was a gentleman who left a hold-all and as we understand it it was never shut or locked—I don't know whether he was a customer—but Mr. Brougham says that the hold all was left in his shop for a considerable period about 18 months and they thought they must look into it and when they did so they found a heap of old clothes and inside the clothes were a certain amount of cartridges. This is the sort of thing a careless man might do. Of course cartridges are not as dangerous as petrol. It is not easy to explode a cartridge except by knocking hard at the percussion cap. On the other hand there was a person who had left a suitcase with two tins of petrol in it, one tin had a little petrol in it, and the other had no petrol. It is hard to say with certainty anything on a point like that. Can you dismiss the case of the suitcase as being improbable

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or not, or is it one of those things which in the circumstances of the case you might say, well we are not quite satisfied or convinced of the truth of it, but there is a possibility of its being true. That is the way one might look at a thing and the conclusion one is left with one examining a thing —there is a reasonable possibility that this may be so, and if that is so, and the position of the Crown is that two gallons of petrol or a tin which contained two gallons of petrol can be traced to accused and accused can be made responsible for it. Then it is an important point to remember where the suitcase was found. You will remember the endeavours made in cross examination and it was pointed to you by Mr. Pereira that the suitcase had not toppled off the racks but had been placed on the floor. The bottom racks are more of a cupboard type. They depend, gentlemen, on the conditions in which they were found. You have heard Mr. Pereira on the point, but it may be urged that it is exceedingly difficult to get from the two firemen the exact location of the place where the suitcase was found. In the first place did they at the time note with any degree of concentration and care, especially in view of the fact that there was no floor, and there was a mass of debris after that. After the whole floor was cleared it would be difficult to say where the case was. It would be a matter of the greatest difficulty for a person to come here and say minutely the place where it was found. The stuff was smoking and smouldering but any way these were the points which were advanced by Mr. Pereira but he relied on another point, for which it may be easier to utilize the evidence, that the boxes were all lying on the floor. At what height from the floor the suitcase was lying, the witnesses were asked. You remember I indicated it in a question as to how far from the heap the suitcase was, but I failed to ask him how far from the floor the explosion had taken place. You see that this is a matter of extreme importance. You may never know what was important in a case till you had heard the evidence. You have Johar's evidence that it was not on the floor. How far above the floor it was, we don't know. The defence suggests that it negatives the suggestion that Kennedy was responsible for it, but there again that argument is of avail to the defence only if you assume that Kennedy disposed of the suitcase as the Crown suggests and he would have placed it on the floor. Can we assume that ordinarily. Can we assume that a person might do that. It might have been placed on a chair, it might have been placed on a heap of boxes. You know the condition of the ground floor. The boxes had been piled and heaped about but not with care, but later on they had been moved about so that business could be continued the next day if anybody came round. If it was placed on the floor by accused then there is no doubt there will be considerable importance attached to the point made by the defence. I think I have done, gentlemen with the question regarding the tins. 10

Now as regards the movements of the accused it was not pointed out, but I have examined the evidence carefully again. There is a concensus of evidence available for the purposes of this case that the accused returned to the shop at 10.50 p.m. from the Colombo Stores. Hossen said so. Kennedy said so. His wife said so so that is the only evidence we have. I don't 20 30 40

think in the circumstances it is necessary for me to go into the question of movements of the other staff. The other members of the staff left before Hossen.

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Then I come to the question of the smell on his shoes which is suggested by the Crown to be circumstantial evidence. That would be circumstantial evidence if there was clear evidence that the shoes smelt of petrol, but there again the evidence, such evidence as is relied on is not clear and there is much evidence to the contrary so that it appears, there may be considerable difficulty in finding that the accused's shoes smelt of petrol.

10 You have been listening to a good deal in the case, which necessarily does not lead you to one conclusion or another. It is possible that immediately after the explosion, if he was a careful person that he might have noticed the smell of petrol on his shoes. Now, gentlemen, this matter has been gone into detail. The position is this. You have got the evidence of Owen, the hospital attendant and the Doctors that there was no smell of petrol on him. Then Mr. Bantock takes the shoes the next morning. Mr. Bantock tests the shoes himself. Whether it was his business to do so or not we don't know. It might be said that there was no smell of petrol. I don't suggest that he should have smelt the shoes. I don't know what position

20 Mr. Bantock holds in the Police Department. Some Police officers wish to work from behind the scene, and some Police officers come forward as witnesses, but it might be said that if there was any pronounced smell, that Mr. Bantock was obliged to test it. Then Mr. Bantock puts the shoes into the box and gives it over to Mr. Collins. Now the evidence in one part of the shorthand notes is not quite fair to Mr. Collins, but at a later part it is set out that he said that he smelt the shoes in the box but I* don't but he said that the smell he got was from the box or from the shoes. In a later statement he said that the smell of petrol came from the shoes. He lifted the lid and the smell came from the shoes. It might have come from one

30 or the other. Of course this is open to the objection or comment that you are sure that the smell came from the box or from the shoes.

* *Sic.*

I suppose, gentlemen, Mr. Collins should have carried out a test. It is very clear that the smell did proceed from the shoes but there was no smell from the box. May be he wanted the smell tested by his assistant Mr. Shammugam and may be the smell might have been dispelled by the box being opened. Mr. Collins says it was kerosine or petrol or a paraffin body. What does that mean. Mr. Shammugam says it was kerosine and not petrol. That is an important point to note because it might be urged that Mr. Collins points that you cannot distinguish between the two.

40 Whether it was kerosine or petrol both these substances are derived from the same object. Because it does not necessarily follow that every paraffin body should smell alike. So that one must take it on a fair examination of that evidence relating to the smell of shoes, that there is no real evidence upon which you can act, that the accused had the smell of petrol on the shoes.

Now, as regards evidence of petrol other than that afforded by smell there is also some evidence, but there again one is on unsatisfactory ground.

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You see the first examination of accused when he went to the hospital was one which was done for the purpose of giving him treatment for a very severe condition in which he was at the time. If you had an accident and went to hospital the officer who admitted you would make a note of the injuries. It would not occur to him to go scrutinising you. In fact, here was a person who went to hospital suffering from an accident. Here are serious injuries. The obvious thing was to attend to them. The accused was going into a paying ward and there was no suggestion that it was a case that would come before the court. If a man was brought to the hospital after an accident he would be examined in the hospital and his case taken up at once. But if he went with a knife injury of course the examination of the condition would be from quite a different point of view. But they had to examine the accused to treat him. Later when this thing assumed an importance he was examined all over, and his body was examined for scars, and so forth. It may be that he had no good attention paid to them in the first instance because no attention need have been paid to him. 10

Dr. A. M. de Silva's evidence is that this need not necessarily have been burns due to petrol being on him but he gave one caution which would suggest that it was, and he brought in a word that was very suggestive and very strongly supportive of the theory, and that is, the dripping nature suggesting a fluid, and he says that there was an injury, a burn extending down the back of the arm, where as except for that that there were glove shaped marks covering the hands from wrist upwards. Well, if the accused had on his coat and it was unlikely that he was able to get on his coat after this explosion he encountered, it seems a little unlikely that he could have got a burn here without injury to his coat whatever, and his coat was not injured. The existence of that at any rate, whether it be a burn or whether it be an abrasion, the aspect of it which was dangerous namely, that it was tapering caused by some liquid, is negatived by the evidence of other doctors who say there was that injury there, but quite apart from whether it was a burn or anything else, that it had no connection with the burn on the hand for there was an interrupted intervening space of uninjured tissue. 20 30

There, is the evidence of the two doctors. I do not know how they impressed you. Certainly both of them were able to explain themselves very satisfactorily. Whether their explanations are right or wrong is for you to judge. Certainly both Dr. Blaze and Attygalle were able to give you what was apparently a good reason for what they were saying, and there was no difficulty in making their meaning quite clear to us. And they are agreed that no very clear opinion could have been formed of the nature of these burns, once the tannic acid crust had formed, and that is not only their opinion, both of them, but Dr. Attygalle appears to have made a special study of burns. 40

I do not know whether he claims to be an expert but he does have very good degrees, R.C.S. and he has contributed to literature on the matter, written a book or pamphlet on burns. Any way the thing is one he has given his attention to. They are all agreed that nothing very much could be said on the nature of the burns. That rather discounts the claim for

meticulous accuracy on the part of the hospital record and I am unable to impute any rebuke to anyone because the occasion for a record of absolute accuracy did not arrive when Kennedy was admitted and once he was sprayed with tannic acid it was not possible.

So that you may say that you cannot act with any confidence upon the opinion of Dr. A. M. de Silva that accused had a burn on the back of his hand which was of a character consistent with some flaming liquid or inflammable liquid, whatever it may be, going down his hand, dripping from his hand, and on to the back of his arm.

10 It is a most important point for the prosecution to get because once that is proved to be so it becomes certain that it is really worth accepting for the purpose of influencing one's judgment.

20 There is no doubt about it that if you had an opinion, no doubt about Dr. A. M. de Silva's competency—but if you have the opinion of someone who directed his mind to it and came to the conclusion that some flaming liquid had run down the hand of accused and burnt his hand and arm, there is no doubt that it is a circumstance of very great importance indeed, because it will point in a very marked fashion to the accused that day having handled something which he denied he ever saw or touched that day and something which contributed to the explosion. But there is no question about the importance of it and then there would be no question of the substantial claim of that evidence to be accepted by you. Can you accept it or not?

30 But as I have told you I do not think that a person who uses petrol to set fire to goods in a room must necessarily have petrol in his hands or legs. I take it it is possible to do things thoroughly and carelessly. If he had petrol on his hands no doubt it will point to a very strong inference of his being connected with setting fire to the goods, but one may set fire to a building by means of petrol and not drop it on one's person if one does it with care, and so also with regard to the smell on his shoes.

And we next come to develop further this question of the injuries. Do these injuries necessarily indicate that he was setting fire to something? What are the injuries? We will leave out this injury on the back of the hand. Assume that the injuries were only on the hands, face, and both ankles. Can you say that they necessarily indicate that they occurred when he was setting fire to something. If it does not, then one of the links of the circumstantial evidence must go aside because in the case of circumstantial evidence every link that is necessary in making up the case must stand the test.

40 Is it actually consistent with a person having momentarily his hands and face exposed to flame? Can you definitely say it? Can you say of anyone person that if a person has burns on his hands face and feet that it necessarily occurred when he was setting fire to something soaked in petrol? It may be consistent with it but that is not enough. If its consistent it will only become a little trifling circumstance that might confirm your opinion, not something from which you must draw an inference necessarily of his connection with it.

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There are certain circumstances that confirm your opinion but by themselves they do not necessarily lead to the inference which it tries to attribute to them. The accused says he was not aware of the injuries on his face and hands. But there would appear to be nothing in that because there is medical testimony, and that is a fact that is generally known—that injuries which are sustained, sometimes, injuries of a most severe nature, which are sustained at times when shock and excitement prevail, sometimes go unnoticed. He will not know the pain of it until conditions are different. You have the medical evidence on it and you have no reason to doubt it. Physical pain at that time is not realised owing to shock and fear. 10

Then you have got a case put forward to you by the two doctors of the lady who happened to have had the same injuries on the face and hands by bending over a gas stove. So far as we can judge what happened was an accumulation of gas on the lower section ignited by reason of its having been turned on and apparently turned off sometime before the jet was lighted, and it was ignited apparently from one of the cracks in the upper section. As in gas explosions there was a certain explosion, a momentary flame. We know now what would happen from what Weerasekere told us that in his experience of gas explosions, gas will go on burning at the jet, 20 but anyway in the case of the momentary explosion of the lady the flame resulted in face and hands being burnt; not clothes,— a matter that goes to show that some agency of it might destroy tissue and at the same time not destroy fabric. In any case gentlemen those are matters which one cannot attach very much importance to; upon which one could feel that one is on absolutely certain ground and from which one could draw conclusions in absolute confidence.

Then we come to this. I will deal with two other points and then proceed with the cause of the explosion. There is a matter which is not exactly a circumstance from which you would necessarily infer guilt, but 30 which the Crown says will confirm your opinion, that is, that the fire occurred on this day. The accused will say that it is a coincidence that the fire occurred on this day. The Crown suggests that there was a reason for the selection of this day, because it was a day which allowed the arrangement and re-arrangement for the purpose of the transfer, and that the idea was to destroy nothing more than the goods in the basement. Then you are told that there is a significance in the day because September was the time limit in one case for the sending up of the Brush goods, and for closing the No. 2 Account. The accused had said he would do it by the end of September. Then it is said that there is a significance in the day because a date beyond 40 that had been fixed for Campbell Carters to exercise their option regarding the stock of skins which were said to be fictitious, that is October. All these go to confirm your belief that it is not a matter of accident. These things happened on the day on which they happened and the manner in which they happened because they are events which occurred in a pre-arranged scheme. These are matters which require your very careful consideration.

Now gentlemen that is the case. I have tried to put to you all the facts connected with the cause of fire. If I have not done so in very great detail, it is not with any intention of shortening my charge, but because it seems to me that there are some matters though important in themselves will not influence you in forming your judgment as to the innocence or guilt of the accused. I have put to you all the facts which are sufficiently of importance to influence your judgment one way or the other, both for the accused and for the prosecution.

10 Now we come to the expert evidence as to the cause of the fire, Gentlemen, I had a feeling in this case that we never had, and I suppose we cannot get in Ceylon a real expert on the subject. Fires are things of extreme rarity here. We know that factories up-country do take fire and that buildings are apt to catch fire. Then we know that fires do occur when there are combustible or inflammable goods like copra for instance. But fires such as you have in England, and which are almost a matter of daily occurrence in England, especially in a large place like London, are almost unknown here. I have been very much struck by reading the exceedingly interesting book by Mr. Gamble (?). He is a person who has seen hundreds of fires, he has seen the progress of fires and noted the results, knowing the
20 cause of the fires. In the large majority of cases causes of fires are known. Even if it is accidental or due to negligence you can recover from the Insurance companies provided they are not wilful. I have no doubt that the expert witnesses who came here have done their best to place their special knowledge at your disposal. But the cause is whether that is the knowledge which will really help us in this case. We have for instance architects who give us the most varying accounts of the breaking strength of concrete. Then we have Mr. Bruce a very competent chemist. He gives evidence on matters which are well within his province as a chemist. He also gives evidence on matters which are somewhat alien to his business, but which
30 as a man with trained observation and a person given to computing things, he may claim to have some familiarity with. But have we anyone here who could tell us "I have seen 2 dozen; 3 dozen, 50 fires or a large number, some caused by gas, some by petrol, some in areas such as open basements, others in basements partly occupied or stocked with goods," who can tell you "I have seen the duration of a fire, I have seen buildings disrupted by fires, causes of which and operations of which I have noted"? Such a person would be an expert. There is no opportunity here for anyone to acquire that knowledge. It is nobody's fault. So that we have several gentlemen who have come before you here and who have put before us the
40 conclusions which they draw upon the application of formulæ in books. Hall's experience is a little nearer the point, but then it was derived under circumstances somewhat peculiar. He had experience of high explosives within buildings other than what he calls commercial explosions, that is what they themselves produce when he was in the war. No doubt that gave him some opportunity, but that is not the kind of experience one wants for the purpose. He speaks of one instance where a torpedo from an airship fell into a basement. I take it that contained one of those high explosives

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which is totally different to what we are dealing with here. So far as his surmise goes he is the one person who will not attribute this to any explosive gas at all. He says it is a medium explosive. That is an entirely different view. It is no doubt very much to his credit for him to say so. That is his opinion and he gives it to you. Well, where are we then? I shall deal with this, gentlemen, as best I can. There are certain difficulties in putting it to you with absolute precision. You will appreciate those difficulties when I tell you about them. But let us just see what this might be due to. There is first the question of a medium high explosive such as Mr. Hall spoke of. One might almost put that out of all possibility unless it is that somebody sent those shoe cases with some explosives in them. I do not know whether they would ever go to the extent of sending explosives in shoe boxes. Then further, all these employees are old servants of accused and they could not get dynamite to put into these shoe boxes. One might also rule that out as impossible. Then there is the question of marsh gas. Mr. Obseysekere said that the defence flirted with the subject of marsh gas. I thought that if anything more was going to be said of marsh gas, that we might have heard of it from Mr. Bruce as to the nature of the marsh gas and the likelihood of experiencing it here. He may be knowing more about soils and so on; that may be a matter within his special province. Mr. Bruce was asked nothing about it, and I did not ask him anything myself because it was not considered necessary by accused's counsel to develop it further. They know best whether there is any purpose in dealing with it or not. Well, can we deal with that as within the realms of practical possibility; Mr. Bruce told us how air rises because it is light; it might have a smell or it might not, that depends on its origin. Then it was said that it was not possible for gas to force its way through the 14 inch slab of concrete which formed the base of the Times building. But there was one passage of the evidence which I drew the attention of counsel to before. I think Mr. Small said that it was perfectly impossible to make it absolutely water-tight at the place where the upright part of it joins the other. As regards the matter of concrete itself water can get through under pressure. Whether gas can get through under pressure I do not know, because it was not asked. If it is not absolutely water-tight I take it it is not absolutely gas tight. Whether it is a thing that was experienced here or not in any marked degree I do not know. But that it is a perfect terror in England we do know.

Gentlemen, we now come to the question of gases and there is no doubt it is important. You were told that 300 c.ft. of gas would be mixed up and imprisoned in 1350 capacity between the girders of the roof of the basement which would form an explosive mixture and Mr. Bruce has given us the result of that explosive mixture and there has been a comparison drawn between that and two gallons of petrol and it has been suggested that it is not for the defence to prove or to know this occurred. Many a criminal case at the end is left in a maze of mystery. Various possibilities are explored and considered. We are dealing with gas as a possibility and we have no doubt if it existed and if the lead pipes which carried the gas was not sealed with white lead, I think it must be allowed that it can creep up there and must

have got into the neighbourhood of the switch board. It could be present immediately round one of the tumbler switches. I do not think that one can argue that if it was present it can go in a straight line. If you postulate it as a force that might have been caused in that way. You have got to see, if you are pursuing the subject any further, could it have been gas. Now the fact that it could not have been gas is negatived by the Crown who says that they have produced the evidence of Mr. Lornie who dismantled the pipe. He says that he took the pipes away. It has not been suggested nor do I think that it can be seriously suggested that Mr. Lornie does not know how to test the pipe. He did not seem to know much about the chemistry of gas but that is not within his province, but that does not effect the matter at all, if Mr. Lornie knows his job. He has given in detail how he conducted his experiments. If you believe him, then there could have been no leak in the pipes except that it is extremely likely if it did occur that could have contributed to this result, and that is if there had been a small perforation or rupture or crack in the top of one of the gas pipes that when it bent it might have effected the sealing on the concavity or the bending, and if heat was applied to the outer surface it might have tended to expand it. That was rather important because this gas, if it was gas which accumulated in the girder area was the result of the accumulation from some slight leak which went up and formed an explosive stratum against the ceiling or something which went in with a rush, a quantity of gas. The evidence of there being a quantity of gas is negatived by the meter test. I need not go into further particulars. The average daily consumption of gas by the Times was 4750 c.ft. or 8800 for 2 days because the last days reading was 2 days reading. This makes an average of 4750 c.ft. a day. Now it is not likely that it was a rapid escape of a large quantity of gas immediately before or sometime after the explosion, for this reason, because the reading for the period 28th September to the stoppage of the meter which would practically be 2 days gas consumption by the Times was 8800 or 4400 c.ft. for a day. That 8800 c.ft. of 4400 for a single day is less than the average consumption for a day which is 4750 c.ft. That is the meter reading. This occurred at night and I don't think it is likely that there would have been a considerable consumption of gas by the Times between 8 p.m. and 11. The Times had closed at the time this had occurred and by evening the paper would have been out so that you have practically for 2 days the 8800 c.ft. of gas or 4400 c.ft. for a day which is well below the average.

As I was telling you, gentlemen, I mentioned it when I started, this occurred in two ways a minute leak going on for several days or a sudden rush of gas. I also showed you that there could not be a rush of gas owing to the meter reading. If this had gone on for some length of time it might have been discovered.

There was 1300 c.ft. of girder area above. There was free communication between the gas in that area and the switch board. There is no reason then why such a thing should not have occurred before or when the maximum amount had been reached because gas being lighter it would rise through the tube and should such an event have been postponed till the maximum

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amount was arrived at, gas being lighter than air it would go up the tube. It does not follow that it was necessarily so but it is a matter which you might consider one way or another. If it was gas and gas was coming to the ground floor would there have been any doubt by the people there that it was gas.

There is Mrs. Kennedy's evidence that she smelt gas. There is evidence of vague smells and these smells were attributed to other causes, like the telephone works from which fumes would arise, but the smell of gas is known and the smell of escaping gas is known. The evidence which we have of smells which was distressing people like Classen was fuminous gas. One 10 has to put up in a crowded area where one does notice smells, but one cannot do anything to prevent it, but it would be different if you smell gas. This is how the evidence stands as regards gas.

Then we come to the question of petrol. Now as I said before the difficulty in this case is that we have not someone here who has got a personal knowledge of explosives used in restricted areas, such as the basements in bungalows who can tell us the effect they have on concrete and what conclusions you are to draw. You have here a controversy over a point, but may be an expert may have settled it at once. There was a particular girder twisted. Even here there are disputes between experts 20 Mr. Reid and *Mhose for the defence say it was an explosive force and Mr. Small says it was caused by heat. Anyway we have this evidence and we have to make the best of it and to see what help we can get in this matter. Now, gentlemen, this evidence is not of primary importance.

**Sic.*

And it will be satisfactory if you will be able to form, if its possible to form, an opinion independent of it, because after all it is expert evidence and opinions of witnesses who come and tell you things which the law allows them to express because it is within their province to do so. But it is exceedingly hard to distinguish between the claims of one or other of them. Expert evidence is always subject to that disadvantage. I will not 30 go so far as to say anything about that old saying about experts that the Deputy Solicitor General referred to. It is an old hoary thing probably entirely unjustified. But we know the danger of it.

Now, take the common kind of expert, the handwriting expert. There is no doubt that some people can carry that branch of science to very high degrees, yet a lot of people claim it who have not got that. But few would venture to base a decision on the opinion of an handwriting expert alone. There is a lot of authority for that and numerous judges have emphasised the necessity for it over and over again. You have to form your own opinion and then turn to the expert evidence. If it confirms your opinion 40 well and good. But if it does not, but you do not for instance start to decide a case on expert evidence. For instance if you have to decide whether a man had signed a Will on the writing of the handwriting expert, will you accept that evidence when you have before you evidence which clearly shows that the man could never have signed that Will? There is a little law book on expert evidence. It is said that experts are very wedded to their opinions and not ready to admit they are wrong, on matters that

are entirely within their business. That is a weakness which is not confined to experts only, but the situation becomes more complicated when you have experts who are giving conflicting evidence. And that is what we have here. (The 3rd line of Bruce's evidence on page 485 (Record) of record is read, which is as follows. That when worked out gives a pressure of 22.2 lbs. sq. in.)

Now gentleman the way in which this expert evidence has been presented to you is this, the architects tell you what pressure is required to produce certain results which are to be seen in the building there today.

10 It is upon this point that there has been the greatest conflict of opinion. There then is the question of the pressure that would be produced by 2 gallons of petrol in that basement. Then the question arises could the pressure produced by 2 gallons have caused those results. That again depends upon what pressure is necessary to produce those results.

It is on the first point that I say the contest has been the keenest. You have had oral evidence on that point and you have had certain experiments. I would deal with the experiments afterwards. You will find that whatever opinion has been expressed in evidence that the experiments do not carry you very far.

20 It may be that its impossible to reproduce the actual conditions which existed in that basement. Then it must be remembered that all those computations are made upon the basis that you have got a basement which contains a certain amount of cubic feet of air, that is the maximum on measurements.

Now, no one has given you any accurate information here today as to the condition of that basement when the fire occurred. Nobody knows it.

Now, it occurred to me that you might have a building—a basement or a cellar so packed with goods that it radically alters the conditions which are necessary for the purpose of producing certain results and explosions.

30 Take, the instance of certain stores, the luggage room of a ship, might be of 1600 c.ft. but it might be packed with goods to reduce it to 1300 c.ft. How they were arranged we do not know except in a very general way. We only know this. That Mr. Ogle has said that the reason why the cases that came from England during the last consignment were not sent to the basement was that there was no room within the basement. The conclusion from that is that this basement was pretty nearly packed to its fullest capacity and extent to which you can pack a basement.

40 Gentlemen such a basement is certainly relatively larger than a room which you can fill for other purposes, because a basement is a room for stock. So we do not know the conditions and this is necessary because reference has been made to the possibility of the petrol having been about a particular locality which has been referred to as a pocket—that is a good word to express it. The existence of pockets, and the likelihood of the existence of pockets will all necessarily be effected by the amount of stuff in the room and the manner of disposal. Then the question of the amount of goods in the room the manner in which they were distributed effects another cause.

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Again in this we are groping in the dark and that is regarding the effect on a person who was in a cellar or a basement like this when there is an explosion.

This is important because if one is asked to draw certain conclusions, the conclusion one must come to is that you cannot absolutely say, unless you know where a person is and how the things are distributed.

Let me deal with that. Some witnesses have said for the defence that a man in the basement would be blown out if he is in the way of the blast, blown down against the wall, and one said if he was against the wall he would be plastered but at the same time we were also told that you could use a high explosive in a basement and so blanket it with a rubber sheet that you will not leave any impression to show the place where it exploded. So can we then draw any one of these conclusions that if a man was in the basement he must necessarily have been injured unless we knew those facts, to say that a blast may go over a person. It is momentary and then the thing ends. 10

We know as a matter of fact that the paper reels on the other side were uninjured, while the wall was knocked off, so it is possible that there must have been some part of the building where a person would have been when the explosion occurred where he would not necessarily have been injured as a result of that explosion. 20

You must be very careful when you say such and such a thing must necessarily have been. If you are unable to say that a certain thing must necessarily be a consequence of another the only thing is to suspend your judgment not to draw a conclusion on it—the only safe thing to do, otherwise you would be simply speculating one way or the other. In any case it is attended with extreme danger. That is an important point.

Mr. Bruce mentioned certain circumstances with which I think you will agree. He said for instance as regards the case of air—he gave you the case of marbles and he said if you pack a certain receptacle or room with some spherical objects like marbles that you still have about 50 per cent. of air space. You can take it from him. There must be a formulae for working that out. There is no reason for doubting it. It is a pure question of fact, as a matter of fact he did work it out. When you draw a number of circles you find that there are the sub-spaces between them. Why the marbles were selected I do not quite know. But it does not seem to me that that will help. We would like to know what would be the effect of packing bales of skins, or boxes of shoes together to make one or several solid masses in the room. Very well. The evidence on that part of Bruce is this. (Reads from page 515 (Record). Bruce's evidence) "If you fill basement with marbles or sand you would still have a fifty per cent. air space." As I said we will accept that. Then he was put the question "I suggest to you that rectangular shoe boxes are very different from a sphere like a marble, etc." and his answer was "Spheres were taken because they are packed to the best advantage." That is a point with which I think you would not agree. For instance if you back barrels in the whole of a ship you have to use a considerable amount of dummies to fill the space left. You would 30 40

leave spaces between and you know that gentlemen. Therefore that will not help. Then he was asked "Would you say that rectangular shoe boxes correspond more nearly to the bricks?" and he said "Yes, to square bricks." Let us take, not marbles or spherical objects, but things that are likely to be in a basement, and which were in this basement, either square objects like boxes of shoes or bundles of skins, some packed well together, and others tied more loosely for storage purposes only. And the next question was "And where you had about half of his stock packed with boxes like that in the basement?" and his answer was "What is the cubic capacity of the stock?" Well, that is answering a question with a question. Of course you cannot blame Bruce. So here comes Mr. Bruce saying "Well, tell me the space occupied by the stock?" The answer is "Well, I cannot tell you the space occupied by the stock"; We do not know that we are all in the dark. There is no doubt that for the purpose of computing, and there is no other way of computing unless you know things precisely. Suppose in the centre of this basement there was a solid concrete block of 8000-16000? c.ft. capacity, that would reduce the area of the basement to 8000 c.ft. Is that going to have no effect? Very well, I will give you the evidence of Mr. Collins. I read his evidence where he says that you have to take the whole for computation. You will ask yourselves whether it will or will not make a difference. Suppose the whole of a ship is reduced to one-third by the presence of substantial solid luggage. Is that not going to make a difference? That may be an extreme illustration. Because though the capacity of the whole is 16000 c.ft. the actual capacity is only half that, because the boxes might constitute the basement. But still that is a space that is less than the whole of the basement. I do not think Bruce said that it is perfectly immaterial. I will read to you the passage of Collin's evidence about it. When Mr. Bruce was asked he said "Tell me what the cubic capacity of the stock is." Mr. Collins on this point said (His evidence is in two places; page 301 and 315 (Record).)

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I was on that question gentlemen as to the possible effect of a restriction in space on two matters, one, the effect on the person in the basement at the time, and to what extent if any it might result in his freedom from physical injury, and the other is the matter on which I will be immediately engaged, namely, in the question whether that would in any way effect the resultant pressure. As I said the matter was not quite clear to my mind and I am giving you the passages. It was put to Mr. Bruce and he answered the question with a question. But there are passages in the evidence of a crown witness and I shall put them to you. Mr. Small's first statement on the point was this: "If it is mixed with the whole of the 16000 c.ft. it would not but if it is mixed in the corner of the room with one or 2 thousand c.ft. then you would get a high explosive mixture." That is one of the high

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explosive mixtures that he spoke of. Then the question was put "Suppose you had that quantity of petrol but the other conditions you assume were the same, what increase would result?—A. You would get an increase of more or less directly a decrease in the pressure." The next is "I give you as the datum that the room was full of racks, parcels of shoes, and other stores, that circumstances would certainly reduce the cubic capacity of the air?—A. Yes. "That is in fact admitted by the other witness." Then comes this question; "Suppose the cubic capacity were reduced to 8000 the pressure would be double that?—A. The proportion again is not the same considering that the assumption you have made are not the same." 10
I understood that as meaning that it would effect it but not necessarily on that ratio. What I am telling you is not evidence, but you must consider it. I am only telling you that the point to my mind was unsatisfactory. Then comes this at page 315 (Record) which Mr. Pereira wishes me to refer to. Here again the record is not very satisfactory and unfortunately on this point my note has failed me. The passage is this "Here in this basement there were a large quantity of stocks, shoes, the racks in which they were kept which would absorb considerable proportion of the cubic capacity?—A. Yes. I have never seen the basement in the original condition but I should imagine that a basement which contained such a stock you will get a fraction 20
of vapour." How exactly that should read I am not too certain at the moment. The next one introduces a word which is clearly not correct. The word here in the notes is "fracture" but it must be "fraction." It should read "If you get such a fraction you must take the cubic capacity of such a fraction rather than the entire chamber for your calculation?." The question should not have been "If you restrict" it to 8000 from 16000, what you want to know is that despite that circumstance what would be the pressure on the walls, not what would be the pressure from the 8000 area. The answer was "You must take the whole capacity." You were 30
asked to test the pressure upon the walls of a 16000 c.ft. area and not upon 8000 c.ft. I could understand that. Because says he, "the pressure is transformed to the whole 16000 c.ft." But I did not understand this to be a categorical statement on this point, namely, if you reduce 16000 to 8000 by some permanent heavy immovable object, then is the pressure upon such parts that are exposed to pressure effected the room. But of course you must remember that we do not even know that these things were so arranged that any part of the walls of the basement were not exposed to pressure. So far as we know they were. I mean we do not know whether it had one solid large block of 8000 c.ft capacity itself, and what the result would be if it was in the centre of the room. Would the 40
parts exposed to pressure be increased or not? I was only telling you that this is one of the points. Now that the evidence has been led, one gets a better notion of it. I wish my mind could be cleared on that point than it is now. That it will reduce the cubic capacity of the air there is no question at all. I wish I had put to Mr. Bruce the question "What is the cubic capacity of the stock you are mentioning"? I wish I had given him 8000 c.ft. and then asked him to work out the results on that cubic capacity,

but that has not been done. So that I am not in a position to tell you on this evidence that those circumstances would have resulted in an increased pressure which would have had the effect of making two gallons more effective under these circumstances, than two gallons in an entirely empty basement. The evidence does not say that. I introduced the subject because I wish I had my mind quite clear on that point. It may be that you are thinking more clearly on this matter and are more competent to deal with it than I am. If you feel no difficulty on the point then there is an end to it.

10 The other point on which I wish there had been some express evidence is this. I am coming now to the different calculations of stresses needed to produce certain results. You have Mr. Small; against him you got Reid who is also an Architect, also Mr. Hall who claims to be also an architect with considerable experience of many years here. At any rate let us take Hall and Reid, and Mr. Small. Hall confirms Reid so that it is not necessary to go over Hall's evidence again because it is confirmatory.

20 Then, gentlemen, I take it that both are competent. We take it that both of them came with a genuine endeavour to lead us in arriving at a right conclusion, as best they could. I don't know whether anyone impressed you more than the other. Mr. Reid was certainly disposed to go into detail and made a more elaborate statement of the position than Mr. Small. Mr. Small gave me the impression of being a person who was rather reticent, who put what he thought was his view of the thing. That was a feature of his evidence. He only took the verandah; I take it he might have taken the others if he was asked to. In fact he expressly says it is no use going to the ground floor because you cannot calculate it there. I suppose he means the factors of heat to which he attaches more importance than Mr. Reid. Then the other stresses, but he says on the verandah you have got a simple test. You have got a slab which practically supports nothing. The verandah slab rests on the girder. He tells us how it is 30 reinforced and I take it this is what he calls the safety factor. I wish it had been shown to me why they should not be taken, and why the shearing factor should be taken. It may be it was done. I am telling you what is on my mind. They were demonstrated to me in Court. The difference between the two methods, we have Mr. Small who says I took this because the conditions were simple. I say why one was adopted and why another was not adopted is because it was more suitable to the ruptures in the building, but Mr. Small's position is this, you want to know the pressure at which concrete will yield and he explains it. He says once the things is broken, it is broken and you want to know the pressure with which it will break, and he 40 went on to determine that in a place where you have got no such things as pillars, because in such a place it is impossible to calculate the pressure. The girders form an intricate part of the structure. He says he did not go to that place for his observations because he could not compute it. Is he right or is he wrong.

Mr. Reid says I have gone and worked it and I have given you my results. Let me deal with Mr. Small's evidence on this point. He says he took the safety factor given in the manufacturers' handbook. I don't

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suppose he would be wrong. He says I have calculated the upwards pressure required to destroy the slab at 264 lbs. caused by an explosion would destroy the slab. That exceeds the safety limit . . . By safety factor I mean the yielding point. Now you see if he is right in his opinion of the pressure 2 lbs. to a sq. in. would be adequate. Then the difference that exists effects the pressure as arrived at by Mr. Bruce does not mean very much. The case for the Crown is that 2 gallons of petrol was sufficient to cause the explosion. If there was a pressure of 30 lbs. to a sq. in. it would cause considerable damage because once it was broken it was broken. That is the way in which Mr. Small approached the subject, not how much 10 pressure has done it because after all we don't so much want to know the least force which would have ruptured the concrete but what force did in fact rupture the concrete. I have put to you all the figures. It is for your thought and consideration, but he then goes on to say at page 271 (Record) why he selected the slab. One of the reasons he gives because the slab on the ground floor would have to bear the weight of the fittings . . . Then also on page 275 (Record) . . . Then you will remember the strong attack which was made on his evidence, that he did not bring into his computation the force necessary to damage the reinforcement. He said it was true it was reinforced, but he drew attention to the force necessary to rupture the con- 20 crete. This is the particular passage to which I am referring in cross-examination. If you make a slab and put steel at the bottom you have a reinforced slab . . . I will not admit that reinforced concrete is stronger than plain concrete. That was a point on which Mr. Pereira was repeatedly returning to the attack, and you will remember the expression used, and I thought I might leave the expression as it was. I was emphasizing that point of view which always guided me in this matter and that is you have got to determine the breaking point of the concrete. You have got to find the yielding point. I am using his words. He said let us find what is the yielding point of the concrete. Whether that is best or not I leave it to 30 you gentlemen. I have gone into detail, and there is such a vast amount of detail that it is unnecessary to recapitulate it that I thought the best thing was to place before you the evidence of the two architects and to put to you the points on which you might prefer the one to the other.

Then on one point alone there is a marked difference between the evidence of Small and Reid. That is as regards the heat.

Before I come to that let me deal with what Mr. Reid says on this point. Reid deals with the existing state of things and emphasises the fact that it is concrete and he takes into consideration certain factors, not merely the breaking point of concrete but the force required to produce 40 the very thing that you see there, *i.e.*, not a mere yield of concrete, but a yield of the composite things of concrete, and steel which yielded in its entirety in places. Not only did the concrete go but the steel went too. If you will remember gentlemen this is a point which is worth noting.

Before our 2nd inspection it rather appeared to me that where Mr. Reid gave evidence of the wires being pulled apart and either ruptured or yielding in parts it came to the same thing. And this was specially the case in that

part of the ground floor which would effect the wall, that part which had come away entirely, the 7 foot length.

I had an impression gentlemen—don't take it from me—32 days of this trial and one might have wrong impression of what was suggested in cross-examination—the line of attack was that as a matter of fact the steel had not given way as a result of the explosion, but those which you found there ruptured was the result of what I might call the salvage operations after the fire. I may be wrong, but you have followed the case. This does not mean that anyone is trying to mislead but we all make mistakes.

10 But Mr. Small was very reasonable at the spot. He readily said there is no use of testing it any further. They (Mr. Hall and Reid) wanted to show you that the appearance of the severed end proved that there had been a pull out. And it just occurred to me whether that might in some measure discount the value of Mr. Small's evidence. You see Small as I have told you said that you need not and it was best not to look beyond the verandah ruptures. That is his opinion. And it is quite possible that he had not given his mind to the condition of the steel in some of those ruptures in the verandah near the margin and in particular in that seven foot stress near the wall, and not having given his mind to it and observed it as it is perfectly
20 natural that he would be under the impression that there was no rupture except what was produced by attempts to dislodge the dangerous fragments. But anyway this much is true: that did not come into his reckoning. But then its not carelessness on his part. Let us give him credit for that. His opinion was that it was not the place to go to get your best results. That is so. That is what he says. But now that has been tested. You have got it all before you and you have to form your opinion on this point. And to form an absolutely definite opinion is difficult. I feel the difficulty also but here again we are freed from the obligation of absolutely having to decide it or not because we are dealing with a criminal case and our position
30 is somewhat different.

A certain thing is only necessary for the purpose of your being convinced. If you are not convinced it is not necessary to determine what actually is the condition of facts.

But the question you have to determine is this—it is not immediately relevant to what I am saying but its good to say this now before we go further.

40 What is it that we are trying to find out in this matter with the assistance of architects? The evidence of certain architects, of Bruce, etc., would only be necessary when one comes to think of it under certain circumstances, that is to say, suppose you are satisfied upon the evidence that the accused never took 2 petrol tins into that basement, that he had nothing to do with them, quite unconnected with it—if that is so there is very little purpose in our deciding whether the thing could not or could have been done with 2 gallons of petrol. But if you are convinced in the manner in which you should be that the accused did take 2 gallons of petrol and did use them then it becomes very necessary to see whether 2 gallons would

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have produced this result—very necessary in one case, utterly unnecessary in another.

So that you see the place which this expert evidence occupies in the case. Now, I do not know gentlemen whether I need recapitulate in all its detail the evidence of the architects for the defence.

You see he (Reid) approaches it from another point of view, utilising another factor. One of the difficulties in the experiments were that Reid did not point out why Small should not have used the factor he used. We might see for ourselves, but that was not expressly done. But I do not say that he should have done it, but he uses the formula and method which he says is best suited to the case. And he takes what he calls the shearing strength of concrete which according to the books is 1,480 lbs. per sq. in. 10

Now when this question of shearing was put to Small there was something said, upon which again I am not quite clear. The question was what about the shearing force and Small said "I do not know what you mean by the shearing force," and he said "I do not call making a hole in the ground shearing force." This is the passage (read from cross-examination of Small from page 275 (Record)). Well, perhaps making a hole is not quite clear, but did he understand shearing to mean what we say,—a complete rupture through the floor, concrete reinforcement and all? I wish we had an express definition of this word "shearing," but its quite clear from the condition of things to which shearing has been applied that that is what it means, unless I am very much mistaken. So that he then goes on to say, "I have not worked out the force . . . because you have not described shearing to me." He says before I can give you the force that can be applied you must tell me what you mean by this . . . (reads from record). 20

So that you see Small also repels this idea of computing the shearing force. Well, but apparently there is such a thing as shearing force, and there is a thing as shearing factor because it appeared in that little book. The thing is mentioned there as that. Its not defined because in some professions its not necessary to define certain things because its too well known; to us of course its just a word. Very well. 30

Then that being the condition of things as regards the force required, I will draw your attention very briefly to the results not the methods because gentlemen we can't check them. They can tell us what the basis of their working is, all the other steps we must accept unless they are challenged as inaccurate. For instance, there is the question of the joists which had been bent upwards. Now, here, there is a matter of controversy. Here too I take it an expert on fires such as you might get in England might be able to tell you at once what the effect of heat would be on joists like that the one that has curled upwards. 40

Mr. Bruce says it is due to heat. Reid says it is due to explosive upward force, and calculates it out and makes it 93.33 lbs. per sq. in. I think that is the figure on page 446 (Record).

It is suggested that the effect of heat apart from upward pressure force would tend to make the joists sag. I cannot tell you anything on that.

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You have to decide it for yourselves. It was suggested that if it lost stiffness and became malleable that it would. I should have thought that on those matters there would be no doubt. There would be no doubt in the case of people who have observed how metal would behave under stresses. Then there are the walls—that pressure in the ground floor which he works out at a force of 356 lbs. per sq. inch. Of course the important part of this for the defence is that whether you take the figure given by Mr. Bruce or the figure given by Mr. Small it would produce these results; so that there is no use in going into the question as to whether Bruce or Collins (Small?) is right. Then there is the question of the spalling of the stanchion. That he says requires a pressure of 86 lbs. per sq. inch. Then there is another matter upon which there is a substantial difference of opinion, and that is whether there has been an uplift of the whole building. Mr. Reid says yes, and it was he who pointed out the cracks. Nothing had been said about cracks by Small and I do not see that there is any reason why he should have done it, because in his opinion the cracks did not represent a general uplift of the building at all. He says that the cracks are due to localised uplift so to speak. There is he said a little uplift in particular places but that there has been a general uplift of the whole building he says is impossible. He says the uplift is due to the expansion from heat. In certain spots he says it has got nothing to do with it, that is the piers, and he says that it shows nothing but the cracks in the piers are due to the expansion following from the heating of the pillar. Then regarding the cracks in the wall towards Duke Street—he demonstrated to you and you know his explanation on that point. He said it was nothing more than the heat from expansion and that there were cracks in the walls in no way connected with the general explosion. Reid says that momentarily the whole building had gone up and come back again. If that is so very great force was necessary which is impossible of calculation, unless you go into the question of the weight of the whole superstructure, which you cannot do here. But we won't go into that. I will tell you what Small says because one has to see whether Small's evidence is right. After all it is he who is responsible for the statement that two gallons were enough for the reason that two gallons would produce a pressure—may be 22; may be 33; but vastly in excess of what he says would be enough to cause the rupture and that is 2 lbs. to the sq. inch. Small went into it very fully in his evidence in rebuttal. Speaking of the piers he says "These piers carry their own weight and the weight of the hollow beam. They support nothing of the building. It is these hollow piers in which you see the cracks. (His Lordship reads further the passage up to "sufficient to account for those cracks.") (Page 521 (Record)).

Now gentlemen here is what I told you, the extent to which experts could differ. Here is Small telling that the thing is a trifle. It is nothing more than a crack in the pier because the pillar upon which the pier rested has given way. Reid says it is an indication of an uplift of the whole building. I am expressing no opinion on matters like this, which would enable you to conclude whether one witness is giving his evidence with caution or care, or whether the other is giving his evidence in an irresponsible or reckless

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manner. One person must be right. I am saying nothing which will incline your opinion one way or the other. You will judge for yourselves. On matters like that, is Small understating it and misleading you, or is Reid piling on the agony and indicating that some titanic force was necessary to do this. That is how the evidence stands. Then he says: "There must be a certain amount of lifting but it must be very small. There was an extension. There was undoubtedly an uplifting of the building in different parts due to the heat on the stanchions and the expansion of the stanchions. There is no indications of the cracks being due to an uplifting." (Page 522 (Record).) That is what I paraphrased by saying that it is a localised uplift 10 which was the necessary result of expansion. He thought apparently that the thing was not worth mentioning because in his opinion it had nothing to do with it at all. Reid was of opinion that it was a valuable indication of the enormous forces that were exerted by that explosion. Then he goes further "By lifting up of the building I understand it to lift it up from its level to another level" (page 523 (Record)). That he says was never the case. But the conclusion of Reid supported by Hall was that there was a momentary uplift of the building, whereas Small says it was nothing more than a localised uplift of a certain part, as a result of heat, and that the explosive force had nothing to do with it. Those, gentlemen, are the principal points upon which the 20 evidence of the two experts differ. They pursue entirely different ways so to say, and come to vastly different conclusions. Small adopts the method which I told you—yielding point of concrete, and he comes to 2 lbs. per sq. inch. Reid says he takes it as he finds it, namely, concrete broken, reinforcement pulled out or fractured, and he says "I compute what is necessary for those and I get certain figures." I can do no more than tell you how they have put their evidence before you, and to give you a few guides which might help you to judge which of the two witnesses is more reliable. Then I do not know whether I need go into the question of the manner in which Bruce and Collins have arrived at their figures of the 30 explosive power of two gallons of petrol, because allowing even a very wide margin of difference, what we have got to find out is whether it could have caused these particular results. So that what we have got to find out is "What is the pressure required to produce those results"? If the pressure is 2 lbs. to the sq. inch—whether that is adequate, whether the explosive force was 32 or 33 lbs. per sq. inch: whether the force required to rupture the slab or to cause the spalling of the stanchion or the uplift of the girders, is in excess largely of the explosive force arrived at either by Collins or Bruce. So that I do not know whether it is necessary, but I shall gladly do so if counsel wish me to do so, that is, whether we should test the methods 40 by which Collins and Bruce had arrived at these different figures. (Mr. Pereira agrees with His Lordship that whether it is 22 or 33 lbs. it is immaterial for the decision of this case.)

It is not necessary for us to go into that. Collins is a very candid person. He said "those are my results and certain factors are negligible." Bruce says nothing is negligible and he works them out minutely—i.e. humidity of the air which Collins says is of no effect and so on. I do not

know whether you were impressed—it is very good for Bruce to endeavour by models to try and demonstrate what he says will happen—but it shows the difficulty of reproducing in the model the conditions which existed in this case. Now let us take the tube experiment.

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Now let us take the tube experiment. Air was admitted to the inner tube through a reserve tube by a valve or tube. At the end of the tube was an opening which corresponded in relation to the tube to the 45 c.ft. in the basement. That was not an explosive force and the question will arise as to the ratio of the aperture to the aperture which existed there and corresponded to the openings in the basement. You might have got a similarity of conditions if you could have had a sudden expansion of air in the inner tube. The same thing applies to Mr. Gray's experiments with the tins. He introduces compressed air into a kerosine or petrol tin. Then the question arises whether you find the same conditions as existed in the basement. Falling back upon similar things you might take a rubber balloon, blow into it rapidly and you will find that it will rupture. I don't know whether that is right, but if you adopt the same process but blow into it slowly, the conditions would not be the same. You get a violent explosion which immediately pushes the pressure to something about 8 or 10 times about that. Any way it has been suggested in cross-examinations that the conditions are not the same. The two conditions are not the same whether you gradually blow into it pressure or whether you subject it to explosive force. It is Mr. Bruce's experiment and he gives you his opinion. It is the experiment of the sand box which I awaited with interest, but there again you cannot introduce these conditions exactly for these reasons. One is that we don't know the exact condition of the basement. That is an important point because Mr. Collins says that the explosive area would be in a pocket. That is to say it would be confined to a particular locality. If you had masses or piles of stuff in this basement you would find conditions of pockets. We know that petrol spreads laterally, it won't rise. If it can't rise laterally and if more vapour is added then an explosion would be caused if there was an ignition of that. The quantity that represented 2 gallons in 16,000 c. ft. was sprinkled in that box. A certain time was allowed for it. Of course I told you that it was urged on you that there was no complete diffusion and that there would be diffusion in the lower strata but it does not produce the conditions in the basement, because a pocket in the basement would have been a pocket which would not be over the whole area. The conditions produced by that experiment cannot be what the conditions were in the basement. What the conditions of the basement it was known. If the basement was stacked high with goods and you had a roof that was closed and confined then an explosion would occur and you would like to know the result of the explosions. The goods had been piled up, and Mr. Ogle's evidence is that there was no room for the parcels that came out from England.

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Then, gentlemen, there is another matter (evidence on page 177 (Record)). We heard Mr. Bruce detail very carefully his method of working out the pressure and you remember the factors that he took in working out his

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calculation, and that was an important element in the calculation of the number of British thermal units of heat resulting from the explosion. What he said on that point has been read to you, and as it was pointed out by the Deputy Solicitor General, you will remember that Mr. Bruce said that if there was 330 c. ft. of gas caught up which went up the girders spaces that would give an explosive force, and it would produce 148,500 British thermal units. The figure is important. Now he was asked to work out what would be the explosive force resulting from two gallons of petrol on the same basis and he worked that at 269,000 c. ft. Now that naturally led to a question being asked him if he allowed all this explosive force of 148,000 British thermal units why he was so chary in allowing the 2 gallons of petrol which produced a larger number of thermal units, viz. 261,000. On the face of it, it would need an explanation. Mr. Bruce's explanation is this and it is an explanation which gives rise to some thought, but you could pursue the matter further. He says you must remember that it was localised. In the case of gas you had a stratified layer of gas in the upper parts of the building. I don't know that that is a good explanation. It is for you to judge. Then he also told us the petrol gas became stratified. The petrol vapour is all stratified on the floor. Would that produce any result? If it was the case, we are told it may be right, that there was an explosion, then you must translate that explosion to the whole of the area which included it. That is to say you can only consider it and must consider it in terms of the whole surface of the basement. If that be so are you going to have condition of things if the explosion occurred in the upper stratum and another condition of things when it occurs in a lower stratum?

If that be so, then does it make no difference as I understand, which might be made if the explosion is localised on say a particular part of it by reason of its being shut in and restricted by goods and merchandise. Apparently we were told no. Why should the force resulting from explosion of a high stratum have terrible results and the explosion of a lower stratum be almost negligible? Is there a good reason for that or not?

For my part, I have an opinion in these matters; they may be somewhat confused, as regards what the underlying causes are, when one listens to the evidence one thinks there is a fallacy somewhere where one can't put one's hand on. But we have to make the best of that evidence and deal with it.

I have not dealt with Hall's evidence because it is a mere recapitulation of the evidence of Reid. But Hall complicated matters by bringing in this question of a medium explosive and negating gas. But anyway it is to his credit that he kept to his opinion and has not endeavoured to fall in line with others, even though he disagrees from other experts who are called on the same side as himself.

Now, there is one point which I have not referred to in this matter and that is the effect of injuries on accused. It may be, gentlemen, that when you have listened to what I have told you that you will come to this conclusion; that you cannot come to any definite conclusion of the existence

or non-existence of injuries other than the burns on accused. It might be that you would have expected to find the accused knocked down, his bones broken, and be more or less a wreck, but we can see that he suffered nothing more than those slight injuries on his knees and abrasions on his elbows which are quite consistent with his having fallen down and raised himself—but that is a trifling thing.

Now, Mr. Collins said that you can never judge the results of an explosion. He said, one man might be injured, and another go unscathed.

Hall, who had seen some explosions during operation in the war seems
 10 to think that in a basement everyone would have been flattened out, except he said a baby, which might be probably too small an object, but at the time Hall gives us some very valuable information on matters on which we might have been ignorant of, and that is the remarkable extent to which you can control the operations of explosives; he also laughed at the idea that because an explosive is used, or medium explosive, that anyone must necessarily be injured. He said what is the use of explosives in engineering if you cannot control them. He said you can use a high explosive and you can prevent injury to any local part by mattressing the underside; for some purposes of instruction the local force of explosives can be eliminated in that
 20 manner, which might not happen in the crowded basement where you have got goods and things of the sort which were in that basement.

Is it possible that a man who was hidden behind one of those at the time, or had fallen down at the time, might go entirely uninjured. We can't assume that this explosion occurred in an empty basement. That is not the case. If it occurred in an empty basement he would probably have been blown down in which case he might have broken his head or sustained fractures. He might have been down on the ground and escaped the blast, as we are told you will do; if you are in the heart of an explosion in which event the safest thing is to lie down flat. But unless one knows
 30 the conditions in the basement you cannot definitely form a conclusion that a person in a basement would necessarily have sustained serious injuries.

So that from the fact that the accused had no injuries worth speaking of, except only this fall, and burns, you cannot necessarily draw the conclusion that he was not in the basement at the time of the explosion. In other words the evidence leaves the case there partly unaffected one way or the other. And no conclusions to be drawn from either.

Well, gentlemen, as I told you this expert evidence really becomes important, in one event and one event only and that is on your being satisfied that the accused was responsible for the presence of petrol there.

40 There is another view of the case which however is not before you, but I am only mentioning it because you might say why I should limit myself to the proof that he was there with the petrol and say further that he set fire to the petrol. It is not necessary in this case. There was no other agency or contributory agency, so that if you come to the conclusion that he took the petrol took it for that purpose, you conclude from that that he was coming out from the basement, the question will arise even if he was there, even if he had petrol there, the defence will say he could not have produced

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this result and he could not have ignited the petrol for the reason that 2 gallons of petrol could not produce these results.

But of course if you find that he never had anything to do with petrol then this is all not waste of labour but it will not be relevant. There is this aspect of it, the Deputy Solicitor General pointed it out, that he did not go there, but there is no direct evidence that he lit the petrol. Then the question might arise how did the ignition occur? We are not a court of investigators who have got to find out whether the accused lit it or not. And the case is confined to 2 gallons of petrol, so that if you feel that the evidence connects him with the 2 gallons of petrol its unnecessary for you to be convinced that 10 2 gallons of petrol were used and the defence is that 2 gallons were not used because only the results would have been produced by a very very large quantity of petrol,—for Mr. Bruce says that to produce all these results 80 to 120 gallons would be necessary. But that is impracticable because the basement would only accommodate for explosive purposes 35 gallons.

That is the case as regards expert evidence, but as I said it has a secondary importance in this case; it only becomes necessary under certain circumstances.

There is also the other evidence in the case which I will draw your attention to, the points you have got to be satisfied upon, the leading points 20 in this case, if you are to be satisfied that the charge against the accused has been proved.

There is first the evidence relating to the accused preparing evidence of non-existent stocks. That of course depends upon your finding that there were stocks represented as existing which were not existing. There are 2 points in that. First you must find that there were certain stocks which never existed and then that accused presumably for this purpose created evidence of their existence; that is, as I told you in P39 primarily, because that was put forward as the summary or the resume of his claim and the crown says that about Rs. 126,000 value of items in that were fictitious,— 30 the T/C. 2 and the brush skins.

Then, as I said there is evidence of preparation which consists in the letters written as regards T/C. items, the letters written to Campbell Bros. offering them sale of those goods in October, a day which the prosecution says was a safe day to mention in the circumstances of the case.

Then as regards brush skins were there such skins? If there were no such skins then do you find that the accused got the second part of P32 prepared to create evidence of it; of their existence; that he wrote P56 to the manager of the National Bank for the purpose of creating evidence that he had Rs. 18,000 worth of skins which were required to be sent and available 40 for despatch at the end of September.

Did he ever intend doing so? Of course in that case he could never have intended sending those skins. Then the crown says that if he had those skins he could not have failed in the particular circumstances of the case to have sent them at once after his interview with Mr. Graham. The Crown says that he delayed replying just simply to mark time. His hands were forced by Campbell Carter.

He interviewed Graham and Graham sent his reply saying that the explanation which the accused gave, he was at a loss to understand. It was a matter of the greatest surprise to him—which is rather a severe thing to say.

That, in the circumstances, says the Crown, it is inconceivable that he would not have sent up those skins if he had them and retained or got back again the good opinion or good will of Mr. Graham—a valuable asset to him in his business.

His explanation is that he was still busy, and that he could not give them up. The fact was he did not send them.

So much as regards P32 and P39.

I went rather elaborately into P39 and the final situation regarding that is this: the document that was intended to delude according to the prosecution, the Company into paying was P39. He never intended submitting anything other than P39 and he had nothing more than P39.

The objection to that Mr. Pereira is that no one could have thought that he could have succeeded with a claim on P39, alone and therefore he must have had some other proof which failed him owing to the fire. Consider that.

P32 he utilised having once made it, hoping at any rate for the purpose of creating evidence for Campbell Bros. if they needed it.

He then fully utilized P39 in P32. This of course is the blackest aspect of it that is put forward by the Crown. Would you believe it, or is it the case that he only got involved in a certain degree of deception, not in its worst extent but to this extent, that he did not want Campbell Carters to believe that the things were somebody else's? But even if done for that purpose which might not have been a dishonest purpose, was it utilised for this purpose? But then if it was written honestly to Campbell Carters did the stock exist, or was it all part of the plot to create such evidence as he could—other evidence he could not produce unless he got a large number of people to join him in this fraud? Then we come to the petrol. You will give your careful consideration to the petrol question. Did he buy it for this purpose or did he buy it for his own purpose and give it over to Perera? Is Perera speaking truly on that point or not? All these arguments I have put before you. You will give due effect to the evidence. So far as one could judge from Hossen, he was under no express directions not to mention Kennedy's name. Then in determining the question of the honesty as a witness of Perera, you will have to consider whether Perera was a party to the preparation of false documents for the help of the accused. Perera says he did not understand what P32 meant, but in one part of his evidence he says "This is what it must mean." As regards the Brush items in P32 if those items were fictitious, then there is no question that Perera was a party to the preparation of false documentary evidence to help the accused.

Then one comes to the question of the possible use of the petrol. Then I told you the difficulty that you will experience and which the accused has stressed for his defence, of the existence of an innocent petrol tin with the tin that carried petrol. What inferences can you possibly draw from

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that? Does that necessarily induce you to change your mind if you have formed your mind against the accused on the other points? Does the fact that there was one tin that did not contain petrol make you doubt your judgment on all the other points? Or would you say that you believe the case apart from that? That is for you to judge. Then when we come to events of the day itself we come to this very important question of how accused emerged from the building. That is a matter which I dealt with to-day and I will not go over it, because I dealt with it as fully as I could, and I gave you all the evidence on the point, and I told you that it does come to a question of the selection of belief between Zain Ahamat and accused. If you believe Zain Ahamat then accused's version is untrue. If you believe Owen then what Zain Ahamat says is untrue. You saw how intensely counsel concentrated on that point. There is nothing that could have been said for and against it that has not been put before you. If you find that at the time of the explosion the accused emerged from the basement and if you have evidence that the basement is where the fire started, and it is quite clear that it did, then if he has not explained his presence, in the basement but denied his presence in the basement, those are points which are strongly indicative of guilt, but do you believe them? Those are the points in the case for the prosecution: all points of circumstantial evidence; circumstantial in the sense that they are not direct, that is, that nobody says that he saw accused sprinkling petrol on the things. If you think that all those circumstances irresistibly lead you to the conclusion that accused is guilty then you must find him guilty. If you have reasonable doubts on any one of those vital points, because all those points are interconnected then you will give the accused the benefit of those doubts. 10

Where it comes to a matter where accused is obliged to explain a thing, and in this case it would have been impossible for anyone defending the accused to have merely contented himself by saying "I rely upon the infirmities of the case for the prosecution"—he should explain it. There are some cases in which an accused person could quite rightly do that, and sometimes such a course is the best to adopt, but of course if proof comes up to a certain point, and it has come to a certain point in this case, if the facts alleged by the Crown are true—then no doubt you come to a point where you are reasonably entitled to ask an accused "Now you must tell us what your explanation is." So far as the privilege of an accused goes, even Counsel cannot use that as a point against him, but the judge can do it. It would have been impossible especially in the case of an accused in this position for him to have refrained from going into the witness box, and he has done what he ought to have done. He has got into the witness box and called his wife as well, and he has given you an explanation. As regards that explanation I would remind you again of that observation of Lord Reading which I referred to at the beginning of my charge, that is, that the law does not require you to have to say "I am absolutely convinced that the explanation of the accused is true." If there is a reasonable possibility of its being true then he must have the benefit of it. That is the position in this case gentlemen. 40

This case has taken a long time. I have done the best I could and I trust that while I have put the case for the prosecution before you with all the strength which the Crown is entitled to put it before you, I hope I have put before you everything for the accused which I could possibly put before you.

It is perfectly true that the responsibility is ultimately on the jury because it is your decision which determines the fate of the accused. I am here to help you so far as my knowledge of the law can go in helping you on to a decision. If I have helped you to the right conclusion it would be
 10 matter of great satisfaction to me. But if I have failed to lead you to the right decision you must know that the responsibility is not mine but yours. But whatever your verdict is I accept it and the verdict of a jury must be accepted as final. But let me only say one word more gentlemen. You know that a verdict to be effective must be a verdict of five or more of you. A verdict which is divided by 4 to 3 for instance, is not a verdict which can be accepted by a Judge. I am not asking that anyone of you should surrender your convictions in this case. If after a careful consideration you are divided, let it be so. I am not asking anyone of you to compromise. It would not be honest to do so. If there are differences of opinion, and if
 20 you are divided, make the most earnest endeavour to agree, after a careful consideration of the case, and if you can, return a verdict that would be the verdict of all of you. I do not suggest that anyone by way of a compromise should surrender his right in the matter. But I say it once again because I particularly wish to impress this upon you, that if after careful consideration you cannot agree in the numbers which the law requires you to agree, then that must be your final verdict. Nobody should surrender his right merely to compromise. It is no doubt a difficult case which requires a lot of thought, but I would ask you not to sacrifice any convictions of your own. Only try if possible to come to one decision.

30 Now the indictment gentlemen is (His Lordship reads to the Jury the Indictment). The first count is punishable with 15 years R.I. and the second with 7 years R.I.

We certify that the above are a correct transcript of the shorthand notes of the charge to the Jury by Mr. Justice Drieberg in the Kennedy case taken down by us.

(Sgd.) R. J. VAN DORT,
Stenographer, S.C.

(Sgd.) L. DE SILVA,
Acting Stenographer, S.C.

40

(Sgd.) H. C. GUY VAN DORT,
Acting Stenographer, S.C.

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No. 14.

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6th June,
1935.

AT THE COURT AT BUCKINGHAM PALACE.

The 6th day of June, 1935.

PRESENT

THE KING'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT	SIR TEJ BAHADUR SAPRU
MARQUESS OF LINLITHGOW	MR. ATTLEE
LORD STEWARD	MR. HORE-BELISHA
SECRETARY SIR SAMUEL HOARE	CAPTAIN R. C. BOURNE.
SIR GEORGE H. MURRAY	

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 7th day of May 1935 in the words following viz. :—

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Alexander Kennedy in the matter of an Appeal from the Supreme Court of the Island of Ceylon (Assize Court of Colombo) between the Petitioner Appellant and Your Majesty Respondent setting forth (amongst 20 other matters) that the Petitioner seeks special leave to appeal from the conviction of and sentence passed on him on the 20th October 1934 by the Supreme Court sitting in its Original Criminal Jurisdiction with a special jury of seven jurors : that the following charges were preferred against the Petitioner by the prosecution : (a) That he had on the 29th September 1933, at Colombo, committed mischief by fire, knowing it to be likely that he would thereby cause the destruction of a building under Section 419 of the Penal Code (Ceylon Ordinance No. 2 of 1883); (b) That he had on the same date committed mischief by fire, intending 30 thereby to cause damage to leather boots, shoes and other shop goods under Section 418 of the same Code : that the trial of the Petitioner upon the above charges to both of which he pleaded not guilty took place on the 3rd September 1934 and following days before Drieberg J. : that on the 20th October 1934 the jury unanimously found the Petitioner guilty as charged whereupon the Judge sentenced him to six years' rigorous imprisonment on each count the sentences to run concurrently : that the case for the prosecution upon the above charges rested on the following two allegations :—(a) that a suitcase containing two petrol cans— 40 one of which contained traces of petrol and the other traces of a

watery non-inflammable fluid—was found on the ground floor of the building belonging to “*The Times of Ceylon*” part of which was leased to the Petitioner for his business premises; and (b) on the motive that the Petitioner was in difficult financial circumstances and that the only way in which he could meet the situation was to set fire to his own goods with the intention of defrauding the Insurance Companies with which his goods had been insured: that the onus of proving that the Petitioner set fire to the building was on the prosecution and that they never discharged that burden and that further there was no evidence to go to the jury as the prosecution failed to prove that such explosion and fire were caused by petrol or that it was possible for the Petitioner to have caused the fire in the manner and circumstances alleged: that the Petitioner’s goods were insured with three Insurance Companies the Commercial Union Assurance Company the Manchester Assurance Company and the Caledonian Insurance Company and that the 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 which are to unite Fire Insurance Companies transacting business on the Island to secure joint action in all matters affecting the interests of such Companies: that of the seven jurors empanelled four were in the employment of companies or firms acting as agents for Fire Insurance Companies transacting fire insurance business in the Island of Ceylon and members of the Association: that one of the four jurors Mr. Ferguson Robert Cheves was in the employment of the agents in the Island for the Manchester Assurance Company the amount of the insurance in the case of that Company being Rs. 250,000: that Mr. E. A. Claessen an insurance salesman carrying on business in Ceylon stated in an affidavit annexed to the Petition that the “*Times*” building was insured with the Commercial Union Assurance Company and other Insurance Companies and that he was credibly informed and believed that a portion of the insurance to the extent of about Rs. 50,000 was underwritten by the Royal Exchange Assurance Corporation whose agents in Ceylon are Mackwoods Limited; the foreman of the jury Mr. Kenneth Walsham Taylor was a Director and Secretary of Mackwoods Limited: that the same deponent stated in his affidavit that he was credibly informed that a portion of the insurance on the Petitioner’s goods effected with the Manchester Assurance Company was also underwritten by the Royal Exchange Assurance Corporation: that the Petitioner did not challenge the above-mentioned four jurors because neither he nor his Counsel nor the Proctor entrusted with his defence was aware either at the commencement or during the course of the trial that the jurors were interested in Insurance Companies or that their employers were members

*In the
Privy
Council.*

No. 14.
Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
6th June,
1935—con-
tinued.

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*In the
Privy
Council.*

No. 14.
Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
6th June,
1935—*con-
tinued.*

of the Ceylon Fire Insurance Association: that during the course of the trial some of the jurors were seen by trustworthy witnesses and also by the Petitioner holding communication with persons other than their fellow-jurors viz. with Mr. I. R. G. Smith manager of the insurance work of the Manchester Assurance Company and with Mr. G. D. Crossman manager of the insurance work of the Commercial Union Assurance and that on several occasions during the progress of the trial and the adjournments thereof the jurors and Mr. Smith and Mr. Crossman retired to the verandah of the Supreme Court where they spent a considerable time in conversation in which the other jurors (who did not represent any Insurance Companies) seldom took any part: that the Petitioner immediately after sentence passed on him made the following statement to the Judge:—" I wish to protest strongly against members of the Insurance Companies hob-nobbing with certain members of the jury during these days " : that Drieberg J. however merely replied that " he did not think he need say anything on that now " and left the matter undecided : that the Petitioner craved leave to refer to five affidavits therewith annexed in support of the above statements and to submit that the facts therein set forth do establish that he had been greatly prejudiced and deprived of the benefit of a fair and impartial trial at the hand of the jury : And humbly praying Your Majesty in Council to order that he shall have special leave to appeal from the conviction and sentence of the Supreme Court dated the 20th October 1934 or for such further Order as may to Your Majesty in Council seem fit :

" The Lords of the Committee in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the conviction and sentence of the Supreme Court of the Island of Ceylon dated the 20th day of October 1934 with reference to the subjects raised before Their Lordships upon the hearing of the humble Petition but that no case ought to be raised with reference to the communication by the jurors with outsiders during the trial and that with reference to the question of the interest of the jurors the evidence contained in the said affidavits filed by the Petitioner ought to be treated as evidence in chief that the Respondent ought to be at liberty to file affidavits in answer and that the Petitioner ought to be at liberty to file affidavits in reply.

" And Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed

to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeal upon payment by the Petitioner of the usual fees for the same."

*In the
Privy
Council.*

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

No. 14.
Order in
Council
granting
special
leave to
appeal to
His Majesty
in Council,
6th June,
1935—*con-
tinued.*

Whereof the Governor or Officer administering the Government of the
10 Island of Ceylon and its Dependencies for the time being and all other
persons whom it may concern are to take notice and govern themselves
accordingly.

M. P. A. HANKEY.

No. 15.

Affidavit of Alexander Kennedy, sworn 18th January, 1935.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

No. 15.
Affidavit of
Alexander
Kennedy,
sworn 18th
January,
1935.

P.C. Colombo No. 10713

THE KING

vs.

ALEXANDER KENNEDY

20 I, ALEXANDER KENNEDY of Colombo in the Island of Ceylon make oath
and say as follows:—

1. I was the accused in the above case and was convicted on the 20th day of October 1934 and sentenced to six years rigorous imprisonment, and am now serving my sentence in the Welikade Gaol in Colombo aforesaid. The trial commenced on the 3rd day of September 1934 and was concluded on the 20th day of October 1934.

2. The Jury empanelled to try me were:—

- 30 (1) Mr. Kenneth Walsham Taylor Director and Secretary of
Mackwoods Ltd., Colombo;
(2) Mr. Walter Richard Alexander McLellan, Assistant of
Messrs. Leechman & Co., Colombo;
(3) Mr. Albert Edward Woodall Assistant of The Colombo
Commercial Co., Ltd., Colombo;
(4) Mr. Edgar Henry Temple Accountant of The British Ceylon
Corporation Ltd., Colombo;
(5) Mr. Ferguson Robert Cheves Planter and Manager of
Sapymalkande Group Dehiowita belonging to The Lunuva (Ceylon)
Tea & Rubber Estates, Ltd.;
40 (6) Mr. R. M. Lawson Assistant of Walker & Greig, Ltd., of
Colombo;

*In the
Privy
Council.*

(7) Sembucutty Arachige Allan Silva Landed Proprietor of
Katana Negombo;

No. 15.
Affidavit of
Alexander
Kennedy,
sworn 18th
January,
1935—con-
tinued.

3. The names of the Jurors who were summoned to serve on the panel were not disclosed until the commencement of the trial when the names of the Jurors were called by the Registrar of the Supreme Court, and as a result I was unable to make any enquiries about the Jurors who were empanelled. I was not aware at the time that Messrs. K. W. Taylor, W. R. A. McLelland and A. E. Woodall were employed by Firms interested in Fire Insurance, and were members of The Ceylon Fire Insurance Association. Nor was I aware that Mr. F. R. Cheves was employed by one of the Companies managed by Harrisons & Crosfield, Ltd., who were also the Agents of The Manchester Assurance Co., with whom I had effected Policy of Insurance No. 9246849 for Rs. 250,000/- over the Stock-in-trade of my business. 10

4. Had I been aware of these facts I would have requested my legal advisers to challenge the above four Jurymen.

5. After my conviction and sentence, I made the following statement with the permission of the presiding Judge—

“ I wish to protest strongly against members of The Insurance Companies hobnobbing with certain members of the Jury during these days.” 20

6. I was induced to make this statement as during the course of the trial I had seen Mr. I. R. G. Smith, who manages the Insurance work of The Manchester Assurance Co., of which Harrisons & Crosfield Ltd., are the Agents, with whom I had effected the said Policy of Insurance No. 9246849 for Rs. 250,000/- and Mr. G. D. Crossman who manages the Insurance work of The Commercial Union Assurance Co., of which Lee Hedges & Co., Ltd., are the Agents, with whom I had effected Policies of Insurance No. 15412505 for Rs. 125,000/- and No. 15117330 for Rs. 175,000/- speaking to the Jurors on several occasions during the progress of the trial in the outer verandah of the Supreme Court. 30

7. By reason of the facts aforesaid I have been greatly prejudiced and have not had the benefit of a fair and impartial trial at the hands of the Jury.

Signed and Sworn to at Colombo in the }
Island of Ceylon this 18th day of } ALEXANDER KENNEDY
January 1935.

Before me,

G. C. THAMBYAH.

District Judge of Colombo in the Island of Ceylon.

L.S.

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No. 16.

Affidavit of Edward Arthur Claessen, sworn 18th January, 1935.

*In the
Privy
Council.*

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

P.C. Colombo No. 10713.

THE KING

vs.

ALEXANDER KENNEDY.

No. 16.
Affidavit of
Edward
Arthur
Claessen,
sworn 18th
January,
1935.

I, EDWARD ARTHUR CLAESSEN of "the Grove" Nawala, in the District of Colombo in the Island of Ceylon make oath and say as follows :—

10 1. The jury empanelled to try Mr. Alexander Kennedy in the above case were :—

(1) Mr. Kenneth Walsham Taylor Director and Secretary of Mackwoods Ltd., of The Chartered Bank Buildings, Fort, Colombo, aforesaid who was elected as Foreman;

(2) Mr. Walter Richard Alexander McLellan Assistant of Messrs. Leechman & Co., of The National Mutual Buildings, Fort, Colombo aforesaid;

20 (3) Mr. Albert Edward Woodall Assistant of The Colombo Commercial Co., Ltd., of Braybrooke Place Slave Island Colombo aforesaid;

(4) Mr. Edgar Henry Temple, Accountant of The British Ceylon Corporation Ltd., Hultsdorf Mills, Colombo aforesaid;

(5) Mr. Ferguson Robert Cheves Planter and Manager of Sapumalkande Group, Dehiowita in the said Island belonging to The Lunuva (Ceylon) Tea and Rubber Estates Ltd.;

(6) Mr. R. M. Lawson Assistant of Walker & Greig Ltd., of Darley Road Colombo aforesaid;

(7) Sembucutty Arachige Allan Silva Landed Proprietor Katana Negombo in the said Island;

30 2.—(a) Mackwoods Ltd., of which the Foreman of the Jury the abovementioned Mr. Kenneth Walsham Taylor was Director and Secretary were in the years 1933 and 1934 and still are the Agents for the following Insurance Companies :—

(1) The Royal Exchange Assurance Corporation;

(2) The Law Union & Rock Insurance Co., Ltd.;

(3) The Northern Assurance Co. Ltd.; and

(4) The Provident Accident & White Cross Insurance Co., Ltd.

*In the
Privy
Council.*

No. 16.
Affidavit of
Edward
Arthur
Claessen,
sworn 18th
January,
1935—*con-
tinued.*

(b) Leechman & Co., of which the abovementioned Mr. Walter Richard Alexander McLellan is an Assistant were in the years 1933 and 1934 and still are the Agents for the following Insurance Companies :—

- (1) The Norwich Union Fire Insurance Society Ltd.;
- (2) The New Zealand Insurance Co., Ltd.;
- (3) The London & Scottish Assurance Corporation Ltd.; and
- (4) The Norwich & London Accident Insurance Association.

(c) The Colombo Commercial Co., Ltd., of which the abovementioned Mr. Albert Edward Woodall is an Assistant were in the years 1933 and 1934 and still are the Agents for the following Insurance Companies :—

- (1) The London & Lancashire Insurance Co., Ltd.; and
- (2) The Thames & Mersey Marine Insurance Co., Ltd.

(d) Harrisons & Crossfield Ltd. were in the years 1933 and 1934 and still are the Agents of The Manchester Assurance Co., and are also the Agents of The Lunuva (Ceylon) Tea & Rubber Estates Ltd., who are the owners of The Sapumalkande Group of which the abovementioned Mr. Ferguson Robert Cheves was at the time of the trial and still is the Manager.

3. I am an Insurance Salesman and carry on my profession in Colombo in the said Island and in the course of my said business I have had dealings with several Insurance Companies established in Colombo amongst others The Royal Exchange Assurance Corporation The Norwich Union Fire Insurance Society The Norwich & London Accident Insurance Association The Ocean Accident & Guarantee Corporation Ltd., and The Commercial Union Assurance Co.

4. The said Mr. Alexander Kennedy had effected the following Insurances covering the stock-in-trade of his business of Kennedy & Co., which were lying in the Times Building situated in Main Street Fort, Colombo, which belonged to The Times of Ceylon Co., Ltd., viz. :—

- (1) A Policy No. 9246849 for Rs. 250,000/- with The Manchester Assurance Co., of which the abovementioned Harrisons & Crosfield Ltd., are the Agents in Ceylon;
- (2) A Policy No. F.588529 for Rs. 75,000/- with The Caledonian Insurance Co., of which E. B. Creasy & Co., Ltd., are the Agents in Ceylon;
- (3) A Policy No. 15412505 for Rs. 125,000/- with The Commercial Union Assurance Co. Ltd., and a Policy No. 15117330 for Rs. 175,000 of which Lee Hedges & Co. Ltd., are the Agents in Ceylon.

5. I have visited the Offices of the above Companies and found affixed to the wall of their respective offices brass plates showing that they held the Agencies of the Insurance Companies mentioned above.

6. All the Insurance Companies referred to above are Members of The Ceylon Fire Insurance Association. The objects of the Association are to unite Fire Insurance Companies (through their Local Agents and Representatives) transacting business in the Island of Ceylon to secure

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joint action in all matters affecting the interest of such Companies and to establish and enforce Rules for the working of Fire Insurance business generally in Ceylon.

*In the
Privy
Council.*

7. The said Times Buildings in which Messrs. Kennedy & Co. carried on the business and which were damaged by fire on the 29th day of September 1933 were insured with The Commercial Union Assurance Co. and some other Insurance Companies and I am credibly informed and verily believe that a portion of the said Insurance to the extent of about Rs. 50,000/- was underwritten by The Royal Exchange Assurance Corporation of which the aforesaid Mackwoods Ltd., are the Agents. A claim of about Rs. 90,000/- was made by The Times of Ceylon Co. Ltd., and this claim was paid prior to the trial of the above case by The Commercial Union Assurance Co., and the other Insurance Companies the aforesaid Mackwoods Ltd., Agents for The Royal Exchange Assurance Corporation having paid The Commercial Union Assurance Co., their proportionate share.

No. 16.
Affidavit of
Edward
Arthur
Claessen,
sworn 18th
January,
1935—con-
tinued.

8. With regard to the Fire Policy No. 9246849 effected by Kennedy & Co. with The Manchester Assurance Co., of which the aforesaid Harrison & Crosfield Ltd. are the Agents I am credibly informed that a portion of the sum assured thereby was underwritten by the said Company with The Royal Exchange Assurance Corporation of which the aforesaid Mackwoods Ltd., are the Agents and of which said Mackwoods Ltd. the Foreman Mr. Kenneth Walsham Taylor is a Director and Secretary.

Signed and Sworn to at Colombo in }
the Island of Ceylon on this 18th }
day of January 1935 }

E. A. CLAESSEN

Before me,

G. C. THAMBYAH

L.S.

District Judge of Colombo in the Island of Ceylon.

*In the
Privy
Council.*

No. 17.

Affidavit of Henry Ernest Leisser, sworn 18th January, 1935.

No. 17.
Affidavit of
Henry
Ernest
Leisser,
sworn 18th
January,
1935.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

THE KING

P.C. Colombo No. 10713

vs.

ALEXANDER KENNEDY

I, HENRY ERNEST LEISSER of Brownrigg Road, Colombo, in the Island of Ceylon, make oath and say as follows :—

1. I am the Proprietor of Leisser and Company and carry on business at Negriss Building, York Street, Colombo aforesaid. 10

2. The Jury empanelled to try Mr. Alexander Kennedy in the above case were :—

(1) Mr. Kenneth Walsham Taylor, Director and Secretary of Mackwoods Ltd., of The Chartered Bank Buildings, Fort, Colombo aforesaid, who was elected as Foreman;

(2) Mr. Walter Richard Alexander McLellan, Assistant of Messrs. Leechman & Co., of The National Mutual Buildings, Fort, Colombo aforesaid;

(3) Mr. Albert Edward Woodall, Assistant of The Colombo Commercial Co., Ltd., of Braybrooke Place, Slave Island, 20 Colombo aforesaid;

(4) Mr. Edgar Henry Temple, Accountant of The British Ceylon Corporation Ltd., Hultsdorf Mills, Colombo aforesaid;

(5) Mr. Ferguson Robert Cheves, Planter and Manager of Sapumalkande Group, Dehiowita in the said Island belonging to The Lunuva (Ceylon) Tea & Rubber Estates Ltd;

(6) Mr. R. M. Lawson, Assistant of Walker & Greig Ltd., of Darley Road, Colombo aforesaid;

(7) Sembucutty Arachige Allan Silva, Landed Proprietor, Katana, Negombo in the said Islands : 30

2. (a) Mackwoods Ltd., of which the Foreman of the Jury, Mr. Kenneth Walsham Taylor was Director and Secretary, were in the years 1933 and 1934 and still are the Agents for the following Insurance Companies viz :—

(1) The Royal Exchange Assurance Corporation;

(2) The Law Union & Rock Insurance Co., Ltd.

(3) The Northern Assurance Co., Ltd; and

(4) The Provident Accident and White Cross Insurance Co., Ltd.

(b) Leechman & Co., of which the above mentioned Mr. Walter Richard Alexander McLellan is an Assistant, were in the years 1933 and 1934 and still are the Agents for the following Insurance Companies viz :—

- (1) The Norwich Union Fire Insurance Society Ltd;
- (2) The New Zealand Insurance Co., Ltd.
- (3) The London & Scottish Assurance Corporation Ltd;
- (4) The Norwich & London Accident Insurance Association :

*In the
Privy
Council.*

No. 17.
Affidavit of
Henry
Ernest
Leisser,
sworn 18th
January,
1935—*con-
tinued.*

(c) The Colombo Commercial Co., Ltd., of which the above mentioned Mr. Albert Edward Woodall is an Assistant, were in the years 1933 and 1934 and still are the Agents for the following Insurance Companies viz :—

- (1) The London & Lancashire Insurance Co., Ltd;
- (2) The Thames & Mersey Marine Insurance Co., Ltd.

(d) Harrisons & Crosfield Ltd., were in the years 1933 and 1934 and still are the Agents for The Manchester Assurance Co., and are also the Agents & Secretaries for The Lunuva (Ceylon) Tea & Rubber Estates Ltd., who are owners of the Sapumalkande Group, of which the aforesaid Mr. Ferguson Robert Cheves was at the time of the trial and still is the Manager.

3. I was present in the Supreme Court of the Island of Ceylon during the trial of Mr. Alexander Kennedy the accused in the above case and on several occasions I saw Mr. I. R. G. Smith, Assistant of Harrisons & Crosfield Ltd., (the Agents for The Manchester Assurance Co.) who manages the insurance work of the said Manchester Assurance Co., and Mr. G. D. Crosman, Assistant of Lee Hedges & Co., Ltd., (the Agents for The Commercial Union Assurance Co.) who manages the Insurance work of the said Commercial Union Assurance Co., who were seated in Court during the progress of the said case, talking to some of the Jurymen in the outer verandah of the said Supreme Court during the adjournments of the said Court :

Signed and Sworn to at Colombo in }
the Island of Ceylon this 18th } (Sgd.) H. E. LEISSER.
30 day of January 1935 }

Before me,

G. C. THAMBYAH

District Judge of Colombo in the Island of Ceylon.

Seal of The
District Court of
Colombo

Affidavit of Robert Hall, sworn 21st January, 1935.

IN THE PRIVY COUNCIL.

No. 18.
Affidavit of
Robert Hall,
sworn 21st
January,
1935.

ON APPEAL.

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

REX

v.

ALEXANDER KENNEDY.

I, ROBERT HALL, of Abdul Kaffoor Building Church Street Colombo 10
Ceylon at present residing at "Fairfield" Newtown St. Boswells Roxburgh-
shire Consulting Engineer and Contractor make oath and say as follows:—

1. I know of Alexander Kennedy as a business man in Colombo but
am not well acquainted with him. I have never been associated with him
in business but have known of his presence in Ceylon since 1911 when he
was employed as an assistant with Whiteway Laidlaw & Co. Ltd. in Colombo.

2. I was summoned to give evidence for the defence at the trial of
Alexander Kennedy which commenced at the Colombo Assize Court on the
3rd September 1934 and concluded on the 20th October 1934. The trial
took place before Mr. Justice Drieberg and a Special Jury. 20

3. I was not present in Court on the day the Special Jury was
empanelled. I am personally acquainted with four of the members of the
jury namely Messieurs Taylor Cheves Lawson and McLellan. I have been
acquainted with all four gentlemen for some years.

4. I know that at the time of the trial Mr. Taylor was Secretary and a
Director of Mackwoods & Co. Ltd. of Colombo and that that company were
agents for the Royal Exchange Assurance and many other insurance
companies. I know that Mr. Taylor was a chartered accountant and
acted as accountant for his employers. I am informed and believe that 30
Mr. Taylor represented Mackwoods & Co. Ltd. on the Fire Insurance
Committee which was composed of representatives of all tariff insurance
companies operating in Ceylon and covering (inter alia) fire life and marine
risks. I know that Mr. Cheves at the time of the trial was employed by
Lunuva Tea and Rubber Co. Ltd. which was under the control of Harrison
& Crosfield Ltd. who were the Managing Agents of that Company in Ceylon
and were also the Agents for the Manchester Assurance Company the
Commerical Union Assurance Co. Ltd. and a number of other insurance
companies. At the time of the trial Mr. McLellan was one of the senior
assistants of Messrs. Leechman & Co. of Colombo and to my knowledge this 40
firm were agents for the Norwich Union Fire Assurance Co. Ltd. and were
connected with all the other insurance companies in Ceylon in risks under-
written by those companies. It is also within my knowledge that Messrs.
Leechman & Co. used to re-insure risks with other insurance companies.

5. Throughout practically the whole time the defence evidence was
being given at the trial two representatives of Messrs. Harrisons & Crosfield

Ltd. (the name of one of whom to the best of my recollection was Smith) were in attendance at the Court. During the adjournments they spent a very considerable time in conversation with members of the jury and they travelled from their offices to the Court by motor-car in company with some members of the jury notably Messieurs Cheves McLellan and Lawson.

6. These conversations were so obvious that I approached these representatives of Harrisons & Crosfield one day during the trial and pointed out that it might lead to serious action being taken if their conduct in conversing with members of the jury was reported to the Judge. They
 10 both laughed at my protest and did not thereafter desist from so conversing. I did not take any further step. The distinct impression on my mind was that the two representatives in question were discussing with the three jurors Messieurs Lawson Cheves and McLellan matters raised at the trial. What gave me this impression was that for their discussions the two representatives and the three jurors withdrew to a far corner of the verandah of the Court building near the entrance to the Judge's room and that the other jurors (who did not represent any insurance companies) seldom took any part in the discussions. I knew that some members of the jury brought their midday meal with them to the Court and others went to the Grant
 20 Oriental Hotel in Colombo for their meal. The jury were not confined but were free to go to their homes and to their clubs after each day's proceedings.

7. On many occasions during the trial I observed that the foreman of the jury Mr. Taylor interrupted Counsel during the examination and cross-examination of witnesses and made remarks on evidence which was being given. It is within my knowledge that the usual procedure is for the evidence of a witness to be completed and for the Judge then to ask the foreman of the jury if he has any questions to ask of the witness. On no occasion did the Assize Judge attempt to stop the interference of the foreman during the examination or cross examination of any witness. I recollect
 30 particularly that during the cross-examination of Mr. Small (a technical witness for the prosecution) Mr. Taylor interrupted leading Counsel for the defence and made it very obvious that he (the foreman) did not want the cross-examination to continue upon the point then under consideration. To the best of my recollection the point in question was as to the precise strength of the concrete floor of the building in the case. On that point the cross-examination of Mr. Small by leading Counsel for the defence did cease after the intervention of the foreman.

8. I have on a number of occasions served upon both special and common juries and have acted as foreman of the jury on three or four
 40 occasions and from my experience I consider that the attitude of the foreman of the jury during this trial was not in accordance with the rules of conduct which govern juries in Ceylon.

Sworn at 35 Coleman Street in the City of }
 London this 21st day of January 1935 } ROBT. HALL.

Before me,

G. E. H. READER,

A Commissioner for Oaths.

*In the
Privy
Council.*

No. 18.

Affidavit of
Robert Hall,
sworn 21st
January,
1935—con-
tinued.

*In the
Privy
Council.*

No. 19.

Affidavit of P. G. Cooke, sworn 7th February, 1935.

No. 19.
Affidavit of
P. G. Cooke,
sworn 7th
February,
1935.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

THE KING

P.C. Colombo No. 10713.

vs.

ALEXANDER KENNEDY.

I, PERCY GREY COOKE of Colombo in the Island of Ceylon make oath and say as follows :—

1. I am a Proctor of the Supreme Court of the said Island and practise my profession in Colombo aforesaid. 10

2. I was the Proctor entrusted with the defence of Mr. Alexander Kennedy, the accused in the above case, and in my capacity as such Proctor I instructed the Counsel for the defence viz : Mr. R. L. Pereira, King's Counsel, and Mr. F. C. W. van Geyzel, Advocate, junior counsel.

The jury empanelled to try the accused were :—

(1) Mr. Kenneth Walsham Taylor, Director and Secretary of Mackwoods Ltd. of The Chartered Bank Buildings, Fort, Colombo aforesaid, who was elected as Foreman :

(2) Mr. Walter Richard Alexander McLellan, Assistant of Messrs. Leechman & Co. of The National Mutual Building, Fort, 20 Colombo aforesaid :

(3) Mr. Albert Edward Woodall, Assistant of the Colombo Commercial Co. Ltd. of Braybrooke Place, Slave Island, Colombo aforesaid :

(4) Mr. Ferguson Robert Cheves, Planter and Manager of Sapumalkande Group, Dehiowita in the said Island belonging to The Lunuva (Ceylon) Tea and Rubber Estates Ltd :

(5) Mr. Edgar Henry Temple, Accountant of the British Ceylon Corporation Ltd., Hultsdorf, Colombo aforesaid :

(6) Mr. R. M. Lawson, Assistant of Walker & Greig Ltd. of 30 Darley Road, Colombo aforesaid :

(7) Sembukutty Arachige Allan Silva, Landed Proprietor, Katana, Negombo in the said Island :

4. The names of the jurors who were summoned to serve on the panel were not disclosed until the trial began, when their names were called out by the Registrar of the Supreme Court and there was no opportunity of making any enquiries regarding the jurors who were empanelled.

5. Had I or counsel or the accused been or become aware, either at the commencement or during the course of the trial—

(a) That the said Messrs. Kenneth Walsham Taylor, Walter 40 Richard Alexander McLellan and Albert Edward Woodall were

members of firms which act as Agents for Insurance Companies and which are members of The Ceylon Fire Insurance Association, or
 (b) That the said Ferguson Robert Cheves was employed as an Estate Superintendent by Messrs. Harrisons & Crossfield Ltd., a Company which was directly interested in the result of the above trial as Agents for The Manchester Assurance Co. Ltd. which had insured the accused's stock-in-trade and effects to the extent of Rs. 250,000/-

In the Privy Council.
 No. 19.
 Affidavit of P. G. Cooke, sworn 7th February, 1935—continued.

10 these facts would assuredly have been brought to the notice of the Presiding Judge, and the jurors concerned challenged :

6. It was only some days after the trial was concluded that we were informed that the four jurors aforesaid were interested in Insurance Companies and on enquiry we found that this was so.

7. Neither I nor counsel were aware during the trial, nor have we at any time thereafter become aware, that conversations which took place during the trial between certain of the jurors and representatives of Insurance Companies had any reference to the facts of the case.

20 Signed and sworn to at Colombo in the Island }
 of Ceylon this 7th day of February One }
 thousand nine hundred and thirty five : }

P. G. COOKE.

Before me,

G. C. THAMBYAH
 District Judge of Colombo
 in the Island of Ceylon.

Seal of The District
 Court of Colombo.

No. 20.

Affidavit of Kenneth Walsham Taylor, sworn 29th March, 1935.

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

No. 20.
 Affidavit of Kenneth Walsham Taylor, sworn 29th March, 1935.

Between

30 ALEXANDER KENNEDY - - - - - *Appellant*
 and
 THE KING - - - - - *Respondent*

I, KENNETH WALSHAM TAYLOR, being a christian do make oath and say as follows :—

1. I am a Director of Messrs. Mackwoods, Limited, Colombo.
2. I was summoned to serve on the jury empanelled to try the case mentioned above and I was selected to act as its Foreman.

*In the
Privy
Council.*

No. 20.
Affidavit of
Kenneth
Walsham
Taylor,
sworn 29th
March,
1935—con-
tinued.

3. Messrs. Mackwoods, Limited, are the agents in Ceylon for
- (a) The Royal Exchange Assurance Corporation;
 - (b) The Northern Insurance Company;
 - (c) The Provident Accident and White Cross Insurance Com-
pany;
 - (d) The Law Union and Rock Insurance Company; and
 - (e) The Marine Insurance Company.

4. Of these companies, those mentioned at (a) (b) and (d) of the preceding paragraph are members of the Ceylon Fire Insurance Association.

5. About two weeks ago, I learned that the Royal Exchange Assurance Corporation mentioned at (a) of paragraph 3 hereof had an interest by way of re-insurance in one or both of the policies of insurance effected by Kennedy & Company with the Commercial Union Insurance Company. I heard nothing of the details of this policy of re-insurance at the time and I am still unaware of the same.

6. I am not aware that any of the other Insurance Companies mentioned in paragraph 3 hereof had any interest in the policies of insurance effected by Kennedy & Company.

7. I had no knowledge whatever of the facts mentioned in paragraph 5 hereof before or during the course of the trial of the case mentioned above. 20

8. As a member of the Company of Messrs. Mackwoods, Limited, I am in charge of their Estates Department and I also control their Accounts and Finance Departments. I have nothing to do with the Insurance Department of my company except that I have occasion sometimes to insure properties dealt with by me in the Estates Department with the Insurance Companies for which my Company are the Local Agents.

9. My Company has no interest, financial or otherwise, in the policies of insurance effected on behalf of the Insurance Companies for which my Company are the Local Agents. My Company only receives a commission on the premiums paid on the same. 30

10. In the case of the Royal Exchange Assurance Corporation, all their local business is transacted by their own employee, namely, Wilfrid Gaillard Bundy, who receives his instructions direct from the Company's branch office in Calcutta.

11. No person other than a fellow juror discussed, or attempted to discuss, with me during the course of the trial of the case mentioned above the facts of the case or any matter connected therewith.

K. W. TAYLOR.

Sworn at Colombo this 29th day of March, 1935.

Before me,

40

M. PINNER,
Justice of the Peace.

No. 21.

Affidavit of Ferguson Robert Cheves, sworn 29th March, 1935.

In the
Privy
Council.

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

Between

ALEXANDER KENNEDY - - - - - *Appellant*

and

THE KING - - - - - *Respondent*

No. 21.
Affidavit of
Ferguson
Robert
Cheves,
sworn 29th
March,
1935.

I, FERGUSON ROBERT CHEVES, being a christian do make oath and say
10 as follows :—

1. I am the Superintendent of Sapumalkande Estate, Dehiowita, in
the District of Kegalle Ceylon.

2. I was a member of the jury empanelled to try the case mentioned
above.

3. Sapumalkande Estate mentioned above belongs to the Lunuwa
(Ceylon) Tea and Rubber Estates, Limited, a company registered under the
Joint Stock Companies Acts in England. Messrs. Harrisons & Crosfield,
Limited, Colombo, are the Local Agents of the said Company.

4. I have no financial interest in the Lunuwa (Ceylon) Tea and Rubber
20 Estates, Limited, or in Messrs. Harrisons & Crosfield, Limited.

5. No person other than a fellow juror discussed, or attempted to
discuss, with me during the course of the trial of the case mentioned above
the facts of the case or any matter connected therewith.

F. R. CHEVES.

Sworn to at Dehiowita this 29th day of March, 1935.

Before me,

JAS. DUNLOP,

Justice of the Peace.

*In the
Privy
Council.*

No. 22.

Affidavit of Robert Mackenzie Lawson, sworn 29th March, 1935.

No. 22.
Affidavit of
Robert
Mackenzie
Lawson,
sworn 29th
March,
1935.

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

Between

ALEXANDER KENNEDY - *Appellant*

and

THE KING - *Respondent.*

I, ROBERT MACKENZIE LAWSON, being a Christian do make oath and say as follows :—

10

1. I am the Manager of the Engineering Stores and Supplies Department of Messrs. Walker & Greig, Limited, Colombo.

2. I was a member of the jury empanelled to try the case mentioned above.

3. Messrs. Walker & Greig Limited had no interest—financial or otherwise—in any of the policies of insurance effected by Kennedy & Company.

4. No person other than a fellow juror discussed, or attempted to discuss, with me during the course of the trial of the case mentioned above the facts of the case or any matter connected therewith.

R. M. LAWSON.

20

Sworn to at Colombo this 29th day of March, 1935.

Before me,

M. PINNER,

Justice of the Peace.



No. 23.

Affidavit of Sembukutti Arachehige Allan Silva, sworn 29th March, 1935.

*In the
Privy
Council.*

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

No. 23.
Affidavit of
Sembukutti
Arachehige
Allan Silva,
sworn 29th
March,
1935.

Between

ALEXANDER KENNEDY - *Appellant*

and

THE KING - *Respondent*

I, SEMBUKUTTI ARACHEHIGE ALLAN SILVA, being a Christian do
10 make oath and say as follows :

1. I am a land owner residing at Katana East in the District of Negombo, Ceylon.
2. I was a member of the Jury empanelled to try the case mentioned above.
3. No persons other than a fellow juror discussed or attempted to discuss with me during the course of the trial of the case mentioned above the facts of the case or any matter connected therewith.

S. A. SILVA.

Sworn to at Katana this 29th day of March 1935.

20

Before me,
(Signature Illegible)
Justice of the Peace.



*In the
Privy
Council.*

No. 24.

Affidavit of John Alexander Clubb, sworn 29th March, 1935.

No. 24.
Affidavit of
John
Alexander
Clubb,
sworn 29th
March,
1935.

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

Between

ALEXANDER KENNEDY - - - - - *Appellant*

and

THE KING - - - - - *Respondent*

I, JOHN ALEXANDER CLUBB, being a Christian do make oath and say
as follows :—

10

1. Messrs. Harrisons & Crosfield Limited are the Agents in Ceylon for the Manchester Assurance Company with whom Kennedy and Company had insured their general stock and skins in a sum of Rs. 250,000/- by a Policy of insurance dated the 15th day of April 1932.

2. I am in charge of the Insurance Department of Messrs. Harrisons & Crosfield Limited Colombo I was away from Ceylon on leave of absence from the 20th day of March 1934 to the 6th day of October, 1934. During this period Ian Russell Grant Smith was in charge of the Department previously mentioned.

3. Messrs. Harrisons & Crosfield Limited have no financial interest in
the Policy of insurance mentioned in paragraph 1 hereof. They only
receive a commission on premiums paid on such policy. 20

4. No other Insurance Company in Ceylon had an interest in the Policy of Insurance mentioned in paragraph 1 hereof by way of re-insurance or otherwise.

5. I did not at any time during the course of the trial of the case mentioned above discuss or attempt to discuss the facts of the case or any matter connected therewith with any of the Jurors empanelled to try the case.

J. A. CLUBB.

30

Sworn to at Colombo this 29th day of March 1935.

Before me,

M. PINNER,

Justice of the Peace.

No. 25.

Affidavit of George Percy Edge, sworn 29th March, 1935.

*In the
Privy
Council.*

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

Between

ALEXANDER KENNEDY - - - - - *Appellant*

and

THE KING - - - - - *Respondent*

No. 25.
Affidavit of
George
Percy Edge,
sworn 29th
March,
1935.

I, GEORGE PERCY EDGE, being a Christian do make oath and say as
10 follows :—

1. Messrs. E. B. Creasy & Company Limited are the agents in Ceylon for the Caledonian Insurance Company with which Kennedy & Company had insured their general stock in a sum of Rs. 75,000/- by a policy of insurance dated the 18th day of September, 1929.

2. I am in charge of the Insurance Department of Messrs. E. B. Creasy & Company Limited, Colombo.

3. No other Insurance Company in Ceylon had an interest in the Policy of Insurance mentioned in paragraph 1 hereof by way of re-insurance or otherwise.

20 4. I did not at any time during the course of the trial of the case mentioned above discuss or attempt to discuss the facts of the case or any matter connected therewith with any of the jurors empanelled to try the case.

G. P. EDGE.

Sworn to at Colombo this 29th day of March, 1935.

Before me,

M. PINNER,

Justice of the Peace.



*In the
Privy
Council.*

No. 26.

Affidavit of Ian Russell Grant Smith, sworn 29th March, 1935.

No. 26.
Affidavit of
Ian Russell
Grant
Smith,
sworn 29th
March,
1935.

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

Between

ALEXANDER KENNEDY - - - - - *Appellant*

and

THE KING - - - - - *Respondent*

I, IAN RUSSELL GRANT SMITH being a Christian do make oath and say as follows :—

1. Messrs. Harrisons and Crosfield Limited are the agents in Ceylon for the Manchester Assurance Company with whom Kennedy and Company had insured their general stock and skins in a sum of Rs. 250,000/- by a Policy of insurance dated the 15th day of April, 1932.

2. During the absence from Ceylon from the 20th day of March, 1934, to the 6th day of October, 1934, of John Alexander Clubb I was in charge of the insurance Department of Messrs. Harrisons & Crosfield, Limited, Colombo.

3. No other Insurance Company in Ceylon had an interest in the policy of insurance mentioned in paragraph 1 hereof by way of re-insurance or otherwise.

4. I did not at any time during the course of the trial of the case mentioned above discuss or attempt to discuss the facts of the case or any matter connected therewith with any of the jurors empanelled to try the case.

IAN R. G. SMITH.

Sworn to at Colombo this 29th day of March, 1935.

Before me,

M. PINNER,
Justice of the Peace.

10

20

No. 27.

Affidavit of John Hood, sworn 30th March, 1935, and Exhibit thereto.

In the
Privy
Council.

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

Between

ALEXANDER KENNEDY - - - - - *Appellant*

and

THE KING - - - - - *Respondent*

No. 27.
Affidavit of
John Hood,
sworn 30th
March, 1935,
and Exhibit
thereto.

I, JOHN HOOD, being a Christian do make oath and say as follows :—

10 1. I am employed as an assistant in the firm of Messrs. Duncum, Watkins, Ford and Company, Colombo, who are the Secretaries of the Ceylon Fire Insurance Association. I attend to the secretarial business of the said Association.

2. I swear that the attached list marked " X " is a true list of the members of the Ceylon Fire Insurance Association aforesaid as at the 1st day of January, 1934.

3. The objects of the said Association are, *inter alia*, to secure joint action on the part of Fire Insurance Companies doing business in Ceylon in all matters affecting their interests and to enforce rules for the working
20 of Fire Insurance business generally in Ceylon.

4. The said Association has no interest, financial or otherwise, in any of the policies of insurance effected by its members. If, however, any particular policy of insurance has been effected contrary to the tariff obligations of the members of the association, that matter would be taken up by the Association.

(Sgd.) JOHN HOOD.

Sworn to at Colombo this 30th day of March, 1935.

Before me,

M. PINNER,

Justice of the Peace.

30

*In the
Privy
Council.*

THE CEYLON FIRE INSURANCE ASSOCIATION.

List of Members (1st January, 1934).

	<i>Companies</i>	<i>Agents</i>	
No. 27. Affidavit of John Hood, sworn 30th March, 1935, and Exhibit thereto— <i>continued.</i>	Alliance Assurance Co. Ltd.	Messrs. George Steuart & Co.	
	Atlas Assurance Co. Ltd.	„ The Eastern Produce & Estates Co. Ltd.	
	ditto	„ Boustead Bros.	
	ditto	„ Mackinnon Mackenzie & Co.	
	Baloise Fire Insurance Co.	„ Volkart Bros.	
	Bankers' & Traders' Insurance Co. Ltd.	„ Shaw Wallace & Co.	10
	Batavia Sea & Fire Insurance Co.	„ Henderson & Co.	
	British Equitable Assurance Co. Ltd.	„ Clark Young & Co. (1933)	
	ditto	„ J. A. Palmer & Co.	
	British Fire Insurance Co. Ltd.	„ Delmege Forsyth & Co. Ltd.	
	British India General Insurance Co. Ltd.	Mr. C. D. Carolis.	
	British Oak Fire Insurance Co. Ltd.	Messrs. Thomson Tetley & Co.	
	British Trader's Insurance Co. Ltd.	„ Bosanquet & Skrine Ltd.	
	ditto	„ J. J. Vanderspar & Co.	
	ditto	„ Darley Butler & Co. Ltd.	
	Caledonian Insurance Co.	„ E. B. Creasey & Co. Ltd.	20
	Central Insurance Co. Ltd. of London	„ Hayley & Kenny	
	Century Insurance Co. Ltd.	„ C. S. Antony & Co.	
	China Fire Insurance Co. Ltd.	„ Heath & Co.	
	ditto	„ Lee Hedges & Co. Ltd.	
	China Underwriters Ltd.	„ Branch Office.	
	Commercial Union Assurance Co. Ltd.	„ Lee Hedges & Co. Ltd.	
	ditto	„ The Ceylon Trading Co.	
	Eagle Star & British Dominions Insurance Co. Ltd.	„ Clark Young & Co. (1933)	
	ditto	„ Whittall & Co.	30
	Eastern Federal Union Insurance Co. Ltd.	„ Calcutta.	
	Eastern Insurance Co. Ltd.	„ Walker Sons & Co. Ltd.	
	Employers' Liability Assurance Corporation Limited.	„ C. W. Mackie & Co. Ltd.	
	Essex & Suffolk Equitable Insurance Society	„ S. L. M. Thaha.	
	Far Eastern Insurance Co. Ltd.	„ Aitken Spence & Co. Ltd.	
	ditto	„ Dodwell & Co. Ltd.	
	General Accident Fire & Life Assurance Corporation Ltd.	„ Clark Young & Co. (1933)	
Guardian Assurance Co. Ltd.	„ Delmege Forsyth & Co. Ltd.	40	
ditto	„ The Galaha Ceylon Tea Estates & Agency Co. Ltd.		
ditto	„ Lipton Ltd.		
ditto	„ E. Coates & Co. (Galle) Ltd.		
Home Insurance Co. Ltd. of New York	„ Darley Butler & Co. Ltd.		
Hongkong Fire Insurance Co. Ltd.	„ Whittall & Co.		
Imperial Insurance Co. Ltd.	„ Bois Brothers & Co. Ltd.		
ditto	„ Clark Spence & Co. (Galle)		
Java Sea & Fire Insurance Co. Ltd.	Mr. V. R. M. V. A. Letchman Chettiyar		
ditto	Messrs. Holland-Colombo Trading Soc.	50	
Jupiter General Insurance Co. Ltd.	„ F. X. Pereira & Sons.		
ditto	„ A. E. M. Sulaiman Bros.		

<i>Companies</i>		<i>Agents</i>	<i>In the Privy Council.</i>
	Lancashire Fire & Life Insurance Co.	Messrs. Cargills Ltd.	
	Law Union & Rock Insurance Co. Ltd.	„ Mackwoods Limited.	
	ditto	„ Carson & Co. Ltd.	
	Liverpool & London & Globe Insurance Co. Ltd.	„ Bosanquet & Skrine Ltd.	
	London Assurance Co. Ltd.	„ Carson & Co. Ltd.	
	London Guarantee & Accident Co. Ltd.	„ Harrison & Crossfield Ltd.	
	London & Lancashire Insurance Co. Ltd.	„ Colombo Commercial Co Ltd	
10	ditto	„ Volkart Bros. (Galle)	
	London & Scottish Assurance Corp. Ltd.	Mr. K. Palmer Jones.	
	Magdeburg Fire Insurance Co.	Messrs. The Hanseatic Trading Co.	
	Manchester Assurance Co. Ltd.	„ Harrison & Crossfield Ltd.	
	ditto	„ Hayley & Kenny.	
	ditto	„ C. P. Hayley & Co. (Galle)	
	Mercantile Fire Insurance Co. of Toronto	„ Rosehaugh Co. Ltd.	
	Motor Union Insurance Co. Ltd.	„ Lewis Brown & Co. Ltd.	
	National Insurance Co. of Great Britain Ltd.	„ James Finlay & Co. Ltd.	
	New India Assurance Co. Ltd.	„ H. L. de Mell & Co.	
20	New Zealand Insurance Co. Ltd.	„ Leechman & Co.	
	ditto	„ Brooke Bond Ceylon Ltd.	
	North British & Mercantile Fire & Life Insurance Co. Ltd.	„ Volkart Bros.	
	ditto	„ Walker Sons & Co. Ltd.	
	ditto	„ George Steuart & Co.	
	ditto	„ The Mercantile Bank of India Ltd. (Galle)	
	North China Insurance Co. Ltd.	„ Whittal & Co.	
	ditto	„ Bosanquet & Skrine Ltd.	
30	Northern Assurance Co. Ltd.	„ Darley Butler & Co. Ltd.	
	ditto	„ Bosanquet & Skrine Ltd.	
	ditto	„ Whittal & Co.	
	ditto	„ Imperial Bank of India	
	ditto	„ Volkart Bros. (Galle)	
	Norwich Union Fire Insurance Society Limited	„ Leechman & Co.	
	Palatine Insurance Co. Ltd.	„ Cumberbatch & Co.	
	Pearl Assurance Co. Ltd.	„ Hull Blyth & Co. (Colombo) Limited.	
	Phoenix Assurance Co. Ltd.	„ Carson & Co. Ltd.	
40	Queen Insurance Co.	„ Lewis Brown & Co. Ltd.	
	ditto	„ The Hatton Transport & Agency Co. Ltd.	
	Queensland Insurance Co. Ltd.	„ Henderson & Co.	
	ditto	„ Aitken Spence & Co. Ltd.	
	ditto	„ Darley Butler & Co. Ltd.	
	Riuniene Adriatica Di Sicurta	„ Volkart Bros.	
	Royal Exchange Assurance Corporation	„ Mackwoods Limited.	
	ditto	„ J. H. Vavasseur & Co. (Ceylon) Ltd.	
	ditto	„ Gordon Frazer & Co. Ltd.	
	ditto	„ George Steuart & Co.	
50	Royal Insurance Co. Ltd.	„ Aitken Spence & Co. Ltd.	
	ditto	„ James Finlay & Co. Ltd.	
	ditto	„ Shaw Wallace & Co.	
	ditto	„ Brown & Co. Ltd. (Hatton)	

No. 27.
Affidavit of
John Hood,
sworn 30th
March, 1935,
and Exhibit
thereto—
continued.

<i>In the Privy Council.</i>	<i>Companies</i>	<i>Agents</i>	
	Scottish Insurance Corporation Limited	Messrs. Aitken Spence & Co. Ltd.	
	Scottish Union & National Insurance Co. Ltd.	„ Gordon Frazer & Co. Ltd.	
	ditto	„ Darley Butler & Co. Ltd.	
No. 27.	Sea Insurance Co. Ltd.	„ Carson & Co. Ltd.	
Affidavit of	South British Insurance Co. Ltd.	„ James Finlay & Co. Ltd.	
John Hood,	ditto	Mr. Francis F. Street.	
sworn 30th	State Assurance Co. Ltd.	Messrs. Henderson & Co.	
March, 1935,	Sun Insurance Office	„ J. M. Robertson & Co.	
and Exhibit	Tokio Marine & Fire Insurance Co. Ltd.	„ Carson & Co. Ltd.	10
thereto—	Triton Insurance Co. Ltd.	„ Whittall & Co.	
<i>continued.</i>	Union Assurance Society Ltd. of London	„ Dodwell & Co. Ltd.	
	Union Insurance Society of Canton Ltd.	„ do.	
	ditto	„ Lee Hedges & Co. Ltd.	
	Union Marine & General Insurance Co. Ltd.	„ Carson & Co. Ltd.	
	Universal Fire & General Insurance Ltd.	„ F. X. Pereira & Sons.	
	Vulcan Insurance Co. Ltd.	Mr. N. T. Sitlani.	
	Western Assurance Co.	Messrs. Darley Butler & Co. Ltd.	
	ditto	„ Henderson & Co.	
	Yangtze Insurance Association Ltd.	„ Aitken Spence & Co. Ltd.	20
	ditto	„ Dodwell & Co. Ltd.	
	Yorkshire Insurance Co. Ltd.	„ Clark Young & Co. (1933)	
	ditto	„ Whittall & Co.	

No. 28.
Affidavit of
Walter
Richard
Alexander
McLellan,
sworn 30th
March,
1935.

No. 28.

Affidavit of Walter Richard Alexander McLellan, sworn 30th March, 1935.

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

Between

ALEXANDER KENNEDY - - - - - *Appellant*

and

THE KING - - - - - *Respondent.*

30

I, WALTER RICHARD ALEXANDER MCLELLAN, being a Christian do make oath and say as follows :—

1. I am the Manager of the Tea Department of Messrs. Leechman & Company.

2. I was a member of the jury empanelled to try the case mentioned above.

3. Messrs. Leechman & Company had no interest of any kind whether as principal or agents, in any of the policies of insurance effected by Kennedy & Company.

40

4. I work in the Tea Department of my Company and I have nothing to do with its Insurance Department.

5. No person other than a fellow juror discussed, or attempted to discuss, with me during the course of the trial of the case mentioned above the facts of the case or any matter connected therewith.

W. McLELLAN.

Sworn to at Colombo this 30th day of March 1935.

Before me,

M. PINNER,

Justice of the Peace.

10

In the Privy Council.

No. 28.
Affidavit of Walter Richard Alexander McLellan sworn 30th March, 1935—*continued.*

No. 29.

Affidavit of Albert Edward Woodall, sworn 30th March, 1935.

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

Between

ALEXANDER KENNEDY - - - - - *Appellant*

and

THE KING - - - - - *Respondent*

No. 29.
Affidavit of Albert Edward Woodall, sworn 30th March, 1935.

I, ALBERT EDWARD WOODALL, being a Christian do make oath and say as follows :—

1. I am an Assistant in the Colombo Commercial Company, Limited.

2. I was a member of the jury empanelled to try the case mentioned above.

3. I am not aware that the Colombo Commercial Company Limited had any interest financial or otherwise in any of the policies of insurance effected by Kennedy & Company.

4. I work in the Engineering Department and I have nothing to do with the Insurance Department of the Company.

5. No person other than a fellow juror discussed or attempted to discuss with me during the course of the trial of the case mentioned above the facts of the case or any matter connected therewith.

ALBERT E. WOODALL.

Sworn to at Colombo this 30th day of March 1935.

Before me,

M. PINNER,

Justice of the Peace.

*In the
Privy
Council.*

No. 30.

Affidavit of Frederick William Richings, sworn 30th March, 1935.

No. 30.
Affidavit of
Frederick
William
Richings,
sworn 30th
March,
1935.

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

Between

ALEXANDER KENNEDY - - - - - *Appellant*

and

THE KING - - - - - *Respondent*

I, FREDERICK WILLIAM RICHINGS, being a Christian do make oath and say as follows :—

10

1. I am the Secretary and Accountant of the British Ceylon Corporation Limited.

2. Edgar Henry Temple who served as a member of the jury in the case mentioned above is employed as an Assistant in the British Ceylon Corporation Limited mentioned in paragraph 1 hereof. He is now out of the Island on leave of absence having left Ceylon on the 24th October 1934.

3. The British Ceylon Corporation Limited acts as Sub-Agents in Ceylon for The Liverpool and London and Globe Insurance Company Limited and for the Ocean Accident and Guarantee Corporation Limited. As Sub-Agents for the above two Insurance Companies we had no interest in any 20 of the insurance policies effected by Kennedy and Company.

F. W. RICHINGS.

Sworn to at Colombo this 30th day of March 1935.

Before me,

M. PINNER,

Justice of the Peace.



No. 31.

Affidavit of John William Thompson, sworn 30th March, 1935.

*In the
Privy
Council.*

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

Between

ALEXANDER KENNEDY - *Appellant*

and

THE KING - *Respondent*No. 31.
Affidavit of
John
William
Thompson,
sworn 30th
March,
1935.

I, JOHN WILLIAM THOMPSON being a Christian do make oath and say
10 as follows :—

1. I am the Manager of the Estates Department of Messrs. Harrisons & Crossfield Limited. They are the agents in Ceylon for the Lunuwa (Ceylon) Tea and Rubber Estates Limited a Company registered under the Joint Stock Companies Acts in England and having its registered office at No. 1/4 Great Tower Street London E.C.3.

2. Mr. Ferguson Robert Cheves is the Superintendent of Sapumalkande Estate which belongs to the Company mentioned in the preceding paragraph. He was so appointed on instructions received from the Board of Directors of the Company previously mentioned.

20 3. Mr. Cheves is not employed by Messrs. Harrisons & Crossfield Limited and is not subject to the control of that Company.

J. W. THOMPSON.

Sworn to at Colombo this 30th day of March, 1935.

Before me,

M. PINNER,

Justice of the Peace.

In the
Privy
Council.

No. 32.

Affidavit of Wilfrid Gaillard Bundy, sworn 30th March, 1935.

No. 32.

IN THE PRIVY COUNCIL.

Affidavit of
Wilfred
Gaillard
Bundy,
sworn, 30th
March,
1935.

ON APPEAL FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

Between

ALEXANDER KENNEDY - - - - - *Appellant*

and

THE KING - - - - - *Respondent*

I, WILFRID GAILLARD BUNDY, being a Christian do make oath and say as follows :—

10

1. I am the representative in Ceylon of The Royal Exchange Assurance Corporation whose local agents are Messrs. Mackwoods Limited.

2. I am employed by and I am directly responsible to, the Royal Exchange Assurance Corporation. I occupy a seat in the office of Messrs. Mackwoods Limited but in the transaction of my business I receive my instructions solely from my Company's branch office in Calcutta.

3. Messrs. Mackwoods Limited have no interest, financial or otherwise, in the policies of insurance effected with the Royal Exchange Assurance Corporation. They only receive a commission on the premiums received on policies effected in Ceylon.

20

4. The Royal Exchange Assurance Corporation had an interest by way of re-insurance in the two policies of insurance effected by Kennedy & Company with the Commercial Union Assurance Company. The amount of this re-insurance was determined by my branch office at Calcutta but one policy was accepted by me and the other by L. F. Duncan an employee of the Royal Exchange Assurance Corporation who was replacing me when I was on home leave early in 1932.

W. G. BUNDY.

Sworn to at Colombo this 30th day of March, 1935.

Before me,

30

M. PINNER,

Justice of the Peace.



No. 33.

Affidavit of Geoffrey Danvers Stafford Crossman, sworn 30th March, 1935.

*In the
Privy
Council.*

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

Between

ALEXANDER KENNEDY - - - - - *Appellant*

and

THE KING - - - - - *Respondent*No. 33.
Affidavit of
Geoffrey
Danvers
Stafford
Crossman,
sworn 30th
March,
1935.

I, GEOFFREY DANVERS STAFFORD CROSSMAN, being a Christian do make
10 oath and say as follows :—

1. Messrs. Lee Hedges & Company Limited, are the Agents in Ceylon of the Commercial Union Assurance Company with which Kennedy & Company had insured their general stock in a sum of Rs. 175,000/- by a Policy of insurance dated the 15th day of April 1932 and their stock of reptile skins in a sum of Rs. 125,000/- by a policy of insurance dated the 17th day of July 1933.

2. I am in charge of the Insurance Department of Messrs. Lee Hedges and Company Limited Colombo.

3. The Commercial Union Assurance Company had effected local re-
20 insurances under their policy for Rs. 125,000/- on skins with The Liverpool and London Globe Insurance Company of which Messrs. Bosanquet & Skrine Limited are the Local Agents, and with the Royal Exchange Assurance Corporation of which Messrs. Mackwood Limited are the local agents. The Commercial Union Assurance Company had also effected a local re-insurance with the Royal Exchange Assurance Corporation under their policy for Rs. 175,000/- on general stock.

4. I did not at any time during the course of the trial of the case mentioned above discuss or attempt to discuss the facts of the case or any
30 matter connected therewith with any of the jurors empanelled to try the case.

G. D. S. CROSSMAN.

Sworn to at Colombo this 30th day of March 1935.

Before me,

M. PINNER,

Justice of the Peace.

*In the
Privy
Council.*

No. 34.

Affidavit of George William Lightfoot, sworn 30th March, 1935.

No. 34.
Affidavit of
George
William
Lightfoot,
sworn 30th
March,
1935.

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

Between

ALEXANDER KENNEDY - - - - - *Appellant*

and

THE KING - - - - - *Respondent*

I, GEORGE WILLIAM LIGHTFOOT being a Christian do make oath and say as follows :—

10

1. I am the Manager of the Insurance Department of the Colombo Commercial Company Limited.

2. My Company are the local agents for the London and Lancashire Insurance Company Limited, and the Lloyds Underwriters. These companies had no interest of any kind in the various insurance policies taken out by Kennedy & Company.

G. W. LIGHTFOOT.

Sworn to at Colombo this 30th day of March 1935.

Before me,

M. PINNER

Justice of the Peace.

20



No. 35.

Further Affidavit of Kenneth Walsham Taylor, sworn 27th November, 1935.

*In the
Privy
Council.*

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

THE KING

v.

ALEXANDER KENNEDY.

No. 35.
Further
affidavit of
Kenneth
Walsham
Taylor,
sworn 27th
November,
1935.

I, KENNETH WALSHAM TAYLOR of Maharagama, Pannipitiya, Ceylon,
make oath and say as follows :—

10 1. I am a Chartered Accountant presently holding the office of a
Director of Messrs. Mackwoods Ltd., Ceylon.

2. I was the Foreman of the Jury empanelled to try the above-
mentioned case.

3. My attention has been drawn to a statement made in paragraph 4
of an affidavit, sworn to by one Robert Hall presently of "Fairfield"
Newton St. Boswells Roxburghshire, on the 21st day of January 1935 at
35 Coleman Street in the City of London, to the effect that I represented
Mackwoods Ltd. on the Fire Insurance Committee which was composed
of representatives of Tariff Insurance Companies operating in Ceylon and
20 covering (inter alia) fire life and marine risks.

4. This statement is untrue. I did not at any time represent Mackwoods
Ltd. or any other firm on the Fire Insurance Committee or any other
Insurance Committee.

Sworn at Colombo, Ceylon, this }
27th day of November 1935. } . K. W. TAYLOR.

Before me,

C. V. GOONERATNE
Justice of the Peace.

*In the
Privy
Council.*

No. 36.

Further Affidavit of John Hood, sworn 27th November, 1935.

No. 36.
Further
affidavit of
John Hood,
sworn 27th
November,
1935.

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE SUPREME COURT OF THE ISLAND OF CEYLON.

THE KING

v.

ALEXANDER KENNEDY

I, JOHN HOOD, presently of No. 15 Galle Face Court, Colombo, make oath and say as follows:—

1. I am employed as an Assistant with Messrs. Duncum, Watkins, Ford and Company, Colombo who are the Secretaries of the Ceylon Fire Insurance Association. I have attended to the secretarial work of this Association since January, 1924. 10

2. My attention has been drawn to a statement made in paragraph 4 of an affidavit, sworn to by one Robert Hall presently of "Fairfield" Newton St. Boswells Roxburghshire, on the 21st day of January 1935 at 35 Colman Street in the City of London, to the effect that Mr. K. W. Taylor represented Messrs. Mackwoods Ltd. on the Fire Insurance Committee which was composed of representatives of Tariff Insurance Companies operating in Ceylon and covering (inter alia) fire life and marine risks. 20

3. During the period that I have acted as Secretary to the Ceylon Fire Insurance Association Mr. K. W. Taylor has at no time represented Mackwoods Ltd., or any other Company on the Committee of the Ceylon Fire Insurance Association.

4. I have searched the records of the Ceylon Fire Insurance Association for a period of ten years prior to January 1924. There is no record that Mr. Taylor represented Mackwoods Ltd. or any other firm on the Committee of this Association during that period.

Sworn at Colombo, Ceylon, this }
27th day of November, 1935. }

JOHN HOOD. 20

Before me,

C. V. GOONERATNE
Justice of the Peace.

In the Privy Council.

No. 69 of 1935.

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

BETWEEN
ALEXANDER KENNEDY - *Appellant*
AND
THE KING - *Respondent*

RECORD OF PROCEEDINGS.

VOL. I.—PROCEEDINGS.

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

Solicitors for Appellant.

BURCHELLS,
5, The Sanctuary,
Westminster, S.W.1.

Solicitors for Respondent.

EYRE AND SPOTTISWOODE LIMITED, EAST HARDING STREET, E.C.4.