31, 1970

IN THE PRIVY COUNCIL

4 OF 1970

ON APPEAL

FROM THE COURT OF APPEAL, JAMAICA

BETWEEN

SIGISMUND PALMER — Appellant

AND

THE QUEEN — Respondent

CASE FOR THE RESPONDENT

RECORD

1. This is an appeal from a judgment of the Court of Appeal, Jamaica (Waddington, AG.P., Eccleston and Edun JJ.) dated the 9th May, 1969, which had dismissed the Appellant's application for leave to appeal from his conviction for murder by the Supreme Court (Robotham J. and a jury) on the 17th December, 1968, when he was sentenced to death. pp.241-255 p.235

2. The Appellant had been indicted for the murder of Cecil Henry in the parish of Saint Ann on the 14th May, 1968. p.1

3. At the Appellant's trial in the Supreme Court, held between the 11th and the 17th December, 1968, the evidence called by the prosecution included the following :-

(a) George Wilson said that on the 14th May he had gone with his brother, Valentine and the Appellant to the house of Dahlia Campbell at Simms Run to buy ganja, an illegal drug; before arriving there the witness had seen the Appellant with a short gun, which he had asked the Appellant to give to him; at the house Campbell had been reluctant to sell them any ganja; but pp.25-63

after some persuasion she had produced some and had started weighing it; two other men, Fedley Brown and Augustus Johnson, had also offered to sell them ganja; the witness had then said that ganja dealing was illegal, whereupon the three villagers had run off; the witness had fired two shots from the gun, and he, his brother and the Appellant had left, taking the ganja with them; a short distance along the road to Higgin Lane the Appellant had demanded the gun back from the witness; by this time an alarm had been raised in the village that the three men had taken the ganja without paying, and the three turned off the road into the surrounding hills; the Appellant had fired one shot from the gun, which had dispersed the pursuers. The three men hid in the bushes, where the witness twice prevented the Appellant from firing again; some men however approached, and one called on the Appellant to come out with his gun. The Appellant had then fired two shots at one of the approaching men, and the witness heard him say that a man had got shot. The Appellant shouted to the other men following him that he had more shots left and that if they followed any further he would shoot them; eventually the three men shook off their pursuers, and returned to Kingston with the ganja.

pp.133-172 (b) Valentine Wilson gave evidence substantially in accord with that of his brother

pp.66-75 (c) Dahlia Campbell denied in her evidence that she had had any ganja, but had said that the three men had come to her house demanding it; they had fired two shots and had run off taking some money and other possessions of hers.

pp.75-89 (d) Fedley Brown also denied that he had had any ganja, but said that the three men had left the village without any, and that he had raised the alarm; he and some other men had trailed the three men onto the hillside where he had heard four shots; he then went up, and found the body of the

deceased at the place where the shots were fired.

(e) Granville Fearon, a farmer, said that he was working in his field about two miles from the village, when he saw the Appellant and the two Wilsons run past followed by three men from the village; the witness had followed with the deceased, who was a neighbour; some shots were fired, and then three shots were fired which killed the deceased; at that time the Appellant was holding a gun about seven yards away and pointing it at him; later two other men had come up, but he had become afraid and turned back.

(f) Joseph Lawrence, a cultivator, and George Parry, a farmer, had both seen the Appellant on the hillside fire his gun at the deceased, who had fallen down. pp.104-112 113-123

(g) Inspector Kirlew had seen the Appellant, who had accused Valentine Wilson of firing the shots pp.172-180

(h) Dr. Magnus said that the deceased, Cecil Henry, had been killed by a bullet striking him above the left eyebrow. pp.129-132

4. The Appellant made an unsworn statement from the dock; he said that he had gone to the village with the Wilson brothers and agreed with George Wilson that ganja had been produced to them and that they had taken it; outside the village, Valentine Wilson had taken the gun from him, reloaded it, and then handed it to George Wilson; later Valentine had fired the gun several times from some bushes; the Appellant had then run off with George; he said nothing about the deceased being shot. pp.181-188

5. Robotham J. began his summing up by outlining the case put by the prosecution, and by directing the jury that the onus of proof was on the prosecution upon the evidence heard in court and accepted by the jury; he directed the jury upon the elements necessary to establish a charge of murder; the prosecution

RECORD

had to satisfy the jury that the killing had not been done in self-defence; the learned judge said that self defence had been raised in the present case as a ground of acquittal of the Appellant, and he directed the jury at length upon what had to be proved to establish a defence of self-defence, and said :-

p.196 ll.23-25

"... You must consider the nature and the "extent of the force used upon the accused "and the force which was in turn used by him "to repel it. If excessive force was used, "members of the jury, the act might not have "been done necessarily in self-defence and the "plea would not be to any avail, but in all "this you must bear in mind that the onus "remains throughout on the prosecution to "satisfy you that he was not acting in self "defence, and if under consideration of all "the evidence you are left in doubt as to "whether the killing may or may not have been "done in self defence the proper verdict would "be one of not guilty."

The learned judge then directed the jury at length upon the evidence of each of the witnesses; he warned the jury that the Wilson brothers should be treated as accomplices and directed them that it was dangerous to convict upon their evidence unless it was corroborated. Finally the learned judge said:

"Now, members of the jury, I have deliberately "refrained from giving you any direction on "manslaughter because in my view, and the "responsibility is mine, if I don't see where "the evidence lies to sustain manslaughter not "to direct you upon it. I have given you no "direction on manslaughter in this case and "indeed neither counsel for the defence or the "crown has made any reference to manslaughter "in this case at all. There are only two "verdicts which are open to you in this case; "guilty of murder or not guilty. Those are "the only two verdicts which are open to you."

p.234

6. The jury found the Appellant guilty of murder, and he was sentenced to death.

7. The Appellant applied for leave to appeal against his conviction, but on the 9th May, 1969 his application was refused by the Court of Appeal (Waddington, Ag.P., Eccleston and Edun JJ.).

The judgment of the Court was given by Waddington J., who summarised the evidence given at the trial, and said that five grounds of appeal had been argued. The first was that there had been misdirection upon what evidence was capable of being corroboration of the Wilson brothers' evidence; after considering passages from the summing-up, the learned judge concluded that there had been no misdirection upon this issue. There had also been no misdirection in relation to the previous firing of the gun by George Wilson. The failure by the witness Fearon to identify the Appellant at an identification parade was adequately left to the jury. The fourth ground of appeal argued was that a verdict of manslaughter ought not to have been taken away from the jury; the learned judge said that self defence had been left to the jury, who had rightly rejected it, and in the circumstances of the case where was no scope for a verdict of manslaughter. Finally there had been no misdirection in regard to any issue of common design, and the application would accordingly be dismissed.

8. The Respondent respectfully submits that the judgment of the Court of Appeal was correct. The only substantial issue which arises on this appeal is whether the issue of manslaughter should have been left to the jury, and it is submitted that the learned trial judge was correct in not doing so. It may be proper in a suitable case, where the facts are appropriate, for a jury to be directed that, if all the constituents of self defence are present, save that an excessive amount of force has been used by an accused man, a verdict of manslaughter is open; but, it is submitted, such cases are unusual, and such a direction would not have been necessary or appropriate in the present case. The facts of the present case do not show that the Appellant was

entitled to any verdict in his favour by reason of his acting in self-defence; no question arises that his actions would have constituted self-defence, but for an excessive use of force on his part

9. The Respondent therefore respectfully submits that this appeal should be dismissed, and that the judgment of the Court of Appeal should be affirmed, for the following, among other

R E A S O N S

1. BECAUSE the Appellant was not acting in self defence

2. BECAUSE the Appellant was not entitled to a verdict of manslaughter

3. BECAUSE there was no misdirection of the jury upon the issue of self-defence

4. BECAUSE the learned trial judge correctly withdrew the issue of manslaughter from the jury.

5. BECAUSE of the other reasons in the judgment of the Court of Appeal

MERVYN HEALD

No. 4 of 1970

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL, JAMAICA

BETWEEN:

SIGISMUND PALMER — Appellant

AND

THE QUEEN — Respondent

# CASE FOR THE RESPONDENT

MESSRS. CHARLES RUSSELL & CO.
Hale Court,
21 Old Buildings,
Lincoln's Inn
London W.C.2.