



# LLOYD'S LIST LAW REPORTS

Including extended Reports of Cases appearing in  
"LLOYD'S LIST and SHIPPING GAZETTE"

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HILARY SITTINGS, 1937

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Edited by  
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THURSDAY, FEBRUARY 25, 1937.

[BY SUBSCRIPTION

## JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Nov. 30, Dec. 1, 3, 4, 7, 8, 10, 1936,  
Jan. 14, 15, 1937.

### ALEXANDER KENNEDY v. THE KING.

Before Lord ROCHE, Sir JOHN WALLIS  
and Sir GEORGE RANKIN.

*Arson — Appeal against conviction —*

*Explosion and fire in appellant's shop in Colombo — Extensive damage to structure—Contents (boots and shoes and skins suitable for manufacture of shoes) destroyed—Alleged misdirection of jury—Inference to be drawn from circumstances of explosion and fire—Evidence of probable cause—Appellant's financial embarrassment—Doubt as to existence of large stock of skins alleged by appellant to have been destroyed — Composition of jury — Alleged partiality—Appellant's ignorance of the fact that certain jurors were employed by firms in some way connected with the insurance companies on risk—Whether the fact that there might have been material for a successful challenge was sufficient of itself to set aside an adverse verdict.*

*—Held, by P.C., that the directions of the learned Judge to the jury were proper and sufficient and that there was ample material upon which the jury could arrive at their verdict; that it was not sufficient to set aside an adverse verdict that there might have been material for a successful challenge (Ras Behari Lal v. King*

*Emperor, [1933] 60 I.A. 354, considered); further, on the facts, that there was no partiality presumed or actual shown in regard to any of the jurors, and therefore no ground upon which a challenge as of right and for cause could have been sustained — Appeal dismissed.*

This was an appeal by Mr. Alexander Kennedy from a conviction for arson by the Supreme Court of Ceylon, in connection with a fire on Sept. 29, 1933, in a store he occupied in "The Times of Ceylon" building at Colombo. A jury of seven found him guilty on two counts, and the Judge sentenced him to a term of six years' imprisonment on each, the sentences to run concurrently.

The appellant, who said that there was no evidence to support the verdict and that the summing up was defective, complained of the constitution of the jury (of which he learned afterwards): four were, he suggested, in the employ of firms acting as agents or sub-agents of fire insurance companies. An affidavit filed for the Crown stated that one of these jurymen had nothing to do with the insurance department of his firm; another was not employed by local insurance agents, as supposed; a third had nothing to do with the insurance business of his firm, but was manager of another department; the fourth was an engineer whose firm were local agents for insurance companies, but he himself had nothing to do with its insurance business. To this no affidavit was filed in reply.

Mr. Walter Monckton, K.C., Mr. C. John Colombos and Mr. B. J. M. Mackenna (instructed by Messrs. Sanderson, Lee & Co.) appeared for the appellant; Sir Terence O'Connor, K.C. (Solicitor-General), Mr.

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Alexander Kennedy v. The King.

[P.C.]

L. M. D. de Silva, K.C. (Solicitor-General, Colombo) and Mr. Kenelm Preedy (instructed by Messrs. Burchells) represented the Crown.

Mr. MONCKTON explained that Mr. Kennedy was a native of Scotland, and his business in shoes and skins included the sale of crocodile, lizard, and snake skins. He had conducted his business in this large modern six-storey building of "The Times of Ceylon."

Lord ROCHE: Was this the building in which the Ceylon newspaper had its office?

Mr. MONCKTON: It was.

COUNSEL (continuing) said that Mr. Kennedy had for many years carried on business on a large scale at Colombo in shoes, skins and men's outfits, having gone to Ceylon from England in 1919. Since 1920 he traded under the name of Kennedy & Co., of which firm he was the sole owner. He occupied for his business part of the basement, part of the ground floor, and part of the first floor of a building belonging to and in part occupied by "The Times of Ceylon." He used the basement as a store, and the ground floor and first floor as a shop. The building was a solid construction of steel and reinforced concrete, the interior partition walls being of brick. The main entrance in the front of the shop was by a glass door opening off a concrete-floored verandah. On the ground floor were two other entrances, one on each side of the shop—one opening into Duke Street and the other through the vestibule into Princes Street. A spiral staircase gave access from the ground floor of the shop to Mr. Kennedy's basement; goods went in by a steep chute.

An explosion occurred at about 11 p.m. on Sept. 29, 1933. During the evening the appellant had been supervising the removal of his business to premises known as "The Colombo Stores," and finally returned to "The Times of Ceylon" building at about 10 50 p.m. He was on the ground floor of his shop with his wife and a salesman, Hossen, and a night watchman in the employ of "The Times of Ceylon" was waiting outside the vestibule door of the shop to lock the building as they left. Appellant's car and chauffeur were in the street. The salesman was sent to buy a bottle of soda water, and until his return Kennedy and his wife stood talking to the night watchman outside the vestibule door. Passers-by could see the movements of anyone on the ground floor, for the lights were full on. Mrs. Kennedy remained talking to the night watchman while her husband went

into the shop, dismissed the returned salesman and drank the soda water. While she was so talking there came an explosion which blew down brick walls in the basement and upon the ground floor. Large sections of the reinforced concrete slabs forming the ceiling of the basement and the ground floor were shattered. The concrete floor of the verandah was cracked. The plate-glass windows were broken and the steel door of the Duke Street entrance was blown into the roadway.

The prosecution's suggestion appeared to be that after drinking the bottle of soda water Kennedy went down by the spiral staircase with a suitcase containing two two-gallon petrol tins (one full, the other empty) and poured the contents of the one tin on the basement floor. Thereafter, either before or following the explosion, he screwed the cap on the petrol tin, put the tin back in the suitcase and took the suitcase to the ground floor, depositing it by the vestibule door. The Crown thought that after the explosion he returned to the ground floor by the spiral staircase and left by the Duke Street doorway. It was the appellant's case that the evidence completely negatived each one of those suppositions.

COUNSEL stated that Kennedy maintained that he was never in the basement on Sept. 29, and that the suitcase produced by the prosecution was not his. Customers in Ceylon left goods with shopkeepers for custody. All he knew of the explosion was that when he was turning off the main switch, as he was leaving the shop, there was a blinding flash. His next recollection was that he was lying on the ground and that his ankles were burning. He had a faint recollection of fighting his way through flames. He did not know whether he left the building through the Duke Street doorway or through one of the broken windows of the shop. His wife and others had noticed a smell of gas on that and earlier days in the basement, and the defence suggested that there had been a gas leak, and that an accumulation of gas in the girders of the basement ceiling was exploded by a spark from the electric light switch. Expert evidence was that two gallons of petrol could not have blown the hole in the basement ceiling; the pressure of 80 or 120 gallons would be needed, and that quantity of petrol could not have been exploded in the basement. The two tins of petrol which Mr. Kennedy purchased on Aug. 23 were bought for cleaning skins.

COUNSEL said that Mr. Kennedy was

taken to the hospital in a car after the explosion. On the way he was asked what had happened, and he replied that as he was turning out the lights there was a flash, and he could not say any more.

LORD ROCHE asked what was to be said on the subject of gas. Was there gas on Kennedy's premises?

COUNSEL replied that gas pipes passed through Kennedy's basement to another part of the building. There was no gas light service in Kennedy's premises; his light was electric only.

LORD ROCHE inquired where was the origin of the fire—was it in the basement or on the ground floor?

COUNSEL said that it was agreed that the explosion took place in the basement. The Crown suggested that the appellant, in the basement, set fire to some stores which had been soaked in petrol, and then made his way up this spiral staircase. As to the two tins, Counsel said, one of them next day showed no trace of having contained petrol or any other inflammable liquid. One tin contained about a liqueur glassful of petrol; the other a small quantity of a watery non-inflammable liquid.

LORD ROCHE asked what was the prosecution's theory of the explosion.

MR. MONCKTON said that petrol was poured on some stock on the floor of the basement, and that this petrol vaporized and mixed with the air in some corner or pocket of the basement in such a way as to form an explosive mixture; that Kennedy, having ascended the spiral stair, returned with the intention of igniting the petrol; and that the light caused the vaporized petrol to explode and to cause a fire. Kennedy was supposed to have carried the suitcase up to the shop.

LORD ROCHE: He asserts that the suitcase found in the shop was not his. What does he say on that matter—that an enemy or a stranger has done it, has deposited the suitcase beside the door, and that he himself knows nothing about it?

COUNSEL said that that was Kennedy's position. There was considerable evidence that it was a custom to leave suitcases for convenience in tradesmen's shops. They had an instance of a customer who had actually left a suitcase. Counsel said the notion that fumes from poured petrol would cause an explosion was manifestly absurd.

LORD ROCHE said that it was equally manifest on any view that the accused did not seek an explosion. No doubt the case

was puzzling. What was the value of the damaged property?

COUNSEL replied that the skins for which claims were made were worth 1½ lacs.

LORD ROCHE: If, as you say, the shop windows were blown out, that sounds like a second explosion. Does anyone suggest that an explosion in the basement blew out the shop windows above?

COUNSEL said that that seemed to be the case.

LORD ROCHE said that that was difficult to reconcile with a "pocket" of vapour. It must have been a powerful explosion. He understood the Crown to suggest that this man went into the basement, poured out petrol, brought the tin and attaché case up to the shop and then went down again and lit the petrol, and that the explosion of fumes occurred in the basement and not in the shop. His Lordship added that if he had been doing this he did not think he would have gone down a second time by the spiral staircase. He would have thrown some lighted thing into the basement.

MR. MACKENNA, continuing for the appellant, answering Lord Roche, said that the first position taken up for Kennedy was that this explosion could not have been produced by two gallons of petrol. The Judge told the jury that the expert evidence on this point was only of secondary importance. Counsel contended that it was of primary importance. If the jury accepted that two gallons of petrol could not have done the damage, there was an end of the case. There was no evidence that Kennedy ever visited the basement. The Crown's case was that the night watchman having seen him emerge from the Duke Street door, that was proof that Kennedy visited the basement. In summing up to the jury the Judge told them that if they believed the night watchman about Kennedy's departure by the Duke Street door they should believe that he was in the basement. That was misdirection on a vital point.

LORD ROCHE asked about the insurance, and COUNSEL said that the appellant's goods were insured with three insurance companies. As to the prosecution's suggestion that he needed money to pay off overdrafts on accounts with the National Bank of India, his assets at the date of the explosion largely exceeded his liabilities. His stock, apart from the skins, was valued by the insurance assessors at 468,000 rs. at the date of the explosion. The overdrafts were then 126,440 rs., and they had been reduced from 145,295 rs. since Jan. 1.

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Alexander Kennedy v. The King.

[P.C.]

The manager of the Colombo branch of the National Bank of India declared in evidence that the appellant had ample security for his overdrafts, and he had no want of confidence in him. A chartered accountant said that his balance sheets did not disclose an unusual position, and he could have raised the money by reducing his gross profits and by increasing his turnover. There was evidence of large quantities of skins at Kennedy's bungalow, and that large stocks were transferred to "The Times of Ceylon" building in July, 1933. His storekeeper spoke to thousands of skins lying loose on shelves in the basement in addition to 50 or 60 parcels of skins. Yet the prosecution suggested that there were fictitious records of skins.

On the subject of the two tins of petrol purchased on Aug. 23, 1933, the appellant in his evidence explained that on returning from Europe in July he had found some of the skins at the bungalow damaged during the monsoon, and he sent for the petrol to clean them. A garage proprietor said that he did not identify the tins found after the fire as those he sold to Kennedy's man. A tanner named Perera declared that when, before the fire, he called on Kennedy and heard about the skins, he told him that petrol would be injurious to them, and that they had better go to the tannery. Kennedy agreed to send them, and Perera, who had to make long journeys up country by car, begged the two tins of petrol and Kennedy gave them to him. A police officer corroborated that on about Oct. 7 Perera showed him the two tins he had received from Kennedy.

An assistant in Kennedy's shop was emphatic that on July 15 a customer left a suitcase with him to be "kept until called for," and it corresponded in size with what the prosecution found. He placed it in a cupboard by the vestibule door, and the position of the case found near the vestibule door was consistent with it being this one. So also said a head clerk. Other witnesses spoke of customers depositing suitcases at shops. Kennedy was corroborated by his wife when he said that he had put all his savings into the purchase of skins, together with the savings of his sister.

COUNSEL said that Mr. Monckton had made the point that the finding of the case by the vestibule door, one tin inside and one beside it, both with the caps screwed on, was inconsistent with the Crown's submission that Kennedy was in the basement at the time of the explosion. Counsel

pointed to the evidence of a "young and athletic police officer," who considered it would have been "extremely hard, if not impossible," to get from the basement to the Duke Street door by the spiral staircase, for the collapse of an inner wall blocked the spiral staircase. It was suggested that if the appellant had been in the basement at the time of the explosion he could not have survived.

Lord ROCHE asked what the Crown said as to motive and to insurance.

COUNSEL replied that the Crown gave as motive Kennedy's financial position, but a right examination would show that he was completely solvent. The chartered accountant who used to make up his accounts said that the state of affairs, considering the nature of the year 1933, was by no means unusual.

Lord ROCHE: That was a time of depression. What happened when the account was presented to the insurance companies?

COUNSEL said that from Sept. 29 to November Kennedy was in hospital with burns on face and hands and his wife gave the accountant, Mr. Watkins, documents for the claim. The insurance assessor, Mr. Ross, satisfied himself that the damaged stock must have been worth 4½ lacs of rupees.

Lord ROCHE: Over £30,000—say £35,000.

COUNSEL (continuing) said that Mr. Ross was shown a skins stock book, but Kennedy explained that receipts for skins he had purchased were burnt in the fire. The assessor was not satisfied by casting his eye over it that there could have been in the basement the quantity of skins shown. Kennedy, of course, had kept a stock of skins at his bungalow. The assessor advised him to put forward a claim for 14,000 rupees' worth of skins.

Lord ROCHE: And on the stock book basis the amount would be—

COUNSEL: Between 120,000 and 130,000 rupees.

Lord ROCHE: At any rate, something big.

Sir JOHN WALLIS: What were these skins?

COUNSEL: Crocodile, lizard and python, for women's shoes. Mr. Kennedy bought stocks of shoes from Messrs. Campbell Bros. & Carter, in England, and paid for them by skins. These were sold on Kennedy's account in London.

Lord ROCHE: The proceeds would be applied to his debt; he would have to draw bills.

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Sir JOHN WALLIS: A sort of consignment business.

Lord ROCHE: What was the evidence about smells of petrol, gas or anything else?

COUNSEL: Two coolies who went into the basement for their coats and left shortly before Kennedy said they smelt no petrol. The man who took Kennedy to the hospital and took off his boots was certain there was no smell of petrol. Mrs. Kennedy's evidence was the same. Attendants who handled Kennedy's clothes smelt no petrol. The only mention of a petrol smell was by an analyst. Kennedy's boots were taken to the police station and there put in a cardboard boot-box, and when this box was handed to the analyst he said he thought he got a smell of petrol from the box.

Lord ROCHE: Was he to analyse the boots?

COUNSEL said that nothing had happened to the boots and no one knew why they were taken to the analyst. Several witnesses spoke of a smell of gas on the day of the explosion and before. One witness who addressed his mind to the question of the explosion thought it might have been by a high explosive.

Lord ROCHE: That would have tended to blow downwards.

COUNSEL: Except, the witness said, that some stock had been placed beneath and had "mattressed" the explosion. What I wish to stress above everything is that, in the time Kennedy was in the building—and it is known exactly—it was impossible for enough petrol vapour to have been formed to cause the explosion.

Lord ROCHE: And the point about the two sets of two petrol tins is that the pair in the shop had nothing in the world to do with the two tins Kennedy purchased. All it amounts to is that there were two tins in both places.

COUNSEL said that that very evening Mrs. Kennedy had told her husband she smelt gas, but her husband made light of it. Previously Mrs. Kennedy had gone looking for the leak.

Mr. MACKENNA proceeded to examine the appellant's accounts. He said that the accounts were made up year by year, and the business showed good profits to 1931. After 46,000 rs. profit there came a fall to 5000 or 10,000 rs., with the next year showing a substantial loss of 30,000 to 40,000 rs.

Lord ROCHE: He wrote down the value of his stocks. He had a reserve of skins outside the business. He put all his reserves into the skin business. He had a private

stock of skins accumulated partly out of money drawn from the business.

COUNSEL said that Mr. Kennedy was increasingly insured from 1920 onwards, and there was a last insurance when he moved skins from the bungalow to the basement in July, 1933. The trial Judge said that his statement was reasonable that it was necessary to effect a policy of insurance as there was more likelihood of an undetected night fire in a closed store than in his own house.

Lord ROCHE: Has anything been paid under the policy?

COUNSEL: Nothing. Apparently they awaited the result of the trial. Kennedy put in a claim for 14,000 rs. worth of skins, which the insurance assessor agreed to.

Lord ROCHE: No question was raised by the assessor about the amount of the shoe stock?

COUNSEL: None. He was satisfied that there was a high-class stock of great value, and said that the figure for shoes was fair.

Sir GEORGE RANKIN: Part of the basement stock was hypothecated to the National Bank of India.

Lord ROCHE discussed with Counsel the curious and uncertain effects of explosions.

Sir GEORGE RANKIN said that with high explosive in the open air it was impossible to tell what it would do.

Lord ROCHE pointed out that the trial Judge discussed with the jury whether Kennedy should have been blown to smithereens. He (Lord Roche) remembered an explosion in a small dressing station where only two people survived, but those two were hardly hurt.

COUNSEL said that the Judge at Colombo told the jury that in an explosion a straw might be blown through a tree. The effects of an explosion were incalculable.

COUNSEL (continuing) complained of the Judge's summing up and suggested misdirection by recommending the inference that if Kennedy left by the Duke Street entrance he must have come up from the basement. The Judge wrongly said that Kennedy was under an obligation to explain his presence in the basement, but Kennedy was not there. Moreover, the Judge told the jury that in deciding whether the accused took the petrol tins into the basement they might disregard the expert evidence as to the amount of petrol needed to produce the explosion. Counsel thought that the expert evidence was relevant to prove that Kennedy did not take the petrol tins into the basement. The Judge instructed the jury that Kennedy's



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survival was not adverse to the prosecution's case that he was in the basement. On the other hand, he failed to point out the improbability that Kennedy should have set fire to his stock while the night watchmen and his wife were standing outside the shop entrance, the chauffeur was in the street, and the shop was so illuminated that any passer-by could see Kennedy's movements on the ground floor.

COUNSEL added that the appellant did not challenge the four jurymen who had associations, he suggested, with agents of fire insurance companies, because he did not know of it at the time. He learned of it only after the trial. The firms were members of the Ceylon Fire Insurance Association, and some of them were interested in the policies of insurance covering the appellant's stocks. Counsel submitted that some of the jurors by interest and bias were unfit to try the accused and that therefore he was deprived of the substance and the appearance of a fair trial.

MR. MACKENNA (continuing) said that a number of witnesses explained that there had been defects in the electrical system from time to time, and on one occasion a bulb fell and all the lights went out at once. The electrician came in and put right the defect. Counsel went on to say that the evidence of the electrician in charge of the sub-station in the Fort revealed that undoubtedly something went wrong with the electricity when Kennedy said it did.

COUNSEL then referred to the evidence of Mr. H. Brougham as being important on the liability of customers leaving parcels. Mr. Brougham told of a parcel left in a shop for two years. When opened, at long last, it was found to contain old clothes with, in the midst of this wrapping, a case of ammunition. The strange thing about the present case was that after all the publicity no one had appeared to claim the suitcase left in the shop.

LORD ROCHE: It is undoubtedly unfortunate that this suitcase should have been left by somebody who has disappeared into the void and to this day apparently has no recollection of it. The remarkable thing is not that he should have left the suitcase or should have forgotten it but that he should not have turned up since, when he was so badly needed.

COUNSEL speaking on the impossibility of an explosion from two gallons of petrol, said that one chemical expert calculated that to produce the actual damage, from 80 to 120 gallons of petrol would be needed. That quantity could not have

been exploded in the basement. Two gallons would give a pressure of  $31\frac{1}{2}$  lb. per square inch, whereas a pressure of 200 lb. per square inch was required to blow up the roof of the basement. An architect on the last point worked out the needed pressure at 86 lb. in parts of the basement to 356 lb. per square inch in other parts. Yet another said "two gallons of petrol could not have done it." Mr. J. V. Collins, an analyst, found that two gallons of petrol, in the most favourable conditions, produced a maximum pressure of 32 lb. per square inch, and ten minutes would be needed to vaporize that quantity of petrol. On the prosecution's case a pressure of 32 lb. could not have been produced by vaporization in the available time.

COUNSEL (continuing) said that a man named Menon was an assistant in the shop, and he received a suitcase from a customer on July 15, 1933, to be "kept till called for." Menon placed it in a cupboard not far from where the Crown's searchers picked up a suitcase with two empty petrol tins. The size of the customer's suitcase agreed with that which the Crown witnesses found. The head clerk and bookkeeper said much the same.

As to the reinforced concrete, of which the building was constructed, COUNSEL said, nobody ever suggested that it was not as good as good cement ought to be. Part of the ceiling of the basement was  $4\frac{1}{2}$  in. thick. That was generally the thickness of the floorings; but some part of the basement ceiling was 9 in. thick where, at a join, one part overlapped another. The structure was very substantial and great pressure upwards would have been required to burst so large a hole as was found. The conditions left were chaotic. On a floor near, machinery was standing, and a witness declared that if the line of explosion had been directed to it, such was the force that it would have turned the machinery over. A wall fell, and so fell that it was difficult to see how anyone could have climbed up by the spiral staircase afterwards. This interposed another difficulty in the way of the Crown, who would have it that Kennedy was in the basement when the explosion happened. An expert was asked whether, if any person had been in the basement, he would not have been flattened out against one of the walls. To render the question more conceivable, a typhoon or a tornado travelled at the rate of 90 or 100 miles an hour. The question became—would a force 14 times as

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great flatten a person out against a wall. The expert was not sure that he would have been transformed into pulp but he said he had known people blown from downstairs upstairs, and what would happen, he concluded, in explosions was simply incalculable. He had known people blown through a wall when they were in the actual blast. That witness, Mr. W. Small, asserted: "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." That witness was an architect, a member of the Institute of Constructional Engineers, and member of the firm of Adams & Small, the architects concerned when "The Times of Ceylon" building was built. He certified the satisfactory quality of the materials used in construction. Mr. H. H. Reid, of Messrs. Edward Reid & Booth, now engaged in the building of Madras University, found evidence that the whole superstructure of the building over Kennedy's shop and a portion of the basement were momentarily lifted. "A momentary uplift of the building," he called it, "from the eye-level in the basement—the whole building lifted momentarily and came back."

Sir GEORGE RANKIN: The upshot of it all is that two gallons of petrol will not do it?

COUNSEL: The Crown required 80 gallons of pressure to produce the main fracture. But 80 gallons would not vaporize in this place; the basement would not hold enough explosive mixture. To produce the totality of damage, several witnesses said that 350 lb. pressure per square inch would be needed.

Sir JOHN WALLIS: Am I really asked to make the assumption that there was an uplift of the whole of this building by the explosion?

COUNSEL: Well, not necessarily. Witnesses for the prosecution said that they did not think there was an uplift caused by the explosion. The uplift, they said, was caused by the heating of the building by the fire.

COUNSEL then referred to the theory of a gas leakage in the basement of the store, and said that Kennedy's case was that an explosion occurred when he switched off the electric light at the end of the day, and that this must have been caused by a spark from the switch firing the escape of gas. Escaping gas had been smelt during the day. The Crown's case was that petrol had been poured on goods on the floor of

the basement, and that the explosion which preceded the fire was one of fumes that had risen from the petrol. Mr. Robert Hall, a building engineer, one of the witnesses called, had said that coal gas could have caused all the damage which occurred. He was of opinion that two gallons of petrol could not have caused an explosion to produce this damage.

Lord ROCHE pointed out that one witness thought that the force of the explosion at some points must have been of a pressure of 100 tons to the square inch—a force in excess of a quarter of a million pounds.

COUNSEL said that the witness, Mr. Reid, dealing with what happened to the concrete floors, said that it would require a pressure of 356 lb. per square inch to cause the damage.

Sir GEORGE RANKIN observed that the British Reinforced Concrete Company's handbook said: "It can only be injured by the fiercest of fires, and even then collapsing would be impossible."

COUNSEL said that the handbook was in use at the trial, and the experiments for the prosecution, as well as his own, were based upon it. The fire undoubtedly was in the basement, and appellant's case was that the damage was done by explosion and not by fire.

Sir JOHN WALLIS: I see that there was a suggestion that a high explosive might have caused this extreme damage. Was any particular explosive indicated?

COUNSEL replied that none was. But he supposed the damage might indicate dynamite, gunpowder, gelignite or something of the sort. Counsel added that Mr. Alexander Bruce, City analyst for Colombo, was in substantial agreement with other witnesses as to the pressure per square inch required to tear away the reinforcement from the concrete and then detach concrete from the base on which it rested. He found, in fact, that 53 lb. pressure was needed in one case and 130 lb. in another, and there was no cross-examination addressed to him on either of those points. He expressed the opinion that 80 gallons of petrol would have been needed to cause such an explosion, and that that amount could not have been evaporated in the basement. He therefore reached the conclusion that this could not have been a petrol explosion. Mr. Bruce thought a pressure of 200 lb. per square inch would have been required to blow up the roof of the basement.

Replying to Lord Roche, COUNSEL said that the insurance assessor, Mr. Ross,

reported favourably on a claim for 14,000 rs. worth of skins in the basement. Counsel added that one expert witness for the prosecution thought that there might have been an explosion on the ground floor simultaneously with that in the basement.

Having read the medical evidence as to the injuries to Kennedy, COUNSEL said that the theory of the prosecution was that Kennedy must have been in the basement when the explosion occurred, but the Judge, in his summing up, told the jury that taking the medical evidence as a whole they ought to draw no inferences from it.

LORD ROCHE: I think that was quite right. His Lordship went on to say that while there was correspondence between Kennedy and his bank upon his overdrafts, the manager of the Colombo branch of the National Bank of India declared that appellant had ample security for his overdrafts, and that he, the manager, had no want of confidence in him. That was a great testimonial to his solvency, together with the fact that Kennedy's total overdrafts had been reduced from 145,295 rs. at the beginning of 1933 to 126,440 rs. at the date of the explosion. Stock, excluding the skins, was valued by the insurance assessor at 468,000 rs.

COUNSEL said that the accountant made it clear that Kennedy's balance sheets did not disclose an unusual position.

LORD ROCHE said that he did not want to hurry Counsel to the insurance question in the case, but he gathered that Mr. Kennedy complained that Messrs. Harrisons & Crosfield's man was on the jury. They were the agents of the Manchester Assurance Company, one of the three companies which insured the skins.

COUNSEL said that the jurymen, Mr. F. R. Cheeves, was superintendent of an estate belonging to the Lunuwa Tea & Rubber Estates, Ltd., and Messrs. Harrisons & Crosfield were the local agents of that company, as well as local agents of the Manchester Assurance Company. The first person Mr. Kennedy complained of was the foreman of the jury, Mr. K. W. Taylor, director of a firm called Mackwoods, Ltd., who held agencies in Colombo for the Royal Exchange Assurance and four other insurance companies. The Royal Exchange Assurance had reinsured one of the policies Counsel had to show the Court, so that it came to this, that a director of the agents of the reinsurers was foreman of the jury.

SIR GEORGE RANKIN: It depends on what

you mean by agent. Anybody can be an agent of an insurance company. It does not mean very much in some cases. What does it amount to here?

COUNSEL: As far as one can see, in Ceylon there are agents and sub-agents of insurance companies. The agents representing their principals were members of the Ceylon Fire Insurance Association.

SIR JOHN WALLIS: I suppose the agents are in Colombo and the sub-agents up-country?

COUNSEL said that that might be generally correct, but there were sub-agents in Colombo. Only one of the jurymen was employed by a sub-agent. This jurymen was Mr. Edgar Henry Temple, employed by the British Ceylon Corporation, Ltd. This company were at the time of the trial sub-agents in Ceylon for the Liverpool & London & Globe Insurance Company. Mr. K. W. Taylor, the foreman, it had been said, had nothing to do with the insurance department of his firm, and was not aware that the Royal Exchange Assurance had any interest in the policies. Besides the Manchester Assurance Company, the skins were insured with the Commercial Union Assurance Company and the Caledonian Insurance Company. The policies of the Commercial Union Assurance Company were reinsured to the extent of 50,000 rs. by the Royal Exchange Assurance, and to an unknown extent by the Liverpool & London & Globe Insurance Company.

LORD ROCHE observed that the Liverpool & London & Globe were on the face of the policy. "Do you tell me," his Lordship asked, "that Kennedy did not recognise any of the people on the jury so as to challenge them?"

COUNSEL: He only learnt afterwards of their connection with insurance companies.

Reading the evidence of the bank manager, Mr. C. E. Graham, COUNSEL said that the effect of his evidence was summed up when the question came: "Did you at any time doubt the honesty of Mr. Kennedy?" He promptly replied, "No." "He had ample security for his overdrafts?" asked Counsel. "Ample security," said Mr. Graham. When the question was put, "Your letters to him asking him to reduce his overdrafts were written as a matter of common prudence?" Mr. Graham replied affirmatively and turning to the Court said: "It was not as a matter of any particular weakness in his account." He accepted the suggestion that



those letters were in the nature of routine letters, except in the case of the longer ones.

LORD ROCHE asked what was the position of the insurers in regard to the fire claim.

COUNSEL pointed out that Mr. G. Percy Edge, of Messrs. E. B. Creasy & Co., agents for the Caledonian Insurance Company, one of the insurers, said that the position would be that the other insurance companies would take a *pro rata* share in the event of liability being admitted. He added: "We have not actually denied liability to Kennedy & Co., and we have not admitted liability. Our position is that we are awaiting the decision of this case." Mr. J. R. G. Smith, of Messrs. Harrison & Crosfield, had explained that his firm were agents for the Manchester Assurance Company. On Apr. 15, 1931, Kennedy took out an insurance policy with his firm for 250,000 rs. to cover general stock and skins. "I will take my *pro rata* share of the claim," said Mr. Smith. "We have not admitted liability. We are awaiting the result of this case." Those who were not directly but indirectly concerned, added Counsel, were saying that the insurance question was depending on the issue of the trial. Later, Mr. Smith stated: "At no time has the Manchester Assurance Company 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." Mr. G. D. S. Crossman, agent in the firm of Messrs. See, Hedges & Co., and employed by the Commercial Union Assurance Company, had given evidence that Kennedy took out a policy with him in April, 1932, for 175,000 rs. for his general stock, exclusive of skins. "My company has neither repudiated nor admitted liability to date," witness had told the Court. "All the companies are awaiting the decision of this case. Kennedy informed me on about Sept. 15 (I cannot remember the date) that he was shifting 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 affecting the period while moving from one place to the other." Mr. Edge also had given evidence that Kennedy notified him on Sept. 15 by letter that he proposed moving to the Colombo Stores premises.

At the request of the Solicitor-General, COUNSEL read a passage in the evidence of Mr. R. L. Watkins, of the firm of Watkins, Ford & Co., chartered accountants, "We merely made up Mr. Kennedy's 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. . . . The stock-in-trade in shoes was fairly static, always about the same."

LORD ROCHE observed that the Crown suggested that there could not have been gathered at Kennedy's bungalow the enormous quantity of 85,000 rs. worth of skins, and that a document indicating the stock contained fictitious elements. But money was being put into the skin business by Kennedy's relatives, and the domestic relationship never made it necessary that the accounts should be precise.

SIR JOHN WALLIS said that while they were at the house the skins were not insured. The Manchester Assurance Company's policy covered stock of boots and shoes at the shop until a new policy was taken for the skins on the arrival of skins at the shop from the bungalow. The policy for the skins was dated July 17, and that was the time the skins were brought in from the house. Counsel could not refer to the insurance policies as proof of the existence of skins in the bungalow until July, 1933.

COUNSEL objected to the Judge telling the jury that if they believed the watchman's account of the door out of which Kennedy came, that helped the conclusion that Kennedy was in the basement.

LORD ROCHE said that he thought that the Judge was only placing alternative considerations before the jury. He was contemplating the hole blown through the ground floor when, it was said, Kennedy touched the switch.

SIR GEORGE RANKIN observed that so much was made of the basement question because Kennedy said he was not there.

LORD ROCHE told Counsel that in saying a fire could have been lit without going into the basement, he himself was not saying that Kennedy had not been in the basement at any time. Several times the Judge told the jury that it was for them to form their own judgment, and that they might ignore what he said if they liked. He balanced the alternatives for them. He told them that assuming what occurred happened in stages, the accused might as well have gone across from the switch to the door as come up by the spiral staircase.

COUNSEL argued that the Judge went wrong in telling the jury that they should