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[5 J.L.R.]

DECISIONS

OF

THE HIGH COURT

AND OF

THE COURT OF APPEAL

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COURT OF APPEAL 1950

HARRY v. JERVIS

HEARNE, C.J.

"There must be reasonable evidence of negligence. But when the thing is shown to be under the management of the defendant and the accident is such that as in the ordinary course of things does not happen if those who have the management of it use proper care, it affords reasonable evidence in the absence of an explanation by the defendant, that the accident arose from want of care."

In the present case no explanation based upon evidence was given by the defendant.

The principle which was stated in *Scott v. London & St. Katherine Docks Coy.* (supra) has been followed in several cases of accidents on the highway although it was not such a case itself. It was followed in *Halliwell v. Venables* (1930) 99 L.J. K.B. 353. In this case a motor car driven on the highway by the defendant overturned and killed the plaintiff's husband. The trial judge held that there was no case to go to the jury, but on appeal it was held that there was a case which should have been left to the jury. It was pointed out that at the time the motor car overturned there was no other traffic on the road.

In *McGowan v. Stott* referred to in *Halliwell v. Venables* (supra) the facts were that a motor vehicle driven by the defendant mounted a footpath and struck the plaintiff in his back. At the close of the plaintiff's case the trial judge gave judgment for the defendant. On appeal it was held that there was a case for the defendant to meet and a new trial was ordered. Again it was pointed out that there was no evidence of there being any other vehicles on the road.

It was held in *Leaver v. Pontypridd* (1912) 76 J.P. 31 that if a tram car is driven along a narrow road and strikes a truck which crushes a man who has parked the truck on the side of the road, there is evidence of negligence against the tram driver. In this case too there was no evidence of any other traffic being on the road.

In *Tart v. Chitty* (1933) 2 K.B. 453 and *Baker v. Longhurst* (1933) 2 K.B. 461, it was held that the plaintiff in driving into a stationary vehicle from behind (there was no other traffic on the road) could properly have been found guilty of contributory negligence, as the circumstances of the case were indicative of negligence in not keeping a proper look out and in not pulling up in time.

In *Tidy v. Battman* (1934) 1 K.B. 319 it was said that *Tart v. Chitty* (supra) and *Baker v. Longhurst* (supra) were only applicable to the facts there present and lay down no general principle of law. In *Tidy v. Battman* it was held that the question of whether a motor cyclist who overtook a stationary car which was behind a stationary lorry drawn across the road and dashed into the lorry and was killed, was or was not contributorily negligent was for the jury to decide. The jury had held he had not been negligent.

We have been unable to find any case in which the mere fact of a collision—there being other traffic on the road—was held on appeal to



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be conclusive of negligence, except the case of *Ellor v. Selfridge & Co.* 46 T.L.R. 236, in which it was held that where a motor car mounts a pavement intended for foot passengers and goes where it has no right to go and injures persons standing there, these facts in the absence of explanation constitute negligence. In this case the jury had found negligence and the appeal was dismissed. It would appear from the authorities that it is entirely for the jury to say, having regard to the evidence of the plaintiff and the evidence, if any, of the defendant, whether negligence has been established.

In the present case the evidence of the plaintiff was to the effect that there was other traffic on the road, and that the negligence of the defendant consisted in passing through three vehicles abreast of one another at a time when there was insufficient room for him to pass. The jury found that that was not how the accident occurred and it would appear that they found themselves in the position of not knowing how the accident really occurred. If in that state of mind they returned a verdict in favour of the defendant, we do not think we could appropriately interfere with it.

The appeal is dismissed with costs fixed at ten guineas.

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## IN RE A COMMERCIAL BUILDING LET UNFURNISHED

### SITUATED AT 26-28 KING STREET AND 3 TEMPLE LANE, KINGSTON

COURT OF APPEAL 1950

Jan. 11, 12, 13
February 17

2 C.A.J.B. 954

*Landlord and Tenant—Rent Restriction—Rooms in building let separately as shops or offices—Standard rent of each commercial building so separately let—Standard rent of building as a whole—Apportionment—Similar lettings.*

A building, known as the Coronation Building, was at all times rented to tenants, each tenant occupying one or more of the rooms as a shop or an office. The tenant of one of the rooms applied to the Rent Restriction Board to fix the standard rent of the room he occupied. The Secretary of the Board, by notice under section 10 (4) of the Rent Restriction Law, Law 17 of 1944, required the landlord to apply for the determination of the standard rent of the building. At the hearing, the Board obtained evidence of the rental, as far as possible, of the various tenancies in the building on the prescribed date, January 1, 1941. No evidence was tendered as to a few rooms which were not then occupied, but the Board appeared to have assessed the rental of these rooms under section 11 (1) (a) by a comparison with similar lettings of similar premises in the same building on the prescribed date. The Board considered the permitted increases allowed by law, added an amount for increase of insurance, and added the amounts so arrived at to the standard rent in each case. It then totalled the amounts so arrived at, and fixed the standard rent and permitted increases for the building as a whole, and then proceeded to apportion the amounts so arrived at for each separate tenant, fixing the standard rent and permitted increases in each case at the amount already arrived at. In arriving at its decision the Board refused to consider evidence relating to the standard rent fixed by the Board of the floor area of tenancies in a building known as the Canadian Bank of Commerce Building.

HELD: (i) The amount for increase of insurance, not being a permitted increase allowed by the Rent Restriction Law, was improperly allowed by the Board; (ii) the building never having been let as a whole, and as it was not intended so to rent it, the Board had no jurisdiction to assess the standard rent of the building as a whole; (iii) the Board had correctly refused to consider the evidence relating to the Canadian Bank of Commerce Building as (a) there was no evidence that they were similar buildings, (b) comparison of the floor area of the building was fallacious as the Coronation Building included an area used as a public thoroughfare; (iv) the Board had adopted correct principles in arriving at the standard rent of each separate tenancy.

APPEAL from the decision of the Rent Restriction Board for the Corporate Area of Kingston and St. Andrew.

*Order varied, and remitted to the Board to deduct from the permitted increase, the sums allowed in respect of increased insurance.*

*Manley, K.C.*, and *Drury* for the appellant:
*Evelyn* for the respondents Levy & Sabio Bros.:
*Sturdy* for the respondent Aitken.

*Cur. adv. vult.*

1950. Feb. 17: The judgment of the Court (Sir Hector Hearne, C.J., Carberry and MacGregor, JJ.) was delivered by Carberry, J.

CARBERRY, J.

CARBERRY, J.: On the 13th of May, 1949, Ivorall Davis, a tenant of a room which he used as an office in the Coronation Building situate in Kingston, filed an application under section 10 (3) of the Rent Restriction Law, Law 17 of 1944, with the Rent Assessment Board for the Corporate Area of Kingston and Saint Andrew, for the assessment of the rent of his room. Section 10 (3) reads thus:—

> "The landlord or the tenant of any premises to which this Law applies may at any time, unless the standard rent of the premises appropriate to the category of letting in which they are let has already been determined by the Board, apply to the Board to determine the standard rent thereof appropriate to that category of letting."

In his application Mr. Davis gave the name of F. K. Hanna as the owner of the building, and on the same day that Mr. Davis filed his application the Clerk of the Board summoned Mr. Hanna as landlord to attend the Board on the 9th of August, 1949, for the hearing of this application.

As Mr. Davis' application disclosed that there were several other tenants on the premises, on the 18th of May, 1949, under section 10 (4) of the Law, the Secretary of the Board required Mr. Hanna as landlord to apply within 15 days for the determination of the standard rent of the premises. Accordingly, on the 19th of May, 1949, Mr. Hanna made his application to the Board, and in the form of application under head "The premises and conditions of the rentals". Mr. Hanna stated "Monthly tenancies aggregating the sum of £300"; in a separate list he supplied the names of the parties interested in the proceedings.



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An Investigating Officer was sent to the premises by the Board and he furnished the Board with a return showing the description and dimensions of the various rooms and the names of the tenants occupying them, as well as a description of the building as a whole.

On August 9th and on subsequent days, the Board considered these applications and on October 21st, 1949, announced its decision which was embodied in an order bearing that date.

It appears that the rooms of the building in question are let out, some as shops and others as offices, and the building seems to consist of a number of "commercial buildings let unfurnished" or, in other words, to be controlled premises within the Rent Restriction Law.

The Board appears to have arrived at its conclusion in this manner:—

It obtained evidence of the rental as far as possible of the various tenancies in the building on the prescribed date, namely, 1st January, 1941. As to a few rooms which were not occupied on the prescribed date, no evidence was offered either as to the amounts at which they were last rented before the prescribed date or as to the amounts at which they were first rented after the prescribed date. The Board seems to have assessed the rentals of these rooms under section 11 (1) (a) by comparison with similar lettings of similar premises in the same building on the prescribed date. The Board thus arrived at the provisional standard rent of each tenant's holding.

The Board considered the permitted increases and added the statutory ten per centum permitted increase allowed by section 13 (1) (a) of the Law. It also took into account the increase in the taxes, water rates and insurance on the building as a whole, since the prescribed date, and apportioned a proportionate amount of such increase to each tenant.

Section 13 (1) (c) authorises the Board to add to the standard rent "an amount proportionate to any increase in the amount of the *rates and taxes* payable by the landlord since the date by reference to which the standard rent of the premises is determinable". But there is no provision in the Law for allowing the landlord to add any increase of expenditure he may have incurred on account of insurance, and as the Board is a statutory body without any discretion to allow increases beyond those contained in the Law, this item of increased insurance charges cannot be passed on to the tenant and must be disallowed.

The Board next considered under section 13 (1) (e) the substantial improvements made to the building generally and to particular rooms in the building. The Board apportioned an amount proportionately to each tenant under this sub-section and allowed an additional amount in respect of the particular rooms improved.

Having added to the standard rent of each tenant the appropriate increase, the Board arrived at the rent payable by each tenant and then totalled these amounts, thus purporting to treat the total so

reached as the standard rent of the building as a whole and the amount payable by each tenant as an apportionment of the standard rent under section 11 (2).

For the landlord two main points were argued on the appeal.

Firstly, it was submitted that the landlord's application was one to determine the standard rent of the building as a whole, that the Board should have determined the rent on the principles set out in section 11 (1) (a) and (b), and that it wrongly rejected evidence relating to the standard rent of the Canadian Bank of Commerce Building; and

Secondly, that in arriving at the standard rent the Board acted on wrong principles in that it fixed the standard rent of each room or other part of the building, and then added these amounts together, and further that even if that was the correct method to be adopted, it omitted from its calculations a part of the premises—3 Temple Lane occupied by Aitken, and had no particulars upon which to find the standard rent of other parts of the building.

With regard to the question of fixing the standard rent of the building as a whole, section 2 (1) of the Rent Restriction Law, Law 17 of 1944, defines a commercial building as meaning a building, or a part of a building separately let, or a room separately let, for certain named purposes. It was admitted at the hearing of the appeal that at no time had the Coronation Building been let as a whole, neither was it proposed so to rent it now but that the landlord desired to ascertain his standard rent, should he in the future have the opportunity so to rent it. If in fact the landlord's application was intended to be one to determine the standard rent of the building as a whole, then we are of opinion that there was no jurisdiction in the Board to hear such an application. Section 10 sets out the applications that the Board has authority to hear in order to determine the standard rent.

The first sub-section provides:—

> "Where *any premises are intended to be let* as a . . . . . commercial building . . . . . it shall be lawful for *any person proposing to let the same* to apply to the Board to fix, provisionally, the rent which will be the standard rent of the premises when they are so let and the Board may fix such provisional standard rent accordingly. The *applicant* shall disclose to the Board the terms and conditions of the *proposed letting* and all circumstances which will affect the standard rent of the premises and, if the premises are later let substantially on such terms and conditions and in such circumstances, such provisional standard rent fixed by the Board shall be deemed to be the standard rent of the premises determined by the Board and appropriate to the category of letting in which they are let."

This sub-section clearly contemplates a case in which the premises are not yet let. The actual words in the sub-section denoting this are—"*Any premises intended to be let*", "*any person proposing to let the same*", "*the applicant*" and not "*the landlord*" or "*the tenant*" as used in sub-section (3) of the same section. Consequently this sub-section has no application to this case before us.



Sub-section (2) provides:—

> "Where any premises are *intended to be let* as a . . . . . commercial building . . . . . without having previously been let in the same category of letting, it shall be the duty of *the person proposing to let the same* to apply to the Board under" (sub-section (1) above), "*before the commencement of the tenancy*, to fix the provisional standard rent."

This section refers to a building which it is proposed to let in a different category from that in which it has been let. e.g. a building which has been rented as a "dwelling-house" and which it is now proposed to let as a "commercial building" and as there is as yet no landlord in respect of the new category of letting, the expression "the person proposing to let" is used; so that this sub-section has no application to this case.

Sub-section (3) to which we have already referred, gives the right to "the landlord or the tenant of any premises to which this law applies" to apply to the Board to determine the standard rent unless the standard rent of the premises appropriate to the category of letting has already been determined by the Board.

Section 10 (4) gives to the Board the right to call upon any *landlord* to make application to the Board to determine the standard rent of any controlled premises. This can only refer to premises already let as the expression "landlord" is used, and, as pointed out above, it was under this sub-section that the Clerk of the Board required the landlord to have the standard rent of the premises determined. The word "premises" in these circumstances refers to each entity in the building separately let in accordance with the definition of commercial building, i.e., "a building or a part of a building separately let, or a room separately let . . . . . for business, trade or professional purposes".

Consequently the only application which the appellant could be called upon by the Board to make was one under section 10 (3) and in the circumstances of this case it was the only application which the appellant could have made to the Board. Moreover the record of the proceedings before the Board indicates that the question of the standard rent in respect of each tenancy was the subject of enquiry before the Board, and the case for the appellant was presented on this footing.

It would appear, however, that there was a misreading of section 11 (2) which led to the belief that it was the duty of the Board to determine the standard rent of the building as a whole. This led the Board to fall into the error of adding the standard rent and the permitted increases in respect of each room or group of rooms let to a tenant and regarding this total as the standard rent and permitted increases of the building.

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Under analogous legislation in the United Kingdom, it was decided in *Veale v. Cabezas* (1921) W.N. 311 and *Vaughan v. Shaw* (1945) 1 K.B. 400 that the standard rent of a house is the rent at which it was first let as a whole and not the aggregate of the rent of the rooms in that house. And that is what our legislature has said in effect in sections 9 and 11 of the Law. In other words the standard rent of a building is to be determined in the same way as the standard rent of a room in the building. The definitions in section 2 show that a "dwelling-house is a building or a part of a building separately let or a room separately let". A "public or commercial building means a building or a part of a building separately let, or a room separately let". In other words the unit for which the matter of "standard rent" must be considered is that which is separately let, be it a building, or a group of rooms in a building or a single room. And in this connection the word "let" includes the word "sub-let".

After the Board had made the error of declaring the standard rent of the Coronation Building to be the aggregate of the tenants' rentals, it went on to make the further error of treating each tenant's rent as the apportionment of the standard rent of the building.

Section 11 (2) is in the followng terms:—

> "Where, for the purpose of determining the standard rent of any controlled premises, it is necessary to apportion the rent at the date in relation to which the standard rent is fixed, the Board may, on the application of either party or the superior landlord, make such apportionment as seems just and the decision of the Board as to the amount to be apportioned to the premises shall be final and conclusive."

This sub-section indicates that the jurisdiction to apportion may arise in this way. Where a part of "a commercial building" or of a "public building" or of a "dwelling-house" as defined by section 2 (1) of the Law has been let or sub-let, it sometimes becomes necessary to determine the rent of the part; and the standard rent of the building which is already known will have to be apportioned in order to determine the rent which can be demanded of the tenant, or sub-tenant of the part and this jurisdiction is only exercisable when this apportionment is to be determined as at the date in relation to which the standard rent is fixed.

The analogous United Kingdom legislation appears in section 12 (3) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, 10 and 11 Geo. 5, c. 17. and reads thus:—

> "Where, for the purpose of determining the standard rent or rateable value of any dwelling-house to which this Act applies, it is necessary to apportion the rent at the date in relation to which the standard rent is to be fixed, or the rateable value of the property in which that dwelling-house is comprised, the county court may, on application by either party, make such apportionment as seems just, and the decision of the court as to the amount to be apportioned to the dwelling-house shall be final and conclusive."



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The case of *Bainbridge v. Congdon* (1925) 2 K.B. 261 illustrates the application of this principle of apportionment. On the prescribed date, a dwelling house was let at a rent of £30 p.a. The tenant of this house had since the prescribed date sub-let three rooms in it to the appellant as tenant at an inclusive rent of 14/- per week. The tenant afterwards applied for an apportionment of the rent and argued that the rent to be apportioned was £30, being the standard rent of the entire dwelling house. It was held that the rent of £30 was to be apportioned "as seems just", that is to say, there must be a fair division of the sum then paid as rent for the whole so that a proper proportion falls to be paid by the sub-tenant in respect of the rooms in question. The Court in doing this must take into account such matters as the size, accessibility and aspect of the rooms. The rent of £30 must be apportioned on these principles so as to find out how much was being paid for these rooms on the prescribed date.

It was argued before us that the appellant was entitled to ask the Board to assess the rent of the entire building so as to enable the appellant to apportion the rent between his present tenants or ask the Board to do so. In this way the appellant hoped to obtain a higher rent from each tenant. So to read section 11 (2) is to misconstrue it entirely.

To return to the instant case, there was no standard rent of the Coronation Building as a whole because it has never been so rented. The Board had no jurisdiction to assess the standard rent of this building as a whole because there was no evidence to show that it was proposed to let it as a whole in any category, and as there was no standard rent of the building as a whole there was nothing which could be apportioned.

With regard to the complaint that the Board wrongly rejected evidence relating to the standard rent of the Canadian Bank of Commerce Building, evidence was put before the Board of the standard rent and permitted increases approved by the Board with regard to tenancies in a building which we were told was one block away from the Coronation Building. This other building is owned by the Canadian Bank of Commerce and is a building consisting of parts or rooms let as shops and offices each of which is a "commercial building". The evidence was to the effect that 10,405 square feet of the bank building which was let out in shops and offices now bring in an annual rental of £3,724 and before us a comparison was made of the rental per square foot accruing to the Bank and the appellant from their respective buildings. This comparison was used for two purposes. One was to furnish the Board with evidence of the total rental of similar premises, that is the Bank building, within the same category of letting to enable the Board to assess the standard rent of the Coronation Building under section 11 (1) by comparison with the Bank building which was in the same vicinity, but in doing this the appellant puts

himself in the illogical position of asking the Board to use the standard rent of the Bank building which was obtained by the aggregate of the rent of the various tenancies in that building and this is the very method of computation which the appellant rightly complains was used by the Board in determining the standard rent of the Coronation Building.

The second purpose which the appellant sought to make of this evidence was one which may be described as a comparison of the square footage income from the two buildings. This evidence must now be considered but before doing so reference should be made to certain facts which it was submitted affected the rents being paid by the tenants of the Coronation Building on the prescribed date. Mr. Smith, a Solicitor whose firm collected the rents from these tenants testified that there was an upward tendency in rents prior to the 1st January, 1941—the prescribed date—and that his firm could not increase the rents of the tenants of the Coronation Building because the owner was at that period insane and could give no instructions for this purpose, and consequently on the prescribed date the rents at the Coronation Building were less than those which generally obtained in respect of similar tenancies in the same category in the locality. Mr. Tavares, an auctioneer, said in evidence "there was a general tendency to raise rents about 1939 by about 30 per cent before 1941—about only 10 per cent of the buildings increased more than 30 per cent".

There was one other fact relating to the same matter which should also be mentioned at this stage. A Mr. Sasso testified that on the prescribed date he was the tenant of the shop now rented by Mr. Sabio and that his rental was fixed at £36 because of "sentiment" and that the owner could have got a little higher rental: but in 1942 when his rent was raised to £40 he determined his tenancy.

Now these three matters are grouped together thus:—

(1) the inability of the owner's agents before the prescribed date to increase the rent of the tenants of the Coronation Building;

(2) the evidence of Mr. Sasso to the effect that he was not paying full economic rent for the shop he occupied; and

(3) the comparison of the square-footage basis which we were told works out at three shillings per square foot for the Bank and two shillings and one penny per square foot for the appellant.

And an argument was advanced to the effect that this marked difference in the income of these two buildings in the same category and in the same vicinity raised a case in which the Board should have applied section 11 (1) (b) of the Law. This sub-section reads:—



> "Where the premises were let in the same category of letting on or before the prescribed date, and the standard rent ascertained in accordance with the provisions of section 9 of this Law would, in the opinion of the Board, be substantially higher or lower than the standard rent ascertained on the principles of paragraph (a) of this sub-section, the Board may determine the standard rent on the principles of that paragraph."

Section 11 (1) (a) prescribes the method of assessing the standard rent of premises which were not let in the same category of letting on or before the prescribed date. In such a case the Board is to determine the standard rent by comparison with similar lettings of similar premises in the same locality on the prescribed date.

This therefore is the argument presented to us. The appellant whose building was let in the same category of letting on the prescribed date is now receiving a substantially lower standard rent per square foot from his building than the Bank is receiving from similar premises, in the same locality—and there is evidence to explain why this is so, therefore the Board should have determined the standard rent of all the tenancies in the Coronation Building on a higher basis so as to more nearly approximate the rental being received by the Bank.

The obvious answer to this argument is that a comparison of similar lettings of similar premises, means, similar lettings of similar premises. Where was the evidence of similar lettings? If it was proposed to invoke the aid of sub-section (b) of section 11 (1), evidence should have been put before the Board of comparable lettings—in each building—since the sub-section would apply to each tenant's holding, which is an entity for the purpose of assessing the standard rent; but no such evidence was given. Moreover this "square-footage" argument is fallacious, as included in the area of the appellant's building forming the basis of the computation is a collanade on one side of the building which is not tenantable and is nothing more than a public thoroughfare. That disposes of the argument on this aspect of the case.

No reference was made during the arguments before us to the evidence of Mr. Tavares of a general tendency between 1939 and 1941 to raise rents by about thirty percent. Neither was any complaint made—we think rightly—that the Board had disregarded this evidence. We are of opinion that evidence of this "general tendency" is much too vague to enable the Board to reach the conclusion within section 11 (1) (b) that the standard rent of tenancies in the Coronation Building (and as ascertained in accordance with the provisions of section 9) would be substantially lower than the standard rent of similar premises in the same locality.

It was also submitted that the Board erred in arriving at the standard rent of that portion of the premises occupied by Aitken, as it failed to consider the rental for that part known as 3 Temple Lane, yard space, now covered by a shed. That shed was erected by Aitken

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some time after 1941 and before the appellant bought it in 1945. On 1st December, 1945, Aitken wrote to the landlord: "With regard to premises I now occupy . . . . . including portion entering from Temple Lane". Mr. Smith states, "Aitken paid £13 for I think the same portion he now occupies, but he never paid rent for the shed". This statement referred to 1941, prior to the erection of the shed. In his closing submission Mr. Hart who appeared before the Board for Mr. Aitken stated "Mr. Aitken paid £13 monthly for rooms he occupied and the open space. He himself put up a shed in that space and whatever way you look at it, Aitken had his rooms and the space". And it is noted that whilst on August 1st Mr. Drury, for the landlord, stated "the £13 was paid by Aitken for two stores" and submitted then that "the space on which his shed now stands was an open piece of land in 1941 and should have a rental fixed in 1941 on coverage space", on 7th October he only submitted "the shed used by Reginald Aitken should be assessed as ground shed", and did not deny Mr. Hart's statement already referred to. We are satisfied that not only was there evidence upon which the Board could hold that Aitken's rental in 1941 included the yard, but also that it was so agreed before the Board and we were so informed by Mr. Sturdy.

The order of the Court is:—

(1) That the order of the Board which reads "Standard rental of £127, p. increases £89. 9. 5. total rental £216. 9. 5. monthly apportioned thus" is set aside.

(2) The case must go back to the Board with directions that it must deduct from the permitted increases of each tenant the sum allowed by the Board in respect of increased insurance since the prescribed date.

(3) The appellant will pay 5 guineas costs each to the respondents Sabio and Levy who were represented by one Counsel and 10 guineas costs to the respondent Aitken who was separately represented. No other respondents appeared or were represented here.

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## REX v. EDMOND JONES

COURT OF APPEAL 1950

2 C.A.J.B. 967.

Feb. 20, 21, 22 March 1

*Criminal Law—Summing-up—Evidence of accomplice—Corroboration—Warning by Judge inadequate—Evidence referred to in summing-up as corroboration related to commission of offence other than the offence charged.*

The appellant and M. had been jointly indicted for murder alleged to have been committed after they had broken into the house of the deceased, but the jury had been unable to return a verdict in regard to M. and the Crown had thereafter entered a *nolle prosequi*. The trial of the appellant had been discontinued, and at the re-trial he was convicted. At the re-trial M. had given evidence that the appellant had entered the house of the deceased, while he, M. remained outside, and that when he came out, the appellant told him that 'a man got awake and he had to butt him down'. The trial Judge directed the jury 'if his evidence remained uncorroborated you should hesitate before convicting on his evidence alone. But . . . . . if you are satisfied with the evidence of an accomplice, even though you may be warned by the . . . . . Judge of the danger of convicting on that evidence, although it is uncorroborated you can nonetheless convict'.

HELD: That the direction was inadequate, and further, that as the learned Judge had referred to certain evidence as corroboration of M.'s evidence that the appellant had committed the murder, when it only amounted to an admission that he had broken into the house, the conviction must be set aside, and a new trial ordered.

*R. v. Lewis* (1937) 26 C.A.R. 110; and

*R. v. Mohamed Farid* (1945) 30 C.A.R. 168, referred to.

APPEAL from conviction recorded and sentence passed by Rennie, J. *Appeal allowed. New trial ordered.*

*Campbell* for the appellant:

*Alexander* for the Crown.

*Cur. adv. vult.*

1950. Mar. 1: The judgment of the Court (Sir Hector Hearne, C.J., Carberry, J. and Cundall, Ag. J.) was delivered by Hearne, C.J.

HEARNE, C.J.

HEARNE, C.J.: Edmond Jones was convicted of the murder, on the 17th November, 1948, of Richard Pratt in the parish of St. Ann and sentenced to death. He has appealed from the conviction and sentence. The chief witness for the prosecution was one Stanley Morris. Jones and Morris had been jointly tried on an indictment charging them with having murdered Richard Pratt, but the jury had been unable to return a verdict in regard to Morris and the Crown had thereafter entered a *nolle prosequi* so far as he was concerned. By reason of circumstances into which it is unnecessary to enter the original trial of Jones was discontinued and it was ordered that he be tried alone in Kingston. At this trial, as we have said, he was convicted and sentenced to death.