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81, 1949

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UNIVERSITY OF LONDON

P.C. Appeal No. 23 of 1949.

30 MAR 1951

INSTITUTE OF ADVANCED

STUDIES

In the Privy Council.

ON APPEAL

FROM THE COURT OF APPEAL JAMAICA.

BETWEEN

CYRIL WAUGH - - - - - *Appellant*

AND

THE KING - - - - - *Respondent.*

RECORD OF PROCEEDINGS.

HUTCHISON & CUFF,
5 STONE BUILDINGS,
LINCOLN'S INN,
LONDON, W.C.2,
Solicitors for the Appellant.

BURCHELLS,
9 BISHOPSGATE,
LONDON, E.C.2,
Solicitors for the Respondent.

INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,
LONDON,
W.C.1.

In the Privy Council.

31723

ON APPEAL
 FROM THE COURT OF APPEAL, JAMAICA.

UNIVERSITY OF LONDON
 W.C.1.

17 JUL 1953

INSTITUTE OF ADVANCED
Appellant
 LEGAL STUDIES

BETWEEN

CYRIL WAUGH - - - - -

AND

THE KING - - - - - *Respondent.*

RECORD OF PROCEEDINGS

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In the Privy Council.

ON APPEAL

FROM THE COURT OF APPEAL JAMAICA.

BETWEEN

CYRIL WAUGH

Appellant

AND

THE KING

Respondent.

RECORD OF PROCEEDINGS

10 IN THE RESIDENT MAGISTRATE'S COURT.
FOR THE PARISH OF SAINT ANN.

Holden at St. Ann's Bay on the 23rd day of December 1948.

*In the
Resident
Magistrate's
Court.*

PRELIMINARY EXAMINATION

*Preliminary
Examina-
tion.*

REX versus CYRIL WAUGH for MURDER
Messrs. ALLWOOD BARRET & THOMSON for Defence.

No. 1.

DEPOSITION of Joscelyn Wright.

This Deponent JOSCELYN WRIGHT on his oath saith :—

20 Sergeant of Police stationed St. Ann's Bay in Saint Ann 25.10.48
Monday about 4.50 p.m. I received report at Police Station and went to
Richmond Estate in Saint Ann where I saw Philip Newby lying on his
back in a cane field about 10 chains from the Main Road bleeding from a
wound in belly and his intestines protruding. He had on khaki trousers
and blue shirt. I sent him to the Saint Ann's Bay Hospital immediately.
Large crowd was at spot. I went to home of Accused Waugh and questioned
him. I did not intend to arrest him. I asked him what happened.
Accused said "I was patrolling that part of the property by the sea called
Fig Tree Bay when I came upon a man carrying a bag of coconuts. I said
to him 'It is you stealing the coconuts down here' and the man threw
30 a piece of iron at me and attempted to chop me with a matchette and I
fire the gun. I didn't know if it catch him but him run towards the river.
I chased him and saw bloodstains where he ran. I turned back and took

No. 1.
Deposition
of Joscelyn
Wright,
23rd
December
1948.

*In the
Resident
Magistrate's
Court.*

*Preliminary
Examina-
tion.*

No. 1.
Deposition
of Joscelyn
Wright,
23rd
December
1948,
continued.

the bag of coconuts and the iron and bring them here." He handed me them and I produce them. Bag of coconuts in Evidence—Exhibit 1 and Iron in Evidence—Exhibit 2. He also handed me this gun and a spent cartridge in it. Gun in Evidence—Exhibit 3. Cartridge shell in Evidence—Exhibit 4. Accused went to a spot on Richmond Property in a coconut walk and pointed out to me where he was when he first saw Newby with the coconuts and where Newby was. The distance between the two spots was 14 feet. He also pointed out the spots where he and deceased were when deceased threw the iron (Exhibit 2) at him. The distance between the two spots was 7 feet. He also pointed out the spots where he and 10
deceased were when he fired the gun. The distance between those two spots was 7 feet 6 inches. 13/12/48 I pointed out all the above spots as well as the spot where I found deceased lying to Kenneth Rickards, Commissioned Land Surveyor. From spot where Accused told me deceased was when shot I followed a trail of blood to a river about 6 chains off. The river was about 10 feet wide and about 4 feet deep at that point water was very dirty. I saw on the bank on the other side a foot print with bloody water in it. I crossed the river and found a trail of blood from the footprint to a spot about 1 chain from the river where I had first seen 20
deceased lying. I searched all along the trail for a machette but found none. I left. I took a statement from Accused same night. I produce it. In Evidence—Exhibit 5. The accused had not been arrested and I did not caution him. I read the statement over to him and he signed it. In view of what another witness had said I asked the Accused for a further statement on 9/11/48 and he gave it and I took it in writing on same paper as Exhibit 5 already in Evidence and I read it to Accused and he signed it. 6.30–7.00 p.m. on 25/10/48 I attended at Public Hospital St. Ann's Bay and saw Accused in the minor operating theatre. Doctor L. M. Jacobs was present and was actually performing an operation on 30
deceased who was conscious. I asked him if he wished to make any statement. He said "Yes" and began to explain how he got shot. I started to write down what he was saying but I could not keep up with his pace and Sergeant Major Johnson who was present took the paper from me and continued the writing.

During the statement deceased fell into a coma and the statement was not completed. This is the statement—marked "A" for Identity. Deceased died early next morning. 16/11/48. I received one pair of khaki trousers and blue shirt and a sleeveless merino which deceased had on when I first saw him. I got them from Mary Jane Newby, deceased's Mother. They were washed and a piece had been cut from upper front of 40
the trousers and the legs slit. These are they. In Evidence—Exhibit 6. I kept them and on 18/11/48 I went and got from Thyra Newby, sister of deceased, a piece of khaki cloth and an underpant. These are they. In Evidence—Exhibit 7. The piece of khaki partly matches the portion missing from deceased's trousers. 19/11/48 I went to Accused home and there arrested him on this Warrant (In Evidence—Exhibit 8) for murder of Philip Newby. I cautioned him. He made no statement. 24/11/48 I went to Accused's home and was handed by his Wife 2 Eley cartridges which were later sent to the Government Chemists and used in tests with the gun (Ex. 3). I also got 5 Eley cartridges from Hugh O. Lindo the overseer on 50
Richmond Estate. These were also sent to Government Chemist. 23/11/48

I made 3 sealed parcels one of the gun (ex. 3) one of clothing (ex. 6) and one of underpant and piece of khaki (ex. 7). I took them to Government Chemist and received them back on 8/12/48 with a Certificate from him. I know his signature. This is it and this is the Certificate. In Evidence—Exhibit 9.

In the Resident Magistrate's Court.

Preliminary Examination.

No. 1. Deposition of Joscelyn Wright, 23rd December 1948, *continued.*

Xzd. I knew Accused before. He is a ranger on Richmond Estate and he was given the gun by his Employer to use when patrolling the property. The property is of cane and coconuts. The spots Accused showed me were in a coconut walk. The crossing out in the 13th line on page 2 of statement (ex. 5) and the interdelineation of the figure and word "7 feet" was done by me some weeks after Accused had signed it. I had made a mistake and corrected it. Accused had not told me "5 yards" when he gave me his statement. I initialled the alteration but Accused has not. When I found deceased in canefield a crowd of about 100 people were there coming and going. Accused was not there. The river was not dirty from rain. It appears that it had its normal dirty colour and had a lot of silt and sticks. The spots shown to me by Accused indicate that he had retreated from the spot where he had been standing when the iron was thrown at him to another spot 6 inches behind and to his left—I am sure—Deceased threw the iron from the same spot at which he was shot. I don't remember if I pointed out two separate spots to the Surveyor. Accused had not retreated more than 6 inches. With regard to the mistake which I said I corrected on line 13 of Exhibit 5 I don't know why I made the mistake.

To Court. 9/11/48 I conducted a search of the river and the trail of deceased for the cutlass but never found any.

(sgd.) D. MARCHALLOCK
Resident Magistrate
Saint Ann

(sgd.) J. WRIGHT.
23.12.48.

30 23/12/48

No. 2.

DEPOSITION of Leslie Johnston.

No. 2. Deposition of Leslie Johnston, 23rd December 1948.

And this Deponent LESLIE JOHNSTON on his oath saith :—

Sub-inspector of Police—stationed Brown's Town in Saint Ann. 25/10/48 was stationed St. Ann's Bay. I went with Inspector Dugdale and Sergeant Wright to Public Hospital—there about 6.30 p.m. on 25/10/48. Remained outside while Patient Philip Newby was being operated on and later was called in the operating room. A statement was taken from Philip Newby.

40 Sergeant Wright started to take it but patient talked rapidly and I took over for Sergeant Wright and continued the statement until the patient fell into a coma. This is the statement ("A" now in Evidence Exhibit 10). (Objection—over-ruled). The statement was not completed.

Not Xzd.

(sgd.) D. MARCHALLOCK
Res. Mag. Saint. Ann
23/12/48

(sgd.) L. JOHNSON,
Sub-Inspr.
23/12/48.

*In the
Resident
Magistrate's
Court.*

No. 3.

DEPOSITION of Lenworth Jacobs.

*Preliminary
Examina-
tion.*

*No. 3.
Deposition
of Lenworth
Jacobs,
23rd
December
1948.*

And this Deponent LENWORTH JACOBS on his oath saith :—

Registered medical practitioner and Medical Officer for St. Ann's Bay. I saw Philip Newby 25/10/48 about 5.00 p.m. and admitted him to Hospital. He was unconscious and suffering from—

1. Gunshot wound left lower abdomen.
2. Exterioration of the intestines through the first wound.
3. Three punctures of the small intestines.
4. Left side of scrotium and penis had been removed by a 10 lacerated wound.
5. Large lacerated wound in right thigh anterior medical aspect.
6. Traumatic shock.

All the injuries were consistent with shots from a shotgun. I operated on the patient using a local anæsthetic. During the operation he regained consciousness and spoke to me saying he felt he was dying and wanted to tell his story before he died. I told him he was going to die and that if he wished I would send for the Police, who would take his statement. He said he wanted me to and I sent for the Police who were on the premises. 20 Inspector Dugdale, Sergeant Major Johnson and Sergeant Wright came to the patient and I continued operating. Two of the Police took a statement from patient. It was not completed as patient got weak and was unable to finish giving it.

He never regained consciousness and died about 4.45 a.m. on 26/10/48. Death was caused from shock and hæmorrhage from gunshot wounds.

Not Xcd.

(sgd.) D. MARCHALLOCK.

(sgd.) LENWORTH M. JACOBS, M.D.

Res. Mag. Saint Ann.

23.12.48.

30

23/12/48.

No. 4.
DEPOSITION of Thomas Ridley.

*In the
Resident
Magistrate's
Court.*

*Preliminary
Examina-
tion.*

No. 4.
Deposition
of Thomas
Ridley,
23rd
December
1948.

And this Deponent THOMAS RIDLEY on his oath saith :—

Fisherman of Priory in Saint Ann. I know Philip Newby. He also lived at Priory. 25/10/48 about 4.15 p.m. I at home heard sound of a gun from direction of Richmond Property at Fig Tree Bay about 20 chains from my home. I then heard a voice calling for "Help, Help." I started towards it and entered Richmond Property and saw Accused Waugh who I knew before with a gun. I said to him "Cyril, what happened
10 man?" He said "You know this boy Phillip that is along with Samuels daughter from Lewis." I said "Yes." Accused said he bucked him up "with this bag of coconuts" pointing to a bag on ground and that he had this piece of iron—he showed me a piece of iron beside him on the ground—and he called to Philip about the coconuts and he threw down the bag and flung the iron at him (accused) and was coming towards him with a long cutlass and he stepped back and he was still coming and he fired the gun at him. I asked Accused if Philip get shot and he said "I believe he got shot on his foot. I asked him which way Philip gone and Accused pointed in direction of a river. One Seaford Tate joined us and other
20 people came. I told Accused to come with me and he and I stepped off in the direction he had pointed and I saw bloodstains on ground. After we had gone $\frac{3}{4}$ chain Accused stopped and turned back. I went on following a trail of blood for about 12 chains and I found Philip Newby across the river lying on his back with his intestines protruding. I spoke to him. I said "Philip what is this you put yourself into." He said "Tommy, if I get help I will live—as Cyril call to me him shoot me." I sent for the Police who came about 20 minutes later. Same afternoon I helped the Police search for a machette. I did not find any. When I first spoke to Accused, he showed me where he was standing and where
30 Philip was standing when he fired at him. 13/12/48 I showed those spots to the Surveyor, Mr. Rickards.

Xxd. When Accused and I started to follow the trail of blood, Accused had left the bag of coconuts at the spot I first saw it. When he saw the crowd coming he went back for it and the iron. It is not the kind used for husking coconuts. This (Ex. 2) is the iron. Between where the bag of coconuts was and the river is cane and guinea grass about 4 feet high. I searched along the blood trail—I was the first person to get to Philip. No one was present when he spoke to me. I have seen Philip working on Seville Property months before with a cutlass—labouring work.

40 (Sgd.) D. MARCHALLECK.

(Sgd.) THOMAS RIDLEY.

Res. Mag. Saint Ann.

23/12/48.

In the
Resident
Magistrate's
Court.

No. 5.

DEPOSITION of Seaford Tait.

And this Deponent SEAFORD TATE on his oath saith :—

Preliminary
Examina-
tion.

No. 5.
Deposition
of Seaford
Tait,
23rd
December
1948.

Mechanic—live Priory in Saint Ann. 25/10/48 about 4.15 p.m. I at home and heard gunshot from direction of Fig Tree Bay. I went and saw Leslie Trench ahead of me and Thomas Ridley ahead of him. I saw Accused on the property and Trench and Ridley searching towards the river about 2 chains from him. Accused had this bit of iron (Ex. 2) in his hand and a bag was on the ground and a gun lying beside the bag. I went up to Accused and asked him what happen. Accused said "A man was resisting against me with a cutlass to cut me and I shoot him." I asked him where the man ran and he pointed towards the river. I saw blood on Accused's knee (of his trousers). I asked him how blood catch his pants and he said he was trailing the man after he got shot and he ran across the river. Accused took up the bag and gun and iron and went towards the road and I went to look for the man and found Philip Newby about 1 chain across the river lying on his back with his intestines protruding. 10

Xcd. I did not see Accused and Ridley walking together. After I left Accused I caught up with Ridley at the river and we crossed together and got to Philip Newby together. Ridley spoke to him. I don't know what was in the bag. It looked as if it was coconuts. 20

(Sgd.) D. MARCHALLECK.

(Sgd.) SEAFORD TAIT.

Res. Mag. Saint Ann.

23/12/48.

No. 6.
Deposition
of Mary
Jane
Newby,
23rd
December
1948.

No. 6.

DEPOSITION of Mary Jane Newby.

And this Deponent MARY JANE NEWBY on her oath saith :—

Mother of deceased Philip Newby and know his clothes. Sunday 24/10/48 I saw him and he was wearing this khaki trousers and blue shirt (Ex. 6). 25/10/48 I heard something. 26/10/48 I heard he was dead and I received the trousers and shirt and this merino (Ex. 6). Elizabeth Martin who washes at Public Hospital St. Ann's Bay gave them to me. The clothes had blood on them. 27/10/48 I returned the clothes to her to wash and she returned them to me washed and I handed them to Sergeant Wright 16/11/48. My son was about 38 years of age and a bachelor. 30

Xcd. My son was living with the daughter of Joe Samuels.

To Court. My son's body was brought to my home on morning of 26/11/48 and I buried him in my yard.

(Sgd.) D. MARCHALLECK.

Her 40

Res. Mag. Saint Ann.

MARY JANE X NEWBY.

23/12/48.

mark

Witness J. WRIGHT, Sgt.

23.12.48.

No. 7.

DEPOSITION of Thyra Newby.

In the
Resident
Magistrate's
Court.

And this Deponent THYRA NEWBY on her oath saith :—

Sister of deceased Philip Newby. Live Priory. Washerwoman. 26/10/48 Elizabeth Martin brought Philip's clothes from the Hospital—trousers, shirt and merino and calico underpant. A piece of the trousers was cut out and separate. I buried the piece of trousers and the underpant as they were in a bad state with blood. 18/11/48 Sergeant Wright came to me and I dug up the piece of khaki and underpant and gave them to him.

Preliminary
Examina-
tion.

No. 7.
Deposition
of Thyra
Newby,
23rd
December
1948.

10 These (Ex. 7) are they.

Not Xcd.

(Sgd.) D. MARCHALLOCK
Res. Mag. Saint Ann
23/12/48.

(Sgd.) THYRA NEWBY

No. 8.

DEPOSITION of Kenneth Kingsley Rickard.

No. 8.
Deposition
of
Kenneth
Kingsley
Rickard,
6th
January
1949.

And this Deponent KENNETH KINGSLEY RICKARD on his oath saith :—

Live 2½ Deanery Road in Kingston—Surveyor of Public Works Department. I came to Saint Ann on 13/12/48 and was shown certain spots on Richmond Estate in this Parish by Sergeant Wright and Thomas Ridley.

I made a survey and prepared a plan, which I produce. In Evidence—Exhibit 11. I marked on the exhibit the various spots pointed out to me and lettered them as follows :—

Ex. 11.

- A. Spot where Accused was said to be when he first saw the deceased.
- A1 Spot where deceased said to have been when Accused first saw him from A.
- 30 B. Spot where Accused was when deceased is said to have thrown a piece of iron at him from B1.
- B1 Spot where deceased was when he is said to have thrown the iron at Accused.
- C. Spot where Accused said to have been when he shot at deceased.
- C1 Spot where deceased said to have been when Accused shot at him from C.
- D. Spot where body of deceased is said to have been lying on ground.

40 All these spots were pointed out by both Sergeant Wright and Thomas Ridley. Accused was not present. The Scale to which the plan is made is 12 feet to 1 inch.

Xcd. The distance between B and C on Exhibit 11 is 2 foot 6 inches.

(Sgd.) D. MARCHALLECK
Res. Mag. Saint Ann
6.1.49.

(Sgd.) K. K. RICKARDS
6.1.49.

*In the
Resident
Magistrate's
Court.*

No. 9.

COURT CERTIFICATE.

PARISH OF SAINT ANN.

No. 9.
Court
Certificate,
10th
August
1949.

I, HUGH MADONALD DIXON, Deputy Clerk of the Courts for the Parish of Saint Ann do hereby certify that the foregoing pages of Type-written Foolscap numbered 1 to 10 are a true copy of the Depositions taken by His Honour D. Marchallock, Esquire, Resident Magistrate for the said parish in the case of Rex. vs. Cyril Waugh for Murder.

Dated this 10th day of August 1949.

(signed) H. M. DIXON.

10

Deputy Clerk Courts, Saint Ann.

No. 10.
Govern-
ment
Chemist's
Certificate,
23rd
December
1948.

No. 10.

Government Chemist's Certificate.

REX versus CYRIL WAUGH

Ex No. 9

(sgd.) D. MARCHALLOCK

Res. Mag. Saint Ann.

23.12.48.

No. F.326/48

3760

JAMAICA—CERTIFICATE

20

for the purposes of Government Chemist's Certificate Laws 1902 & 1916.

I, the undersigned, Government Chemist of Jamaica, do hereby certify that—

I received on the 23rd day of November 1948 from Sergeant J. A. Wright
articles contained in
three sealed parcels for analysis.

The seals were intact on delivery.

REX vs CYRIL WAUGH—For Murder

On the 29th November 1948 I received from Sergeant J. A. Wright a sealed envelope which was labelled as follows:—"One spent Eley cartridge (No. 12) received from Cyril Waugh on the 25/10/48 used in shooting Philip Newby when he was attacked by Newby on Richmond Estate on the 25/10/48." 30

I also received from Sergeant Wright an envelope containing two Eley cartridges "received from the home of the accused Cyril Waugh."

I also received from Sergeant Wright some other cartridges for the purpose of test.

I made an examination of the exhibits and I carried out experiments therewith and I found as follows:—

Parcel marked "A" contained one 12 gauge Iver Johnson shot gun No. 24357 K.H. The barrel of this gun contained a residue of recently fired smokeless powder. The pull on the trigger was 5½ lbs.

10 *Parcel marked "B"* contained one pair of Khaki trousers having both legs cut downwards and part of the front missing, one blue shirt and one merino. I was unable to find any shot gun marks or pellet holes in these garments.

20 *Parcel marked "C"* contained a portion of the front part of a pair of Khaki trousers. There was a jagged semi-circular portion at the part corresponding to the top of the left leg. There were no powder marks or pellet holes. I tested the fibres round this jagged hole and I detected lead therein from which I am of opinion that this hole was made by a discharge of lead shot. There was also a pair of torn underpants. There was a gun shot hole in the front of the left leg which corresponded with the hole in the portion of trousers. The diameter of this hole was about 1 inch. No pellet holes or powder marks were observed.

The empty shot gun cartridge was a 12 gauge Eley Kynoch smokeless powder. I carried out firing experiments at ranges of 2 feet, 3 feet, and 5 feet using white cardboard targets. For these tests I used the two Eley Kynoch cartridges which had plain cases and which were similar to the empty cartridge case submitted by the Police and I also used another Eley Kynoch cartridge.

30 At a range of 5 feet there was made in the target an irregular hole measuring from 1 to 1¼ inches across and about 19 pellet holes outside and about 2 inches away there was another hole which was made by the wadding.

At a range of 3 feet there was formed a hole about 1 inch across which was irregular and which had about 6 pellet holes outside.

At a range 2 feet there was formed a round hole about 1 inch in diameter with no pellet holes outside. Some slight blackening of the paper target was observed.

40 I am of opinion from my observations of the targets that the range of firing from the muzzle of the gun to the deceased was between 2 feet and 3 feet as no pellet holes were observed round the gun shot hole in the trousers.

As witnessed my hand this 30th day of November 1948.

At the Government Laboratory,
Hope,

Kingston P.O.

Certified true copy of Ex. 9

(Sgd.) A. M. DIXON

Deputy Clerk Courts. St. Ann.

9/9/48.

(Sgd.) W. L. BARNETT,

Government Chemist.

*In the
Resident
Magistrate's
Court.*

—
No. 10.
Govern-
ment
Chemist's
Certificate,
23rd
December
1948,
continued.

*In the
Supreme
Court of
Judicature
of
Jamaica.*

**No. 11.
INDICTMENT.**

THE KING *against* CYRIL WAUGH.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

**No. 11.
Indictment,
21st
February
1949.** **In the Circuit Court for the parish of Saint Ann.**

HIS MAJESTY'S ATTORNEY GENERAL presents that CYRIL WAUGH is charged with the following offence.

STATEMENT OF OFFENCE :

Murder.

PARTICULARS OF OFFENCE.

10

Cyril Waugh on the 26th day of October, 1948, in the parish of Saint Ann murdered Philip Newby.

**(Sgd.) L. L. MURAD,
Acting Crown Counsel,
21.2.49.**

**No. 12.
Plea,
28th
February
1949.**

**No. 12.
PLEA.**

**REX *vs.* CYRIL WAUGH
CASE FOR THE PROSECUTION.**

**St. Ann's Bay.
Time : 10.00 a.m. Monday, 28th February 1949.**

20

PLEADING OF ACCUSED.

CLERK COURTS : Cyril Waugh, His Majesty's Attorney-General presents that you are charged with the following offence—Statement of offence, Murder. Particulars of offence : Cyril Waugh on the 26th day of October, 1948, in the Parish of Saint Ann murdered Philip Newby. How say you, are you guilty or not guilty of the offence charged ?

ACCUSED : Not guilty.

Mr. MOODY : Your Honour, I appear for the accused.

CLERK COURTS : Cyril Waugh, these gentlemen whom you shall now hear called are the jurors who are to try your case. If, therefore you

challenge them or any of them, you must do so as they come to the Book to be sworn and before they are sworn and you shall be heard.

JURY AS CALLED.

No.	35	Edwin Palmer.	Challenged by Crown.
"	34	Henry Miller.	
"	1	Ella Anderson.	
"	13	Alexander Clark.	
"	15	Spencer Campbell.	
"	23	Eric Green.	
10	"	7	Gerald Blackett.
"	"	36	William McDonald.
"	"	32	Cleveland MacFarlane.
"	"	14	Samuel Christie.
"	"	18	Caleb Donaldson.
"	"	26	Elma Johnson.
"	"	16	Lester S. Coke.
"	"	20	Irving Fullerton.
"	"	5	Wesley Brown.
"	"	12	Owen Clark.
20	"	3	Septimus Brown.
"	"	11	Joseph Christie.

*In the
Supreme
Court of
Judicature
of
Jamaica.*

No. 12.
Plea,
28th
February
1949,
continued.

No. 13.

Jury as Sworn.

No.	34	Henry Miller.	
"	1	Ella Anderson.	
"	13	Alexander Clark.	
"	15	Spencer Campbell.	
"	23	Eric Green.	
"	7	Gerald Blackett.	
30	"	32	Cleveland MacFarlane.
"	"	26	Elma Johnson.
"	"	20	Irving Fullerton.
"	"	5	Wesley Brown.
"	"	12	Owen Clark.
"	"	11	Joseph Christie.

No. 13.
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CLERK COURTS: Will you elect a Foreman from amongst you please?

Jury conferred and elected No. 26—Mr. Elma Johnson.

CLERK COURTS: Members of the Jury, you have agreed that
40 Mr. Johnson should be your Foreman?

VOICES: Yes.

CLERK COURTS: Members of the Jury, the prisoner at the Bar stands indicted in the name of Cyril Waugh, for that he on the 26th day of

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October, 1948, in the Parish of Saint Ann, murdered Philip Newby. On this indictment he has been arraigned and on his arraignment he has pleaded "Not guilty." Your charge therefore is to enquire whether he be guilty or not guilty and hearken to the evidence.

Sergeant of Police reads the Proclamation.

His Honour Mr. Justice MACGREGOR : Yes, Mr. Murad.

Mr. Murad opens case for the Prosecution at 10.35 a.m.

No. 14.
Deposition
of
Kenneth
Rickard,
28th
February
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No. 14.

DEPOSITION of Kenneth Rickard.

THE EVIDENCE.

10

KENNETH RICKARD, sworn.

Examined by Crown Counsel.

Q. Is your name Kenneth Rickard ?—A. Yes, sir.

Q. And do you live at 2½ Deanery Road in Kingston ?—A. Yes, sir.

Q. And are you a Surveyor attached to the Public Works Department ?
—A. Yes, sir.

Q. Now, on the 13th of December last year were you shown certain spots on the Richmond Estates in St. Ann by Sgt. Wright and Thomas Ridley ?—A. Yes.

Q. Did you make a survey ?—A. Yes, sir.

20

Q. And you prepared a plan ?—A. Yes, sir.

Q. And do you now produce the plan you prepared ?—A. Yes, sir.

Q. Now, did you mark on that plan various spots pointed out to you ?—A. Yes, sir.

Q. And you lettered them ?—A. Yes, sir.

HIS HONOUR : You were pointed out certain spots ?—A. Yes, sir.

Q. By Sgt. Wright— ?—A. And Thomas Ridley.

Mr. MURAD : You say you lettered those spots ?—A. Yes, sir.

HIS HONOUR : You have A, B and C, and you have A1, B1 and C1 ?—A. Yes, sir.

30

Q. The right on the plan is the north sea-coast ?—A. The sea-coast is the west. The sea-coast really is the east of the property of Richmond Estates.

Q. That is the sea-coast on the right-hand side ?—A. Yes, sir.

Q. A, B and C, are those the positions of the prisoner ?—A. Yes, sir.

Q. A1, B1 and C1 are the positions of the deceased as pointed out to you ?—A. Yes, sir.

Mr. MURAD : Now, A indicates what spot ?—A. Spot pointed out to me by Sgt. Wright and Thomas Ridley as the spot where the accused was standing when he first saw the deceased.

40

HIS HONOUR : And A1 ?—A. Is the position where the deceased was standing when the accused saw him.

Q. So A and A1 are the positions of accused and the deceased when first seen ?—A. Yes sir.

Mr. MURAD : And B indicates which spot ?—A. The position where the accused was standing when the deceased threw the bit of iron at him.

Q. Said to have been thrown ?—A. Yes sir.

HIS HONOUR : And B1 ?—A. The position where the deceased was standing when he was said to have thrown the iron at the accused.

10 Q. B and B1 are the spots where accused and deceased were when the iron was alleged to have been thrown ?—A. Yes sir.

Mr. MURAD : And C ?—A. The position where the accused was standing when he fired at the deceased.

Q. And C1 ?—A. The position where the deceased was when he was shot by the accused.

Q. And D ?—A. The position pointed out to me by Sgt. Wright and Thomas Ridley where the body of the deceased was then.

HIS HONOUR : Put your finger on it for the Jurors Mr. Rickard.

Mr. Rickard does so.

20 Mr. RICKARD : That is the point D.

Q. That is across the river ?—A. Yes sir.

Mr. MURAD : Can you tell us the distance between A and A1 ?—A. 14 feet.

Q. Between B and B1 ?—A. 7 feet.

Q. Between C and C1 ?—A. 7 feet 6 inches.

Q. And between C and D ?

HIS HONOUR : You need not be exact Mr. Rickard. ?—A. 254 feet. I would like to check that over. Yes, 254 feet.

Q. Just under 4 chains ?—A. Yes sir.

30 Mr. MURAD : And the scale to which this plan is made is ?—A. 20 feet to an inch.

HIS HONOUR : What is the distance between A to B ?—A. Approximately 6 feet.

Q. And A1 to B1 ?—A. Approximately 2 feet sir.

Q. Now then Mr. Rickard illustrate the point. If a person was advancing from A to B, whilst one advanced from A1 to B1 they would be more or less coming together, walking towards each other ?—A. Yes sir.

Q. And one would travel 6 feet whilst the other would travel 2 feet ?—A. Yes sir.

40 Q. And B to C ?—A. Approximately 3 feet.

Q. And B1 to C1 ?—A. 2 feet to 2 feet 6 inches.

Q. The movement of the person from A1 to B1 ; he has advanced to B1 and then he has turned to his right to C1 ?—A. Yes sir.

Mr. MURAD : I tender the plan Your Honour.

HIS HONOUR : Did you by any chance see in the vicinity of that spot a young almond tree ?—A. Yes sir, I did.

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Q. Can you tell us roughly where about it was?—A. It is about 27 feet from A, and about 21 feet from A1.

Q. In which direction?—A. Direction towards A.

Q. A to A1 is 14 feet?—A. Yes sir.

Q. Was it A to A1 and then beyond?—A. Beyond A1, it is below A to the left.

Q. Below A?—A. Yes sir.

Q. Below A and to the left. Have you put it in?—A. No sir.

Q. Can you mark it in your plan?—A. It was taken by bearings. I will put it in roughly. 10

Q. Put in the approximate position. You will mark it "E" for us. Did you notice a grass root behind which made it possible for some one to stoop down?—A. No sir.

Q. Would you mind marking on that plan the spot you have just marked for the young almond tree?—A. Yes sir.

Witness marks point on Jurors' Plan.

Q. On both the small one and the big one?—A. Yes sir.

Marked plan passed to His Honour, to Counsel for Defence and Crown Counsel.

Q. Were there any grass roots at that particular spot?—A. Yes sir, 20 not very high.

Q. You went there on the 13th of December, approximately two months after, six weeks after?—A. Yes sir.

Cross-
examina-
tion.

Cross-examination by Mr. Moody.

Q. Can you give me the distance between the spot that you marked E and the spot A?—A. About 18 feet.

Q. And what did you say about A1 to E?—A. 26 feet.

Q. You said 21 feet the first time?—A. A1 is 26 feet.

Q. Now this Spot E, would you say it is directly behind A?—A. Not directly behind. 30

Q. Would you say it describes anything like a right angle?—A. No.

Q. From A going towards the seashore?—A. No, it is not a right angle to A going towards the seashore. It is about 120° E to A and making an angle of approximately 120 degrees.

Q. And E you say is the almond tree?—A. Yes, sir.

Q. How tall is it?—A. It is about 8 feet to 9 feet.

Q. And what is the approximate thickness of the foliage at the time you saw it?—A. About, say, 13 feet, judging from the branches.

HIS HONOUR: Leaves thick?—A. Not very thick.

Q. About what height the leaves start from the ground?—A. I will 40 look if I made any notes.

Witness looks in note book.

WITNESS: I didn't make a note of that.

Mr. MOODY: Can you give me an idea as to how far it is from the spot A to the seashore?—A. Approximately 120 feet.

HIS HONOUR: A little less than two chains?—A. Yes, sir.

Mr. MOODY : Did you observe the condition of the land around ?

HIS HONOUR : You mean the vegetation or the slopes ?

Mr. MOODY : The vegetation.

Q. Did you observe if there was a coconut walk ?—A. Coconut trees.

Q. What direction were the coconut trees ?

HIS HONOUR : Were they planted in line ?—A. I didn't observe that.

Mr. MOODY : Were you able to observe whether it was a coconut grove ?—A. Yes.

10 Q. A lot of coconut trees ?—A. Yes.

Q. Did you observe if there was a cane piece there ?—A. Yes.

Q. Do you remember in what direction ?—A. Yes.

Q. Where was it ?—A. The cane piece was, looking on the plan, to the left of the scene.

Q. As you look at the plan ?—A. Yes, as you look at the plan, to the left of the scene.

HIS HONOUR : I take it these spots A, B and C were not in the cane-field ?—A. No, sir.

Mr. MOODY : They were in a grass piece or a coconut grove.

20 Q. Did you follow a track to get to the point D ?—A. Yes, I was taken on a route from the main road.

HIS HONOUR : You didn't go from that spot straight to the spot D ?—A. I went straight to the spot D.

Q. From A, B, C to D, did you go along a track there ?—A. I made my own track.

Q. It was a well-defined track ?—A. I didn't observe any defined track.

Mr. MOODY : Did you observe any defined track ?—A. I observed tracks running through and I took the shortest route to the scene.

Q. Now you mentioned from E to A1 is 26 feet ?—A. Yes, sir.

30 Q. And from A to E is 18 feet ?—A. Yes, sir.

HIS HONOUR : I take it that your marking of E in the plan now is not exact, as you haven't got compass bearings to take it, but you have done it to the best of your limited ability ?—A. Yes, sir.

Mr. MOODY : Can you state from memory, can you recollect whether the distance was about half, that is the spot A is about half the distance between the almond tree and A1 ?—A. It is approximately that.

HIS HONOUR : And A is to the right of the line ?—A. Yes, sir.

Mr. MOODY : What was the scale of the plan ?—A. Twenty feet to the inch, the big one, and 10 feet to the inch.

40 Mr. MOODY : Did the witness answer to you that there were grass roots there ?—A. Yes.

HIS HONOUR : Yes, but he did not recollect any particular one.

Mr. MOODY : Did you see any marks at the time you went there beyond where these marks were pointed out to you ?—A. By the Sergeant ?

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Q. But you didn't see at the time these spots were pointed out, you didn't see any marks there at all?—*A.* No, sir, they place sticks.

HIS HONOUR: Were there sticks at the spots when you got there?—*A.* No, sir, when I reached there—

Mr. MOODY: You put sticks?—*A.* I didn't.

Q. Who did?—*A.* The Sergeant of Police.

HIS HONOUR: When he pointed them out he put sticks to identify the spots to you?—*A.* Yes, sir.

No. 15.

DEPOSITION of Joscelyn Wright.

10

JOSCELYN WRIGHT, sworn

Examined by Crown Counsel

Q. Is your name Joscelyn Wright?—*A.* Yes, sir.

Q. And are you Sergeant of Police stationed at St. Ann's Bay in Saint Ann?—*A.* Yes, sir.

Q. On the 25th of October last year were you at the Police Station in St. Ann's Bay?—*A.* Yes, sir.

Q. Did you receive a report?—*A.* Yes, sir.

Q. What time was that?—*A.* About 4.50 p.m.

Q. That was on Monday?—*A.* Yes sir.

Q. And did you go to Richmond Estates in St. Ann?—*A.* Yes sir.

Q. You saw Newby there?—*A.* Yes sir, I saw the deceased Phillip Newby in a cane field on the northern side of the road about 9 chains from the road lying on his back.

Q. The main road?—*A.* Yes sir, his intestines protruding.

HIS HONOUR: You pointed out that spot to Mr. Rickard?—*Yes sir.*

Q. Spot E, that is on one side of the gully—?—*A.* That is between the gully and the road.

Mr. MURAD: Did he have on any clothes?—*A.* Yes sir.

Q. Trousers, shirt?—*A.* Trousers and shirt.

Q. And did you send him to the hospital at St. Ann's Bay?—*A.* Yes sir.

HIS HONOUR: Was he unconscious?—*A.* No sir, he didn't appear so.

Q. When you got there was anybody else there?—*A.* A large crowd.

Q. Did you go to the home of the accused man Waugh?—*A.* Yes sir.

Q. From the spot you went where first?—*A.* I went to Waugh's home.

Q. Before going to the hospital?—*A.* Yes sir.

Q. You sent the deceased to the hospital first?—*A.* Yes sir.

40

Q. You went to the prisoner's home?—A. It is still on the main road leading from Priory to Richmond between Priory and Llandoverly it is on Richmond itself.

Q. On Richmond?—A. Yes sir.

Mr. MURAD: How far away would it be to his home from that body?
—A. From where the body was?

Q. Yes?—A. That should be about 8 or 10 chains.

HIS HONOUR: Where the deceased was found?—A. Yes sir.

Mr. MURAD: Was the accused man at home?—A. Yes sir.

10 Q. Did you ask him certain questions?—A. Yes sir.

Q. Had you at that time made up your mind to arrest him?
A. No sir.

Q. What did you ask him?—A. I asked him what caused him to shoot Newby; then he said "I was patrolling that portion of the property known as Fig Tree Bay by the sea when I suddenly came upon a man with a bag of coconuts. I said to him oh, is you stealing the coconuts down here. The man throw a piece of iron at me and raised a machete to shop me. I fired a shot, I don't know if it catch him, and the man run towards the river. I chased after him and saw bloodstains along
20 where I ran. I turn back and take up the iron and the bag of coconuts and bring them here."

Q. Did he hand you the iron and bag of coconuts?—A. Yes sir.

Mr. MURAD: Produce them please. *Exhibit 2 Iron.*

Q. That is the iron?—A. Yes sir, this is the iron.

Passed to Jury and Judge.

Exhibit 1 Bag Coconuts.

Q. That the bag of coconuts?—A. Yes sir, this one.

HIS HONOUR: Husked or unhusked?—A. Husked Your Honour.

Q. Do I see some there?—A. The husks were taken up from under
30 a tree.

Q. Are there husks in the bag?—A. Yes sir.

Q. Were those husks in the bag when handed the bag of coconuts?
A. No sir.

Q. Why are they in there now?—A. It is only because they are really connected to the coconuts.

Q. Why were they mixed together. Please have the husks taken out.

Q. How many coconuts were there?—A. Around 40.

Q. Is it 40 or not 40?—A. I didn't check them sir.

40 Q. Let us see the size of the bag, how easy to hold over his shoulder, if Newby was holding it over the shoulder.

Bag shown to His Honour.

Mr. MURAD: Was the bag in that condition Sergeant?—A. It seems as if those holes were bored after by rats.

HIS HONOUR: Did the bag have holes at the time you received it?
—A. Not as big as these holes, just small holes.

Q. Careless handling perhaps eh?—No answer.

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Mr. MURAD : When the bag was handed to you with the coconuts could you see the coconuts in there, or that coconuts were in the bag ?—

A. I couldn't see them unless I open the bag.

Mr. MURAD : I beg to tender them Your Honour.

Q. Did he hand you anything else ?—A. Yes sir, he handed me the gun.

Q. Is that the gun (Exhibit 3) ?—A. Yes sir.

Q. Did you find anything in it ?—A. No sir, he handed me the cartridge, a spent cartridge.

Q. Spent cartridge (Exhibit 4) ?—A. This is it. 10

Q. You didn't see him remove that from the gun ?—A. He took it out and handed it to me.

Q. Out of what ?—A. From the barrel of the gun.

HIS HONOUR : He took it from the gun and gave it to you ?—

A. Yes, sir.

Mr. MURAD : And that is the spent cartridge and the gun ?—

A. Yes, sir.

Mr. MURAD : I beg to tender them, Your Honour.

HIS HONOUR : Before we forget, you have told us about some husks ?—A. Yes, sir. 20

Q. When was it that you went back and collected more husks ?—A. The same evening.

Q. By you ?—A. No, sir, by another constable.

Q. I suppose he will be coming to give evidence. Who is the constable ?—A. McKitty.

Q. Is he here ?—A. Yes, sir.

Q. Constable McKitty later gave you some husks ?—A. I really saw him picked them under the tree ; we were up there at the time and where he picked up those husks was not far away.

Q. I thought you were not there and you returned later ?—A. We 30 went searching for the machete along the trail of blood as far as up to the river and returned.

Q. When you first went to the spot that evening or when you went back ?—A. The first evening we went there.

Q. Was it on the first visit when you saw the dead man lying on the ground ?—A. The husks were taken up after we saw the man on the ground.

Q. Before you went to the prisoner's home ?—A. After we came back from the prisoner's home.

Q. You went back to the spot later in the afternoon ?—A. Yes, sir. 40

Q. And when you went back to the spot it was then you saw Constable McKitty picked up some husks ?—A. Yes, sir.

Q. How many ?—A. About four husks.

Q. Did they appear freshly husked ?—A. Yes, sir.

Q. Where did he pick them up ?—A. Under a tree about a chain and a half (1½ chains) from where the alleged shooting took place.

Q. A chain and a half in the direction nearer to the sea or further from the sea ?—A. Further from the sea.

Q. So if that is the sea here and that is the spot the husks were found, somewhere further there ?—A. More going up to this line. 50

Q. Somewhere there ?—A. Yes, sir.

Mr. MURAD : Did the accused go with you back to Richmond property after you saw him at his home and spoke to him ?—A. Yes, he went back with me to Richmond property.

Q. And did you go to a coconut walk ?—A. Yes, sir.

Q. And did he point out certain spots to you ?—A. Yes, sir.

Q. What spots he pointed out ?—A. Where he was and where the deceased was when he first saw him.

Q. Was Thomas Ridley there ?—A. Yes, sir.

10 HIS HONOUR : At that time ?—A. Yes, sir.

Mr. MURAD : Did you measure the distance ?—A. Yes, sir.

HIS HONOUR : You measured the distance ?—A. Yes, sir.

Mr. MURAD : What did you make it ?—A. Fourteen feet.

Q. And you subsequently pointed out those spots to the Surveyor, Mr. Rickard ?—A. Yes, sir.

Q. Did he point out any other spots ?—A. Yes, sir.

Q. What spots ?—A. He showed me where he was and where the deceased was when the iron was thrown at him.

20 HIS HONOUR : Did you measure it ?—A. Yes, sir, that was 7 feet Your Honour.

Mr. MURAD : Did he show you any other spots ?—A. Yes, sir. He showed me where he stood and where the deceased stood when the gun was fired.

HIS HONOUR : You mean when the gun was fired ?—A. When the accused fired the gun.

Q. That was how far apart ?—A. 7 feet 6 inches.

Mr. MURAD : On the 13th of December last year, did you point out these spots to the Surveyor, Mr. Rickard ?—A. Yes, sir.

30 Q. Did you mark the spots ?—A. I didn't put anything at the spot, but there was a small stump there where the accused pointed out to me, where the iron fell when he threw it at him, and I knew that distance then because of that stump.

HIS HONOUR : What kind of stump ?—A. A tree that was cut down, a small tree that was cut down.

Mr. MURAD : Was it a coconut tree ?—A. No, sir, a small shrub.

HIS HONOUR : The accused said the iron fell there, so you were able to place the spot ?—A. Yes, sir.

Mr. MURAD : Did you notice an almond tree in the vicinity ?—A. Yes, sir.

40 HIS HONOUR : Only one or more than one ?—A. Several of them.

Mr. MURAD : You noticed any grass roots ?—A. Yes, sir, there was plenty of grass, tall grass.

Q. From the spot where the accused pointed out as where the deceased was when he was shot, did you follow any route ?—A. Yes, sir, I went along where he said the deceased ran.

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HIS HONOUR : He showed you the direction where the accused [*sic*] ran ?—A. Yes, sir.

Mr. MURAD : Where did that take you to ?—A. To the river, sir.

Q. Did you notice any blood on the way ?—A. Yes sir, there was blood stains all the way up to the river.

Q. Can you say how deep the river was ?—A. About 4 feet.

HIS HONOUR : There was 4 feet of water in the river ?—A. Yes sir.

Q. Or the bank was 4 feet ?—No answer.

Mr. MURAD : Did the blood stains lead right up to the brink of the river ?—A. Yes sir. 10

Q. You noticed anything on the other side ?—A. Yes sir, there was footprint in the mud over the other side of the water.

Q. You crossed the river ?—A. Yes sir, that was full of bloody water.

Q. Did you cross the river ?—A. Yes sir.

Q. Did you find blood stains on the other side ?—A. Yes sir.

Q. You found a trail of blood stains leading to where ?—A. To about a chain on the other side to a coconut tree.

HIS HONOUR : The spot where you earlier found the deceased ?—A. Yes sir.

Mr. MURAD : Did you make a search ?—A. Yes sir. 20

Q. What did you search for ?

HIS HONOUR : The blood stains that you followed from the spot where the incident took place to the river, that is spot D, did it lead in a direct course ?—A. No sir.

Q. Or did you go down and cross somewhere ?—A. We came down lower and cross over.

Q. You came here and followed them here ?—A. Yes sir.

Q. That was the spot about a chain ?—A. Yes sir.

Q. So you followed this for some distance by the river ?—A. Yes sir.

Q. To the spot where he eventually fell ?—A. Yes sir. 30

Q. Would he have continued up this way to the main road ?—A. If he had gone straight.

Q. If he had continued that course, the spot where he fell, he would have continued out to the main road ?—A. Yes sir. I may mention that it was not he who came up along the river bed ; we had to cross down there because there was a coconut tree across the river.

HIS HONOUR : I am afraid Sergeant you have completely misunderstood the question. What I am trying to find out is the route the deceased took from that spot where he was shot to the river ?—A. It was not a straight route. 40

Q. Where did he meet the river ?—A. He met the river nearly opposite where his body was found.

Q. For you to cross you had to go over here ?—A. Yes sir.

Q. Blood stains led from here to a spot somewhere here in a straight line ?—A. Yes sir.

Q. Was it a beaten track or a well-marked track ?—A. No sir, he ran through a grass piece Your Honour.

Mr. MURAD : When you say that, was there a track in the grass ?—A. I didn't notice any track, it was just high grass.

- Q. You said you saw blood stains ?—A. Yes sir.
 Q. On the ground ?—A. On the grass all the way.
 Q. Was the grass trampled ?—A. Yes sir.
 Q. Did you make a search ?—A. Yes sir.
 Q. What did you search for ?—A. A machete.
 Q. How many of you searched ?—A. Several of us.
 Q. About how many ?—A. I and say about 10 of us.
 Q. Did you find it ?—A. No sir.

HIS HONOUR : You got the report about 4.50 ?—A. Yes sir.

- 10 Q. What time did you get out there ?—A. About 10 minutes after 5.

Q. Can you say whether it was before 4.15 the incident took place ?
 —A. No sir.

Q. You didn't enquire, you didn't learn whether it could have taken place at 3 or 4 or quarter past 4 ; you do not know how long the report took to get to you ?—A. No Your Honour.

Mr. MURAD : Did the accused man join in the search ?—A. I don't remember that he joined in.

Q. Did you go back to the home of the accused man that night, or did you see the accused man that night ?—A. Yes sir.

- 20 HIS HONOUR : You had him with you ?—A. Yes sir, we took him to the station.

Mr. MURAD : Did you take a statement from him ?—A. Yes sir.

Q. Had you at that time made up your mind to arrest him ?—A. No sir.

HIS HONOUR : In fact you didn't arrest him, you only arrested him some weeks after the warrant was issued ?—A. Yes sir.

Mr. MURAD : Did you take down the statement yourself ?—A. Yes sir.

- 30 Q. Did you read it over to him ?—A. Yes sir.
 Q. Did he agree it was correct ?—A. He did.
 Q. Did he sign it ?—A. Yes sir.

Exhibit 5 passed to witness.

Q. Is that the statement ?—A. Yes sir.

Exhibit 5 passed to Counsel for Defence.

Q. Now, on the 9th of November, did you take a further statement from the accused ?—A. Yes sir, but I don't remember the date, but I did take a further statement from him.

Q. You took it down in writing ?—A. Yes sir.

Q. You read it over to him ?—A. Yes sir.

- 40 Q. Agreed it was correct ?—A. Yes sir, and he signed it.

Q. Did you write it at the foot of the first statement that he had given ?—A. Yes sir, I think I did.

HIS HONOUR : I wonder why, why not on a separate sheet of paper ?
 —A. It was first roughly done.

Q. It was another statement given on a different date, why continue it on the same sheet ?—A. I had no specific reason.

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—
 No. 15.
 Deposition
 of
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Q. Is that the statement?—A. Yes sir.

Mr. MURAD: I beg to tender both statements Your Honour.

HIS HONOUR: Any questions Mr. Moody?

Mr. MOODY: No, Your Honour.

HIS HONOUR: There is something that should be explained on the second page Mr. Murad.

Mr. MURAD: Look at the second page Sergeant?—A. Yes sir.

HIS HONOUR: You see an alteration?—A. Yes sir.

Mr. MURAD: What is the alteration there Sergeant?—A. Altered from 7 feet instead of—

10

HIS HONOUR: From 5 yards to 7 feet?—A. Yes sir.

Mr. MURAD: You made the alteration?—A. Yes sir.

Q. Was the accused present?—A. No sir, he was not.

Q. Was the alteration initialled?—A. By me sir.

HIS HONOUR: When did you make it?—A. I made that sir sometime after receiving—

Q. I asked you when, not why?—A. I don't remember the date.

Mr. MURAD: This was on the 25th October the first statement, Monday?—A. Yes sir.

Q. Can you remember how long after you made that alteration?—
A. It might have been about two weeks or so after. 20

HIS HONOUR: You took a second statement on the 9th of November?—A. Yes sir.

Q. Did you make the alteration before or after you took the second statement or at the same time?—A. I think it was after.

Mr. MURAD: Had the accused man used the words "5 yards" when he gave the first statement?—A. He did.

HIS HONOUR: Why did you alter it?—A. Because of some notes from the Resident Magistrate as to the same discrepancy in the measurements.

30

Q. Evidence from the Coroner, the Resident Magistrate is Coroner?—A. Yes sir.

Q. As to discrepancies?—A. Yes sir.

Q. Why did you take upon yourself to alter the man's statement?—
A. When I looked at the notes I took of the measurement at the time I took the measurement I found it did not correspond, and I put the 7 feet.

Q. When you looked at your notes, the measurements that you had made, of what he pointed out to you at the spot, you say that the 5 yards didn't agree with what you had noted?—A. Quite so sir.

Q. How long have you been in the Police Force?—A. Nearly 25 years 40
sir.

Q. After 25 years you make an alteration of that description?—
No answer.

HIS HONOUR: Read the statement please Mr. Henry.

Clerk Courts reads statement as follows :—

“ Cyril Waugh states :

I am a ranger employed to the Richmond Estates in St. Ann and I live on the property. My postal address is Laughlands. I live 3 miles from St. Ann's Bay, I knew Phillip Newby by sight but not his name. I always saw him working at Richmond estates after the crop working in the field. On Monday the 25th October 1948 about 4.15 p.m., I was patrolling alone on a portion of the property known as Fig Tree Bay, with the single barrel cartridge gun belonging to the estate. This section is by the seaside. On arriving at that section I saw a man carrying a crocus bag with something in it over his left shoulder and a cutlass under his left arm and a piece of iron in his right hand. That was in the coconut plantation and he was coming from the inner part of the property towards the seashore. When I first saw him he was about 8 yards from me. A young almond tree was between us and that is why I didn't see him before. I recognised his face to be the man I always saw working on the estate ; and whom I got to know later to be Phillip Newby. I called to him saying, ' its you taking away the coconuts from down here ? ' As I said that to him he fling the piece of iron at me that he had in his right hand. He was then about 7 feet from me. The iron didn't catch me. He then drew his machete from under his arm, dropped the bag and started to approach me with the machete raised in his hand. I stepped back and said to him, ' Stop.' I raised the gun but he didn't stop and I fired one shot at him. He turned and started to run inwards the property towards the river. I ran after him and bawled out ' help, help ', several times. I chased him for about 2½ chains in some tall grass and I noticed blood stains along the path he was running. As I saw the blood, I turned back to the bag and then about 3 minutes after I saw Thomas Ridley and Seaford Tait, coming. Shortly after I saw Leslie Trench, known as Trenchie, come on the scene. No one was present when the incident between us took place. I showed them where Newby ran and the blood-stains on the grass along the path. A crowd came on the scene, and I took the bag and contents which I found was coconuts and the iron to my house. I didn't find the machete. He had run with it. Shortly after the Police came and I showed them the bag with coconuts and the iron Newby was carrying and told them of the incident. I then took the Police back to the spot and along the path Newby ran. By that time Newby had been taken away to the hospital so I didn't see him. I then went to the St. Ann's Bay Police Station and gave this statement which was read over to me and which is correct.

Taken by me this 25.10.48 at about
8 p.m., at St. Ann's Bay Station
and read over to the witness.

(Sgd.) J. WRIGHT, Sgt. (Sgd.) CYRIL WAUGH.

25.10.48.”

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HIS HONOUR: He was then about 7 feet from me. That is the line 5 yards to 7 feet.

Clerk Courts continues:

“Cyril Waugh further states:

At the time I spoke to Thomas Ridley who first came on the scene I did not say to him ‘you know the boy Phillip that is along with Samuels daughter from Lewis?’ What I actually said to him was ‘the boy that is along with Joe Samuels daughter from Lewis.’ I couldn’t mention his name then for I never knew Newby’s name before.

(Sgd.) CYRIL WAUGH

9.11.48.”

10

Mr. MURAD: Now, on the evening of the 25th October, the same evening of the report, did you go to the Public Hospital in St. Ann’s Bay?—A. Yes, sir.

Q. About what time was it?—A. Around 6 o’clock.

Q. Was it as a result of—

HIS HONOUR: You went from the scene to the prisoner’s home?—

A. Yes, sir.

Q. From his home you went back to the scene?—A. Yes, sir.

Q. To the spots where he pointed out?—A. Yes, sir.

Q. From there you came away?—A. From there we went to the Station.

Q. Did you leave him at the Station when you went to the Hospital?—A. He wasn’t at the Hospital. I think he was left at the Station.

Q. Then you went to the Hospital for this incident you are about to relate, and you went back to the Station and took the statement from him which you collected at 8 o’clock?—A. Yes, sir.

Mr. MURAD: Was Dr. Jacobs there?—A. Yes, sir.

Q. And did you see the deceased man there?—A. Yes, sir.

Q. You think the accused was left at the Police Station?—A. Yes, sir.

Q. Did you go into the Operating Theatre?—A. Yes, sir.

Q. What was Dr. Jacobs doing?—A. He was performing an operation on the deceased.

Q. Was the deceased man conscious?—A. Yes, sir.

HIS HONOUR: You saw him perform an operation on the deceased at the time the deceased was conscious?—A. Yes, sir.

Mr. MURAD: Did you take a statement from the deceased?—A. Yes, sir, I started to take one.

Q. What happened?—A. I couldn’t really write as fast as he was going, as he was talking.

Q. Who was there?—A. Sgt.-Major Johnson was there.

Q. What happened?—A. And he finished the statement. I wrote a part and he finished the balance.

Q. He took over from you?—A. Yes, sir.

HIS HONOUR: He finished the writing?—A. Yes, sir.

Mr. MURAD: What happened?—A. Well, before the deceased finish giving the statement he fell into a coma, and then he couldn’t talk any more.

30

HIS HONOUR : Whilst giving the statement he became unconscious ?
—A. Yes, sir.

Mr. MURAD : Look at this please (*statement passed to witness*) ?—
A. Yes, this is the statement.

Q. Your handwriting is there ?—A. Yes, sir.

Q. And you know the handwriting of Sgt.-Major Johnson ?—A. Yes,
sir.

Q. You have seen him write before ?—A. Yes, sir.

HIS HONOUR : Could you make a mark with a blue pencil dividing
10 your handwriting from Sgt.-Major Johnson's ?—A. I am making an
" x," sir.

Statement shown to Mr. Moody.

HIS HONOUR : Almost at the beginning.

Q. Before you started taking this statement from the deceased, did
you have any conversation with the deceased ?—A. No, sir.

Q. And Sgt.-Major Johnson ?—A. No, sir.

Q. None of the police had any talk with him ?—A. No, sir.

Mr. MURAD : The deceased died early the next morning ?—A. Yes,
sir.

20 Q. Now on the 16th of November did you receive a pair of khaki
trousers and blue shirt and sleeveless merino from one Mary Jane Newby ?
—A. Yes, sir.

Q. And she is the deceased's mother ?—A. Yes sir.

Q. And those were the clothes which the dead man had on when you
first saw him ?—A. Yes sir.

Q. When you got them from Mary Newby were they in the same
condition as when the man had them on ?—A. They were washed.

30 Q. Anything else you noticed ?—A. The pair of trousers, the upper
portion of the front was cut out, missing, and the leg of both trousers were
slit down open.

HIS HONOUR : Leg slit open ; presumably done at the hospital to
take it off him ?—A. Yes sir.

Q. The piece missing, was piece cut out in front ?—A. Yes sir.

Mr. MURAD : Exhibit 6 please.

(Exhibit 6 passed to witness.)

HIS HONOUR : Where is the piece that is missing in front ?—A. This
is the back and this is the front.

Q. Let us see where the piece in front was missing ?—A. The piece
was cut out up here (*indicating*).

40 Q. You say trousers, merino and what ?—A. Shirt.

Mr. MURAD : Hold it up for the Jury to see (Ex. 6).

HIS HONOUR : These were given to you by the deceased's mother ?
—A. Yes sir.

Q. Can you say whether these were the same clothes he was wearing
on the afternoon of the 25th of October ?—A. They were the same.

Q. Why were they not taken away from him on the afternoon of the
25th of October ?—A. Your Honour, we were not contemplating that it
was murder.

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Q. Did you take a statement at the hospital?—A. Yes sir.

Q. After reading that you did not contemplate it was a charge of murder?—A. No sir.

Q. It was only when the statement was submitted to the Coroner that he got you to do so?—A. Yes sir.

Q. Up to which time you practically made no investigation?—A. Investigations were made.

Q. You even omitted the clothes, submitted no clothes for examination to the Government Chemist.

Q. Did you have the clothes from the prisoner?—A. No sir. 10

Q. Have you got them yet?—A. No sir.

Q. So even to-day your investigations are not complete?—No answer.

Mr. MURAD: On the 18th of November did you get from the sister of the deceased, Thyra Newby, something?—A. Yes sir.

Q. What you got?—A. A piece of khaki trousers and an underpant.

(*Exhibit 7.*)

HIS HONOUR: Did you see where she got them?—A. They were buried near the house.

Q. And she dug them up?—A. Yes sir. This is the piece of khaki trousers, the front part, and this is the underpant. 20

Mr. MURAD: And does the piece of khaki cloth you got from the deceased's sister correspond to the missing portion of the trousers?—A. Yes sir, it corresponds to a portion of it, but even when it is placed in the missing part there is still a portion missing. It does not cover all the missing part.

Mr. MURAD: I beg to tender this Your Honour.

Q. Now, on the 19th of November did you go to the home of the accused man?—A. Yes, sir.

Q. Did you arrest him?—A. Yes, sir.

Q. You arrested him on a warrant?—A. Yes, sir. 30

Q. You read the warrant to him?—A. Yes, sir.

Q. You charged him with the murder of Phillip Newby?—A. Yes, sir.

Q. Cautioned him?—A. Yes, sir.

Q. Made any statement?—A. No, sir, he made no statement.

Q. Look at the warrant (Ex. 8), is that the warrant?—A. Yes, sir.

Q. Now, on the 24th of November did you go to the home of the accused man?—A. Yes, sir.

Q. Did you receive two Eley cartridges?—A. Yes, sir.

Q. Who did you get these cartridges from?—A. Mrs. Waugh.

Q. Wife of the accused?—A. Yes, sir. 40

Q. Did you send them to the Government Chemist?—A. I took them there along with five others.

Q. Five other what?—A. Cartridges, more cartridges. Eley cartridges.

Q. Where did you get those five cartridges from?—A. From Mr. Lindo of the Richmond Estates.

Q. And did you take those also to the Government Chemist?—A. Yes, sir.

Q. Did you receive them back on the 8th of December?—A. Yes, sir.

HIS HONOUR: When you saw the prisoner on the evening of 25th October did you examine his clothes that he had on?—A. I didn't, Your Honour.

Q. Did you make any enquiry to find out whether he had changed his clothes after he had got in?—A. I didn't.

Q. Did you notice any blood on his clothes?—A. I didn't notice that there was any blood on the clothes.

Q. You didn't?—A. No, sir.

Cross-examination by Mr. Moody.

10 Q. You got the report in the evening and you went first of all to where, when you left the station?—A. I went straight to the spot where the deceased was at the time.

Q. Where did you go after that?—A. From there we went to Waugh's home.

Q. Who was present at Waugh's home. Who was at Waugh's home when you were there?—A. He was there, and his wife was there.

Q. Any other policemen beside yourself?—A. Yes, sir, Inspector Dugdale was there and Sgt.-Major Johnson.

20 HIS HONOUR: You are using the old familiar titles which applied then?—A. Yes, sir.

Mr. MOODY: Ridley was there?—A. I don't remember that Ridley was there, he may have been, but I don't remember.

Q. You remember if the Inspector spoke to Ridley?—A. He may have done so.

HIS HONOUR: You don't remember?—No, sir.

Mr. MOODY: You remember if anything was said about the cocoanuts at Waugh's house?—A. As far as I remember it is only the explanation that Waugh gave.

30 Q. You don't remember if anybody was asked as to the condition of the coconuts and the bag?—A. No.

HIS HONOUR: You don't remember any further discussion about the coconuts in the bag?—A. No, sir.

Mr. MOODY: You made any notes of what happened at Waugh's house?—A. Not at the house.

Q. When did you write your statement?—A. I wrote my state—

Q. How long after?

HIS HONOUR: Let us get the exact date?—A. On the 9th November.

40 Mr. MOODY: You wrote your statement a month later, a month less one week, and you wrote that statement entirely from memory?—No answer.

HIS HONOUR: Was that the first note you had made?—A. No, sir, the first note was the measurements.

Mr. MOODY: The first note of your statement is what His Honour means.

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HIS HONOUR : The first note that you made of what the prisoner told you was in your statement on the 9th November ?—A. Yes, sir.

Mr. MOODY : You said you noted measurements. What measurements did you note ?—A. The measurements of the spots that were pointed out to me where the shooting took place.

Q. This was where, at the spot or at his house ?—A. At the spot.

HIS HONOUR : Do I understand that afternoon when you went to the spot where the shooting took place, Waugh pointed out to you certain spots ?—A. Yes, sir.

Q. And you there and then measured, and you there and then made 10 a note of the measurements ?—A. Yes, sir.

Q. He pointed out the spots and you noted the measurements at the time ?—A. Yes, sir.

Mr. MOODY : Have you got a note of that here ?—A. Yes, sir.

Q. It is correct to say then that at no stage did Waugh name any measurements, he merely pointed out distances and you measure them ?—A. Yes.

Q. Could you let me see your notebook ?

(Witness took out a sheet of paper.)

Q. That is a transcription ?—A. No, sir. 20

Q. That is the original note ?—A. Yes, sir.

Q. You didn't have a notebook ?—No answer.

HIS HONOUR : That is the note you made at the time in ink ?—A. I had a fountain pen.

(Note passed to Mr. Moody.)

Mr. MOODY : You have no note of any measurement of 5 yards here ?—A. No, sir.

Q. Did you say at the Preliminary Enquiry on the 23rd of December in cross-examination at top of page 4. Did you say there that the accused didn't tell you 5 yards when he gave you his statement ?—A. I don't 30 know if I said that Your Honour.

Q. But you said to-day in answer to His Honour the learned Judge, he didn't tell you 5 yards ; that is what you say ?—No answer.

Q. Now, you said you made a search for this cutlass ?—A. Yes, sir.

Q. There was a considerable crowd of people there at the time you were looking for this cutlass ?—A. Yes, sir.

Q. Over a hundred people ?—A. About 10 of us look for the cutlass, but there was a crowd there.

Q. What would you estimate the size of the crowd at ?—A. At the 40 time around 150 people.

Q. Did they come up after you got there ?—A. Some came after.

HIS HONOUR : Some were there when you got there ?—A. Yes, sir.

Q. When you got there where were they ?—Where the deceased was lying.

Mr. MOODY : Could you say from what direction they came ?—A. Through the canefield evidently and from the main road.

Q. That would be in the direction which was pointed out to you where the deceased was?—I saw people coming and going along in the canefield towards where the deceased was.

HIS HONOUR : Between the main road and where he lay?—A. Yes, sir.

Mr. MOODY : You mentioned river, is there a river there at all?—A. Yes, sir.

Q. Isn't a river something supposed to run out to sea?—A. That flow out to sea.

10 Q. Was it flowing out to the sea the day you went there?—A. There is always sand at the mouth of the river, and I cannot remember whether it was actually flowing into the sea.

Q. It isn't a river at all?—A. No, sir.

Q. And water collects there during rainy weather?—A. No, sir.

HIS HONOUR : Or is it a gully course?—A. There is always water there.

Mr. MOODY : Running out to sea?—A. Yes, sir.

Q. You say it is about how deep?—A. Four feet.

Q. Dirty?—A. Yellowish colour.

20 Q. And you say it was running all the time?—A. It has a very level surface and the force is slow, the running is slow, the water is more still.

Q. You come to the first question I asked you, whether it is only a pond that runs to the sea when rains fall?—A. Not a pond; it is kind of stagnant, and you do not have a fast flow of water.

Q. You have no flow of water at all?—A. There is a flow of water.

Q. You didn't find the cutlass? Nobody found it, you have never since heard a report?—A. No, sir.

Q. Has there been any change in the grass at that place between the time you had been there and when you went there with the surveyor?

30 —A. As far as I notice there was hardly any change.

Q. The grass had been cut in any way?

HIS HONOUR : Or fed down?—A. No, sir.

Mr. MOODY : Now this stump that you say you used to mark the spot, what sort of stump was it?—A. A small tree that was cut nearly to the level of the ground and started to spring.

Q. How did that tree look when you went there with the Surveyor?—A. A little taller than when I went there first.

Q. Did you tie a bit of string around it to indicate the same tree?—A. No.

40 Q. Was there another mark by which you could identify this spot?—A. Just knowing the spot itself, but I had no other mark.

Q. Now, the spot that you mentioned is entirely in the coconut walk?—A. Yes, sir.

Q. And there is a canefield adjoining the coconut walk?—A. Yes, sir.

Q. And I think you said already that there are no recognised tracks?

HIS HONOUR : The track that the deceased followed wasn't a recognised track.

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Mr. MOODY : Did you see any other tracks there ?—A. I didn't see any other.

Q. None at all?—A. No.

HIS HONOUR : You didn't see any tracks in the coconut walk or through the canes ?—A. No, sir.

Mr. MOODY : In fact from the situation of this coconut field nobody would be using it at all except the ranger who patrol, or people employed to pick coconuts at the time ?—A. That is so.

Q. But it does not lead anywhere ?—A. Not that I notice.

Q. Walking through there has no advantage except to the owners 10
of the property ?—A. That is so, sir.

Q. It doesn't lead for instance to an adjacent property or anything like that ?—A. No.

Q. Could you walk on the seashore and get to an adjacent property ?
—A. Yes, sir.

Q. Is it used as a usual track by the seashore to get to any other property ?—A. I understand so.

Q. You do not know by your own knowledge ?—A. No, sir.

Q. You have never travelled over it yourself ?—A. No, sir, only 20
when going to that same spot on this occasion.

Q. Where was the first spot that you saw blood, at around this spot ?
—A. I first saw blood around half a chain where it is alleged the deceased was shot.

HIS HONOUR : Half a chain from the immediate vicinity ?—
A. Yes, sir.

Mr. MOODY : Would you give me an indication of what you call half a chain ?—A. From here to there, not quite the width of the room.

Q. That is the first spot you saw blood ?—A. Yes, sir.

Q. Who pointed that out to you ?—A. I saw it.

Q. Nobody pointed it out ?—A. No, sir. 30

Q. You say there was blood all the way from there ?—A. All the way from there.

Q. Those coconut husks, was any search made for husks that evening ?
—A. Yes, sir.

Q. Were those the only husks found or there were other husks found ?
—A. Those were the only husks found.

Q. Do you know if the deceased was employed on that property ?—
A. I don't know.

Q. Did you make any enquiries to ascertain where he had been working that day ?—A. No, sir, I didn't. 40

HIS HONOUR : You more or less, Sergeant, adopted the idea a praedial thief has been shot, he has got his deserts, without looking any further to see whether the shooting was justified or not. That is more or less the attitude you took up. In fact, not only you, but everybody concerned with the case, until it reached the Resident Magistrate ?—
No answer.

Mr. MOODY : Did you have any difficulty at the Preliminary Enquiry in pointing out spots or in giving measurements as to the spots ?

HIS HONOUR : I do not follow you, Mr. Moody.

Mr. MOODY : In cross-examination, page 4, did you make a statement there identifying two spots from which the iron was thrown and the spot where the deceased was ?—A. I think I did.

HIS HONOUR : We cannot have what he said at the Preliminary Enquiry unless it is a contradiction of what he said now.

Q. You have told us that the prisoner pointed out to you the spot where the deceased was when he flung the iron ?—A. Yes, sir.

Q. And where the prisoner says he was ?—A. Yes, sir.

10 Q. Which the Surveyor has also shown and told us that you showed him as B and B1 on the plan ?—A. Yes, sir.

Q. And you have to-day told us that the prisoner pointed out spots C and C1, where he was and where the deceased was when the shot was fired ?—A. Yes, sir.

Q. Now the spot where the deceased was when he flung the iron, and the spot where the deceased was when he received the shot, presumably these were two different spots ?—A. Yes, sir.

Mr. MOODY : Did you form any idea as to the difference between these spots, how far they were ?—A. A matter of perhaps about 18 inches.

20 Q. Now, when you went to Waugh's house you stated to-day that the question you put to him was what caused him to shoot Newby. Is that the first question you asked him ?—A. I think so.

Q. Did you know he had shot Newby ?—A. I had heard so.

Q. You are certain that you asked him that question ?—A. Yes, sir.

Q. You didn't, by any chance, ask him what had happened ?—A. I may have asked him that.

Q. But what did you in fact ask him ?—A. I may have asked him that, but I am sure I asked him what caused him to shoot Newby.

Q. And you asked him that before you knew he had shot Newby ?

HIS HONOUR : No, he didn't say that.

30 Mr. MOODY : The only thing you heard was that Newby had been shot ?—A. Yes.

Q. Did you know by whom ?—A. I heard by Waugh.

Q. And that is why you asked him that ?—A. Yes, sir.

HIS HONOUR : Who made the report at the Station, do you remember ?—A. No, sir.

Luncheon adjournment taken at 12.46.

Resumption 2.08 p.m.

No. 16.

DEPOSITION of Walter Leigh Barnett.

40 Clerk Courts makes Jury Roll Call and calls on prisoner.

WALTER LEIGH BARNETT, sworn.

Examined by Crown Counsel

Q. Is your name Walter Leigh Barnett ?—A. Yes.

Q. Government Chemist for Jamaica ?—A. Yes.

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Q. On 23rd November last year, did you receive from Sgt. Wright three sealed parcels?—A. I did.

Q. Did you examine the contents and make an analysis?—A. I examined contents and I carried out tests.

Q. Now, the first parcel marked A, what did that contain?—A. That contained a 12 gauge Iver Johnson shot gun.

HIS HONOUR : That one (Ex. 3)?—A. Yes, this is the gun.

Mr. MURAD : Did you examine the barrel?—A. Yes, it contained a residue of recently fired smokeless powder.

HIS HONOUR : How recently fired, Mr. Barnett?—A. I should say 10 within two to three weeks.

Q. The evidence is that it was on the 25th of October, four weeks after?—A. One cannot say exactly, it is only an estimate, it was not a matter of months.

Mr. MURAD : What did parcel B contain?—A. A pair of khaki trousers.

Q. Noticed anything about them?—A. Yes, both legs had been cut down and some parts of the front missing.

Q. Those are the trousers?—A. Yes, there was also a blue shirt and a merino. I was unable to find any pellet holes, powder marks or shotgun 20 holes on the garment on any of the three articles.

Mr. MURAD : Parcel marked C?—A. Contained a piece of khaki which was part cut out from the pair of trousers.

Q. Would you say it corresponded to the trousers that you have in parcel marked A?—A. It could have been the missing part cut from the trousers.

HIS HONOUR : The whole of it or only piece?—A. The whole of it.

Q. Could this be the whole of the piece missing from the pant?—A. No, I wouldn't say that, not the whole.

Mr. MURAD : Did you notice anything about that portion?—A. There 30 was a jagged semi-circular portion at the top of the left leg.

Q. You would say that part corresponds with the top of the left leg?—A. Yes.

HIS HONOUR : Put your finger on the jagged semi-circular part.

Witness does so saying "that is where my thumb is."

Q. What about that?—A. I examined the fibres round this jagged hole and I detected lead.

Mr. MURAD : Did you form an opinion?—A. I formed the opinion that that part with the hole could be made by a discharge from a shotgun pellets. 40

Q. Did you find any powder marks or pellet holes?—A. I was unable to find any powder marks or pellet holes.

Q. Now, in parcel C?—A. There was also a pair of torn underpants. On the left leg was a circular hole part of the circular hole which corresponded to position of hole in the trousers. I fastened this piece of cardboard to garment in order to show the circular hole.

WITNESS : Here, it is not complete. This is the top. This is the left leg (the paper tag). Buttonhole is at the top. And this is part of the circular hole. I marked it in pencil on the cardboard. Diameter is about 1 inch.

Mr. MURAD : Were there any powder marks or bullet holes ?—A. I was unable to find any powder marks or pellet holes.

Q. You say that corresponded with the hole in the trousers ?—A. In my opinion.

HIS HONOUR : You say you were unable to find powder marks or pellet holes. Did you put the garment back as it would have been resting on his leg ?—A. As near as I could I did.

Q. Did you put it back as it would have rested on his leg if he had it on showing the piece of garment top and bottom ?—A. I tried to do that. There was a piece of cloth missing ; the hole was not complete.

Q. Has it been cut ? Apparently it has been cut. Unfortunately it has been cut in the very spot which matters in the case instead of being cut at the back. What goes down to the bottom where your right hand is ?—A. This goes to the top of the garment.

Q. How does the piece go around ?—A. That would come there and join on to there.

Q. So a piece is missing ?—A. Yes, sir.

Q. That piece now that comes up and joins on, did you examine that piece also to see any pellet holes ?—A. Yes, I couldn't find any.

Q. In any part of the cloth ?—A. No part of the cloth.

Mr. MURAD : Did you also receive one spent Eley cartridge, No. 12 ?—A. Yes.

Q. Is that it ? (Ex. 4) ?—A. Yes.

Q. And did you also receive some Eley cartridges ?—A. Of similar make.

Q. Live cartridges ?—A. Yes.

Q. How many did you receive ? You received them for the purpose of tests ?—A. Yes.

Q. And you carried out tests with them ?—A. Yes.

Q. Describe the gun ?—A. A single barrel breech-loading gun.

Q. And did you carry out experiments with it at various ranges ?—A. Yes, I fired cartridges from this gun at paper targets.

Q. What ranges did you experiment with ?—A. Two feet, 3 feet, 5 feet, 7½ feet and 10 feet.

Q. And you used the live cartridges that were similar to the spent cartridge ?—A. Yes.

Q. What did you find at the range of 5 feet ?

HIS HONOUR : Have you got the targets ?—A. I took photographs, but I also produce the actual targets.

WITNESS : This is the target at 2 feet (Ex. 12).

HIS HONOUR : That shows powder marks ?—A. It made a circular hole about an inch across and some powder marks. No pellet holes outside the large hole.

Mr. MURAD : At range of 3 feet what did you find (Ex. 13) ?—A. I got this circular hole measuring about an inch across.

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HIS HONOUR: No powder marks?—A. Not discernible Your Honour, and about six pellet holes just outside the large hole.

Q. Five feet (Ex. 14)?—A. The 5 feet shows a much larger hole and many more pellet holes outside of it. This hole up here is caused by the wadding.

All Exhibits passed to Jury and Judge.

HIS HONOUR: The marks down here are these powder marks?—A. Those scattered marks are due to dust getting on it afterwards.

Q. So there are no powder marks on that?—A. No, no powder marks.

Mr. MURAD: Did you arrive at an opinion Mr. Barnett as to the 10 range of firing from the muzzle of the gun?

HIS HONOUR: These targets that you show, 2 feet, 3 feet, 5 feet; that measurement is taken from the target to the——?—A. To the muzzle Your Honour.

Mr. MURAD: What opinion did you arrive at?—A. I formed the opinion from the comparison I made of the targets that the hole on the pants, the range was say between 2 to 3 feet from the muzzle of the gun to the garment.

Q. The muzzle of the gun to the clothes of the deceased?—A. Yes.

HIS HONOUR: On the target at 2 feet you found powder marks. 20 On target of 3 feet you found no powder marks, and no powder marks on piece of khaki. So, therefore, presumably, it was more than 2 feet, possibly less than 3 feet?—A. Yes.

Mr. MURAD: Can you tell the length of the gun?—A. I did not measure the length of this gun, but I have measured the length of other guns like this and they are 3 feet 9 inches.

Cross-
examina-
tion.

Cross-examination by Mr. Moody.

Q. How is it fired?—A. First of all the gun is broken and the cartridge put in, and then it is closed, and then the hammer has to be pulled back, and then it would be ready to fire and after pulling the trigger 30 the hammer is released, it strikes the firing pin which in turn——

Q. Can you explain in connection with the tests you carried out what led you to say that it has been recently fired. I do not want the details of the complete tests, just really with relevance to the recentness?—A. First of all I removed the barrel and I examine inside by an instrument known as a barrel roloscope (?). This is a kind of telescope which can be fixed at distances along the barrel. By that means I find if there is any fouling inside or any rust. The next thing I do is to wash out the barrel with distilled water and carry out tests on the washings.

HIS HONOUR: Would that test show you that it was recently 40 fired?—A. Yes, Your Honour.

Q. It would show you it was fired?—A. If it had been fired a long time I would expect patches of rust.

Q. You found no rust?—A. I didn't notice any patches of rust.

Mr. MOODY: I take it from what you saw that you saw some patches of rust.

HIS HONOUR: Did you see patches of rust?—A. I cannot remember. I saw fouling which was uniformly distributed along the barrel.

Mr. MOODY: Why did you mention patches of rust, to indicate what?—A. If it had been fired and left unclean for some time.

Q. How long; give me an idea as to the length of time for the formation of the rust?—A. Rust starts to form generally after about two weeks.

10 Q. But according to what you said Mr. Barnett it was between two to three weeks and you saw no rust?—A. It had only the appearance of a gun which had been fairly recently fired.

Q. If as you say the rust would begin to form only two to three weeks it must have been fired much more recently than two weeks because you saw no rust?—A. I cannot say I saw any rust.

Q. I thought you said you didn't see any rust?—A. I said "not sufficient rust."

Q. Did you say——?—A. I say "sufficient" now.

Q. Now, but not before?—A. Not before.

Q. Now let us see if we can get a proper answer.

20 HIS HONOUR: No, Mr. Moody, that is not a proper question.

Q. Can you measure the gun for me please?

(Witness measures gun.)

A. 3 feet 11 inches.

Mr. MOODY: Could you take independently the length of the barrel?—A. 32 inches.

No. 17.

DEPOSITION of Leslie Johnson.

LESLIE JOHNSON, sworn.

Examined by Crown Counsel.

30 Q. Is your name Leslie Johnson?—A. Yes, sir.

Q. And are you a Sub-Inspector of Police?—A. Yes, sir.

Q. And on the 25th of October last year were you stationed at Brown's Town in St. Ann?—A. Yes, sir.

Q. That is on the 25th of October you were stationed at St. Ann's Bay?—A. Yes, sir.

Q. Now, on the evening of that day did you go to the public hospital in St. Ann's Bay?—A. Yes, sir.

Q. Who accompanied you?—A. Inspector Dugdale.

Q. Sgt. Wright went with you?—A. Yes, sir.

40 Q. About what time was this?—A. About 6 p.m.

Q. Now, did you go into the Operating Theatre?—A. Yes, sir.

HIS HONOUR: Were you called by anybody?—A. Yes, sir, by Dr. Jacobs.

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Q. Who did you find in the operating theatre?—A. Sergeant Wright.

Q. Was Dr. Jacobs there?—A. Yes, sir.

Q. What was he doing?—A. Operating on the deceased.

Mr. MURAD : Was Phillip Newby there?—A. Yes, sir.

Q. Was a statement taken from Phillip Newby?—A. Yes, sir.

Q. Who began to take the statement?—A. Sgt. Wright.

Q. What happened?—A. Newby was talking rapidly and Sgt. Wright could not overtake him. Sgt. Wright couldn't write quickly, so I took the paper from him and started to write and finished it; until he could not say any more. He stopped talking. He apparently went into a coma. 10

Q. That is Newby?—A. Yes, sir.

Q. Is that the statement?—A. Yes, sir.

Q. Is that the writing of Sgt. Wright at the beginning?—A. Yes, sir.

Q. You know his writing?—A. Yes, sir.

Q. And that is your writing at the end?—A. Yes, sir.

HIS HONOUR : Any questions asked of him?—A. No, sir.

Q. Did you go to Richmond earlier on?—A. Yes, sir, I did.

Cross-
examina-
tion.

Cross-examination by Mr. Moody

Mr. MOODY : May I enquire whether the statement is tendered ?

HIS HONOUR : No. 20

Mr. MOODY : You were at Waugh's house?—A. Yes, sir.

HIS HONOUR : Did you go to Waugh's house?—A. Yes, sir, I did.

Mr. MOODY : And did you hear—well, was any question asked about a bag of coconuts?—A. I don't remember.

Q. Was any investigation made of the coconuts while you were there?—A. I think Sgt. Wright asked one question.

Q. What was that?—A. I think he asked the accused what caused him to shoot.

Q. And about the coconuts?—A. No, sir, I don't remember any 30 questions being asked about coconuts.

Q. Ridley was there?—A. I think he was there.

Q. You don't remember if any question was addressed to Ridley about the coconuts?—A. No, sir.

Q. When you left Waugh's house did you also go to the spot?—A. I went into the coconut cultivation before I went to Waugh's house.

Q. Did you see any coconut husks there?—A. I didn't see any husks.

Q. Where did you go from there?—A. From Waugh's house?

Q. From the spot from the field?—A. To Waugh's house.

Q. How many times you went to Waugh's house?—A. Once. 40

Q. Did you return to the field?—A. I went to the field before I went to Waugh's house.

Q. And then you left from Waugh's house where for?—A. To the Public Hospital.

Q. Did Waugh go with you?—A. No, sir.

HIS HONOUR : If you suggest a particular question that was put to Ridley he may remember.

Mr. MOODY : Did you hear the Inspector ask Ridley whether the coconuts were tied up in the bag just as they were at this present ?—
A. Yes, sir, I did.

HIS HONOUR : That is Inspector Dugdale. You heard him ask Ridley whether the coconuts were tied up in the bag as they were at that particular moment and Ridley said yes.

Q. I take it these coconuts were tied up in the bag ?—A. Yes, sir.

Q. How were they tied ?—A. If I remember correctly, it was about half bag of coconuts and it was tied just where the coconuts reached in
10 the bag with a bit of string.

HIS HONOUR : Tied with a bit of string just above the coconuts ?—
A. Yes, sir.

Q. Half bag ?—A. Yes, sir.

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No. 18.

DEPOSITION of Dr. Lenworth Jacobs.

LENWORTH JACOBS, sworn

Examined by Crown Counsel

Q. Is your name Lenworth Jacobs ?—A. Yes, sir.

Q. Are you a Registered Medical Practitioner ?—A. Yes, sir.

20 Q. And Medical Officer for St. Ann's Bay ?—A. Yes, sir.

Q. On the 25th October last year did you admit Phillip Newby to the hospital ?—A. Yes, sir.

Q. About what time was it ?—A. About 5 p.m.

Q. What condition ; was he conscious or unconscious ?—

A. Unconscious.

Q. You made an examination of him ?—A. Yes, sir.

Q. What did you find ?—A. (1) Gunshot wound left lower abdomen.

(2) Exterioration of the intestines through the first wound.

30 HIS HONOUR : What does that mean ?—A. The tripe, as you call it, was outside. (3) Three punctures of the small intestines. That is the intestines itself was punctured in three different spots by the same wound, but the intestines were punctured in three spots. (4) The left side of the scrotum and penis was removed by a lacerated wound. That is, half of the genital was removed, both the penis itself and the scrotum.

HIS HONOUR : Shot away ?—A. Yes, sir. (5) A large lacerated wound in the thigh, the right thigh. The upper thigh, anterior medial aspect of the thigh.

Q. That means ?—A. In the upper thigh on the inside. (6) The patient was suffering from traumatic shock.

40 Q. That is ?—A. He was in a state of unconsciousness, perspiring profusely and his blood pressure was below 90.

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HIS HONOUR : I don't quite understand. He had the wound first of all on the left lower abdomen. Can you put your hand on the two ?
—A. Yes, sir, the wound started here (*showing the left side of stomach*), that was opened up and intestines came through this outside here. The intestines itself were pierced in three spots. Then the wound went through here taking off all that and came down here.

HIS HONOUR : It really was the course of pellets and the wadding travelling from the left side taking off part of the penis and the genitals and lodging in the right thigh ?—Yes, sir. It went on through here and taking off everything and lodged down here. 10

Q. So the shot was fired from the left side and from above downwards ?

—A. Yes, sir, and obliquely downwards.

Q. Not from in front ?—A. No, not directly in front, from this position like (*indicating*).

Q. From the side ?—A. Yes, sir, he got the pellets going through here ; it was definitely not in front, but in front and to the side, in front above and to the side.

Mr. MURAD : Doctor, all the injuries were consistent with a shot from a shotgun ?—A. Yes, sir.

Q. Did you operate on the patient ?—A. Yes, sir. 20

Q. During the operation did he regain consciousness ?—A. Yes, sir.

HIS HONOUR : You gave him local anæsthetics ?—A. Yes, sir.

Mr. MURAD : Did he speak to you ?—A. Yes, sir.

Q. What did he say ?

Mr. MOODY : I object, I am objecting to that question.

HIS HONOUR : On the ground ?

Mr. MOODY : That the prisoner was not present at the time.

HIS HONOUR : Isn't it material and relevant as to the state of mind at the time the Crown has to prove ?

Mr. MOODY : That is so Your Honour. 30

HIS HONOUR : Isn't it admissible ?

Mr. MOODY : I am not suggesting it is not admissible either. It should be made clear that the prisoner was not present at the time.

HIS HONOUR : He has said that.

Mr. MOODY : And some question should be addressed to the witness to indicate as to the state of mind that was being sought.

HIS HONOUR : What questions can you put to a man in the throes of death, assuming that he was.

Mr. MOODY : With respect, I have not heard he was in the throes of death. It is on that ground. 40

HIS HONOUR : It has not got to be in the throes of death to make a dying evidence admissible.

Mr. MOODY : It is merely the question " did he speak to you ; what did he say." If I had heard from the witness as to his condition or any

questions addressed to give some idea that it was his condition or state of mind that is being sought, I would not have objected.

HIS HONOUR : You have heard that the man went into a coma ; that he died before he regained consciousness. You know what is on the deposition. The man went into a coma 10 minutes later and died during the night. I allow the question.

Q. (*To witness*) : What did he say ?—A. He said he felt that he was dying and he would like to give his story to the police before he died.

Mr. MURAD : What was your opinion of his condition at the time
10 Doctor ?—A. That he was dying.

HIS HONOUR : You had formed the opinion that he was dying ?
—A. Yes, sir, and I told him that.

Q. You told him that before or after he made the statement ?—
A. After he made the statement, I told him yes, he was a dying man and that if he wished I would send for the police right there in the theatre.

Mr. MURAD : Before he spoke did you form the opinion that he was going to die ?—A. Yes, before I started the operation I thought he was dead. As a matter of fact before I got to that stage I thought he was dead.

HIS HONOUR : When you told him you would send for the police
20 there in the theatre if he wished it, what did he say ?—A. He asked me to do that before he died.

Q. So he again repeated “ before he died ” he asked you to send for the police ?—A. Yes, sir, that was his last wish.

Mr. MURAD : Did you send for the police ?—A. Yes, sir.

HIS HONOUR : You there and then sent for the police ?—A. Yes, sir, they were right outside.

Mr. MURAD : Can you say who came ?—A. I know Inspector Dugdale, Sgt. Wright and Sgt.-Major Johnson came.

Q. Did you continue operating ?—A. Yes, I told him what the man
30 had said.

Q. And did they take a statement from the patient ?—A. Yes, sir.

HIS HONOUR : What did the patient do ?—A. He started talking, telling them and they wrote down.

Mr. MURAD : What happened Doctor ?—A. He finally became too weak and stopped talking, and I finished the operation.

Q. Did he become unconscious ?—A. Yes, sir.

Q. And eventually died ?—A. Yes, sir.

Q. He never recovered consciousness ?—A. No, sir.

Q. He died about what time ?—A. About 4 o'clock the following
40 morning.

Q. In your opinion death was due to what ?—A. Hæmorrhage from gunshot wound.

Q. Would shock assist ?—A. And shock.

HIS HONOUR : You are quite satisfied Doctor that he knew he was going to die ?—A. Yes, sir.

Q. You definitely told him ?—A. Yes, sir, I told him that.

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Mr. MURAD : You say he told you he was going to die ?—A. Yes, sir, he knew that too.

Q. You say he had abandoned all hope of living ?—A. He had.

HIS HONOUR : From the way you give evidence I gather that you are surprised that he was not dead when you started operation ?—

A. Yes, sir.

Q. Did you expect him to recover consciousness ?—A. I didn't think he would.

Cross-examination by Mr. Moody.

Q. Doctor, you indicated the direction in which the wound or the 10 shot must have gone. Would a gun hip high from the prisoner, a gun held on the hip—

HIS HONOUR : About how tall was the dead man, Doctor ?—A. I really do not know. I haven't the faintest idea.

Mr. MOODY : It would not be impossible for a gun held on the hip, an ordinary height person to have inflicted that wound if discharged from that position, that is held on the hip like that (*indicating*) and discharged to cause a wound, if the gun was held like that in two hands, hip high, a person of the height of the prisoner, could you expect to find the type of wound that you saw ?—A. You mean as inflicted ? 20

Q. In the assailant who discharges the shot ?—A. If it could have caused that wound ?

Mr. MURAD : I am objecting at this point. I do not think it is made clear to the Doctor how the two are standing.

HIS HONOUR : I do not think you will get the Doctor to give an opinion unless he understands everything first.

Mr. MOODY : You indicated the position of the deceased from the witness box ?—A. Yes, sir.

Q. And I asked you, bearing that position in mind and saying the assailant held the weapon hip-high, whether it could have inflicted a wound 30 such as you saw ?—A. May I have the gun, sir, there was a possibility.

HIS HONOUR : It would start from the distance the two of them were and the relative height of the two men and the height on which each stood ?—A. Yes, sir.

Q. If a gun is held at the hip and fired from the hip the direction of the wound could have been caused like that by depending on the distance apart and the relative positions of the people.

Mr. MOODY : I was accepting the position that you indicated that the deceased was in, and the position of the accused I saw indicated. He had held the shotgun like that (*indicating*) more or less hip-high ?—A. Yes. 40

Q. Was the last part of your answer with regard to the position ? Is that still in doubt ?—A. It is very important, because if the man that was shot was down there and the wound was up here in relation to the height, it would not create any problem at all, but if the positions were reversed then there would be a problem, it could not have happened.

HIS HONOUR : It comes back to the relative positions, the height of the two men and the position as they stood, the levels on which they stood ?—A. Yes, sir.

Mr. MOODY : Now in the position that you described the deceased as being at the time he received the shot, the direction of the shot, would it be possible for him to have his right hand raised at that time?—

A. Oh, yes.

Q. Nothing to prevent it?—A. Nothing to prevent it.

Q. Would you say it would be a very easy position for him?—

A. I don't know.

HIS HONOUR : At any rate you saw no injury on the hand?—

A. No, sir.

10 Mr. MOODY : From what you said, Doctor, you knew apart from anything that the deceased said, you knew he was going to die?—A. Yes, sir, from my experience I was sure he was going to die.

Q. Nothing that he said affected your opinion?—A. No, no.

HIS HONOUR : Nothing that he said affected your opinion as to the probability of death?—A. No, sir.

Mr. MOODY : You said in answer to my friend " he had abandoned all hope of living " ?—A. Yes, sir.

Q. What you saw that caused you to come to that conclusion? What did you see to cause you to say that he had abandoned all hope
20 of living?—A. His general mental state.

Mr. Moody sits down.

No. 19.

OBJECTION by Defence Counsel.

Mr. MURAD : I beg to tender the statement Your Honour.

HIS HONOUR : Any objections Mr. Moody ?

Mr. MOODY : Yes, sir. First and foremost, Your Honour, I would say that the statement is not complete. That if it appears from its nature that there was an intention to qualify anything that appears therein the statement is inadmissible, not admissible. Secondly, Your Honour,
30 that the contents of the statement must be of necessity a record of the transaction as to the manner of the infliction of the injury, and that it should have none of the faults which would be objectionable as far as evidence is concerned from the mouth of a sworn witness. And finally, there must be a settled, hopeless expectation of death which takes the place of the sanction of an oath. And I say overall, that it is for the Crown to indicate the presence of those circumstances before the statement is admitted.

HIS HONOUR : Those are the three grounds. Now dealing with the first question. You say the statement is not complete because if it indicates an intention to qualify any part of it, it is not complete. As the statement
40 appears, and with the exception of the last sentence which is incomplete and which has no relation to the incident itself and would therefore be inadmissible, can you say that the statement in itself as to the incident that took place resulting in the injury is incomplete ?

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Mr. MOODY : I am in a difficult position. I would prefer if one of the other grounds was taken first.

HIS HONOUR : That is the first thing I am dealing with is whether it is complete ; on the face of it doesn't it purport to be complete as to only that portion which could possible be admissible ? After all a statement to be admissible need not be recorded in writing, and therefore assuming for argument sake that if the officer who took the statement said the deceased gave a statement and said so and so, and incidentally he also said something else which is inadmissible in evidence, because it did not relate to the circumstances of the shooting, would that portion 10 which related to the actual shooting be admissible ?

Mr. MOODY : I would submit no. The whole statement must go in of what the deceased said.

HIS HONOUR : Have you any authority here ?

Mr. MOODY : I have Phipson, Roscoe and Archbold.

Mr. MURAD : And Taylor.

Copy of Phipson passed to Mr. Moody.

Mr. MOODY : Just merely by inference it says here that the declaration should be complete, and then the whole of what the declarant intended to say, an unfinished statement, or one which the declarant intended, but 20 was prevented from qualifying being inadmissible.

HIS HONOUR : I am going the whole way with you so far.

Mr. MOODY : The actual words of the deceased must be proved, and not mere substance, and that if questions were put, both these and the answers must be given to enable the court to see how much was suggested. But it is the complete statement and the statement cannot be recorded.

HIS HONOUR : Dealing with the completeness, the second point that you have raised with regard to the admissibility of the evidence comes from the witness box. That portion is inadmissible if any inadmissible evidence had been given. For example, if it had had nothing to do 30 with the incident. Suppose the dying declaration had been "John Brown stabbed me with a knife," that would be admissible ; that by itself would be admissible. " He stabbed me because last week I cut him," because last week I cut him would be inadmissible.

Mr. MOODY : Your first statement " John Brown stabbed me with a knife " would not be admissible.

HIS HONOUR : Why not ?

Mr. MOODY : The word " stab " is an opinion.

HIS HONOUR : I am afraid I cannot agree with you.

Mr. MOODY : There are authorities when opinions are in a doubtful 40 position——

HIS HONOUR : That is not an opinion, it is a fact. Even if he goes on to say the reason for it is something that took place a few weeks ago, that would not be admissible because it did not relate to the circumstances

of the stabbing. Sure the statement that "John Brown stabbed me" is complete ?

Mr. MOODY : That is so.

HIS HONOUR : It is complete as to that portion that is admissible.

Mr. MOODY : My submission would be that the statement cannot be separated, the whole statement that the deceased made must be considered. Some sections cannot be admitted and other sections be disregarded.

10 HIS HONOUR : It comes back to the question of whether it is complete or not. If a person is giving a narrative as to what took place and shows it is complete, that portion is complete, and then proceeds to go on and tell something which normally would not be admissible, does that make his statement as to what took place inadmissible ?

Mr. MOODY : Your Honour the question is what did the deceased intend to say. He started to give an account of certain things and he made certain statements. Before he has completed that he is cut off, he becomes unconscious.

HIS HONOUR : Is that so ? Not before he has completed, after he has completed, before he has completed something else.

20 Mr. MOODY : Which nobody knows what he intended to say. The portion of that unfinished sentence I respectfully submit is extremely relevant as intending to qualify the circumstances in which the transaction took place.

HIS HONOUR : How ? If it does not relate to the incident, and after all the only portion of a dying declaration which is admissible is what relates to the incident which resulted in death. No other portion is admissible.

Mr. MOODY : With respect, Your Honour, I was under the impression that everything that was said by the deceased—

HIS HONOUR : No.

30 Mr. MOODY : There was no right to reject any portion. The exact words of the deceased must be put in, and even where questions are addressed to him, the exact words of the questions that are addressed to him must be included.

Mr. MURAD : Page 358 Archbold, last paragraph.

HIS HONOUR : But no statement in the declaration is admissible which would not have been so, if given on oath. That portion of the declaration which is not admissible under normal circumstances must be left out. This other portion can be tendered in evidence.

40 Mr. MOODY : Sure that cannot be intended to cut across general rules ?

HIS HONOUR : I agree with you.

Mr. MOODY : The general rule is where a statement is tendered the entire statement—

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No. 19.
Objection
by Defence
Counsel,
28th
February
1949,
continued.

*In the
Supreme
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of
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No. 19.
Objection
by Defence
Counsel,
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continued.

HIS HONOUR : No, Mr. Moody, the statement in this case happens to be in writing, it has been recorded. What is admissible is what the deceased said, and the best evidence of what he said is what has been reduced into writing. If it was not in writing it would still be admissible on the recollection of the witness who heard it.

Mr. MOODY : I still feel that the whole of what he said must be included and not a portion, and strict rules would be provided which allowed them to be admitted and those rules must be observed strictly. The rules cannot be relaxed except on the strictest possible grounds, and the whole tenure of the authorities as shown in Phipsons have shown by 10 illustration a number of instances in which declarations have been rejected for the finest of fine reasons. And the fact that it can only refer to the transaction itself neither previous nor past, but the narrative of the account how the injury was inflicted.

No. 20.
Ruling
by Judge,
28th
February
1949.

No. 20.
RULING by Judge.

HIS HONOUR : I rule that the statement is admissible with the exception of the last sentence which is an entirely different subject and has nothing to do with the case, the death or the circumstances under which the injury came to be inflicted. I rule the statement admissible because 20 of that.

HIS HONOUR : Now, Mr. Clerk will you read the statement.

CLERK COURTS : Phillip Newby states : I got shot innocently I was going to bathe going from Llandoverly direction and about $\frac{1}{2}$ chain from the seaside and just about to take off my clothes behind a grass root I saw a man approach with a gun and he shoot me innocently and the man say that anybody he saw down there he is going to shoot because they are stealing coconuts down there. I was not carrying any bag with coconuts. I was not carrying any iron—not even a pocket knife. After I shot I feel it. When I feel the shot I try to run, because the man say 30 he was going to shoot me. When he fire the shot he missed the other man.

HIS HONOUR : I admit it to that point, and Members of the Jury. The Sgt. Major says that he took over from Sgt. Wright after the word “ clothes ” and continued “ behind a grass root.”

No. 21.
Deposition
of
Mary Jane
Newby,
28th
February
1949.

No. 21.
DEPOSITION of Mary Jane Newby.

MARY JANE NEWBY, sworn.

Examined by Crown Counsel.

Q. Your name is Mary Jane Newby ?—A. Yes, sir.

Q. And you are the mother of the dead man Phillip Newby ?—A. Yes, 40 sir.

Q. Now, do you remember when last you saw him alive ?—A. Yes.

Q. Was that on Sunday, 24th October last year ?—A. Yes.

Q. Was he wearing khaki trousers and blue shirt?—A. Yes.

(Exhibit 6.)

Q. Look at those please?

HIS HONOUR: Those are his?—A. Yes, sir.

Q. He was wearing those on the Sunday?—A. Yes, sir.

Mr. MURAD: On the following day you heard something?—A. Yes, sir.

Q. And he died after. Did you receive this trousers and shirt?—

A. Yes, sir.

10 Q. And merino?—A. Yes, sir.

HIS HONOUR: From whom, lady?—A. From the hospital.

Mr. MURAD: In St. Ann's Bay?—A. Yes, sir.

Q. And on the 27th of October did you give the clothes to somebody to wash?—A. Yes, sir.

Q. Did the clothes have any blood on them?—A. Yes, sir.

Q. And you had them washed?—A. Yes, sir.

Q. Who you gave the clothes to?—A. To Elizabeth Martin.

Q. She washes where?—A. In my yard.

20 Q. And after they were washed were they returned to you by Elizabeth Martin?—A. Yes, sir.

Q. And did you give them to Sgt. Wright on the 16th of November last?—A. Yes, sir.

Q. How old was your son, Mrs. Newby?—A. I don't remember.

HIS HONOUR: How tall was he, madam?—A. As tall as Inspector Johnson (about 5 feet 8 inches).

Q. Can you say whether he was as tall as the prisoner?—A. No, sir.

Mr. MURAD: Now, was your son's body brought home on the morning of 26th October?—A. Yes, sir.

Q. And did you bury him in your yard?—A. Yes, sir.

30 Q. Was he living with you at the time?—A. No, sir, but he comes and go all the time.

Q. Was he living with anybody?—A. Yes, sir.

Q. Who was he living with?—A. Ethline Samuels.

Q. Was she the daughter of one Joe Samuels?—A. Yes, sir.

HIS HONOUR: Lady, a piece of the trousers has been cut out. Who cut it out?—A. I don't know, but it came from the hospital just as it is.

Q. Did you get the separate pieces from the hospital?—A. Yes, sir.

Q. You got that from the hospital?—A. Yes, sir, but I didn't notice it.

40 Q. What about the underpants?—A. I never notice the underpants was in the box, but it was in such a bad condition they bury everything together.

Q. But you didn't cut it out yourself?—A. No, sir.

No cross-examination by Mr. Moody.

Mr. MURAD: Where did Mr. Samuels live?—A. I think he lives at a place they call Lewis.

*In the
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No. 21.
Deposition
of
Mary Jane
Newby,
28th
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continued.

*In the
Supreme
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No. 22.
Deposition
of Dr. L.
Jacobs
(recalled),
28th
February
1949.

No. 22.

DEPOSITION of Dr. Lenworth Jacobs (recalled).

Dr. JACOBS, recalled.

Mr. MURAD : Doctor, look at the trousers for me, please. Can you tell how the trousers got cut, slit down the legs ?—A. Yes, sir, in order to draw it off easily.

HIS HONOUR : Does that apply to the underpants also ?—A. Yes, sir, I think it would.

Q. What about the missing piece of the trousers ?—A. We are not responsible for that. I suppose what happened is we cut it this side and started to draw it off, and that piece just fell out of it on account of the hole made by the pellets. 10

No. 23.
Deposition
of Thyra
Newby,
28th
February
1949.

No. 23.

DEPOSITION of Thyra Newby.

THYRA NEWBY, sworn

Examined by Crown Counsel

Q. Is your name Thyra Newby ?—A. Yes, sir.

Q. Are you the sister of the deceased Phillip Newby ?—A. Yes, sir.

Q. And you live at Priory ?—A. Yes, sir.

Q. On the 26th October last year did you see your brother's trousers ?—A. Yes, sir. 20

Q. A pair of khaki trousers he had been wearing when he died ?—A. Yes, sir.

Q. Did you see any other clothes of his ?—A. Yes, his underpants and merino and shirt.

Q. You noticed anything about the trousers ?—A. Yes, sir.

Q. What you noticed ?—A. At the front I notice a piece of the trousers was cut out and separate.

HIS HONOUR : The piece in front was separate ?—A. Yes, sir.

Mr. MURAD : You noticed anything about it ?—A. They were in blood. 30

HIS HONOUR : You buried the underpants ?—A. Yes, sir, and the piece that came off, I buried the underpants and piece.

Mr. MURAD : You buried those because they were in a bad condition ?—A. Yes, sir.

Q. On the 18th of November last year did Sgt. Wright come to see you ?—A. Yes, sir.

Q. And did you dig up the piece of khaki and the underpants ?—A. Yes, sir.

Q. And did you hand them to him ?—A. Yes, sir. 40

Q. And those are they ?—A. Yes, sir.

I tender them Your Honour.

No cross-examination by Mr. Moody.

Adjournment taken at 3.45 p.m.

No. 24.

DEPOSITION of Thomas Ridley.

Resumption—Tuesday—1.3.49.

Time—10.00 a.m.

Clerk Courts makes Jury Roll Call and calls on prisoner.

THOMAS RIDLEY, sworn

Examined by Crown Counsel

- Q. Is your name Thomas Ridley ?—A. Yes, sir.
- Q. And do you live at Priory in St. Ann ?—A. Yes, sir.
- 10 Q. And are you a fisherman ?—A. Yes, sir.
- Q. Do you know the deceased Phillip Newby ?—A. Yes, sir.
- Q. And do you know the accused man ?—A. Yes, sir.
- Q. You knew them both well ?—A. Yes, sir.
- Q. Did Phillip Newby live at Priory ?—A. Yes, sir.
- Q. Can you say if he lived with a daughter of one Joe Samuels from Lewis ?—A. Yes, sir.
- Q. Now, on the 25th of October last year were you at home ?—
A. Yes, sir.
- Q. Did you hear something ?—A. I heard the sound of firearm.
- 20 Q. About what time was this ?—A. About 4.15 in the afternoon.
- Q. Where did the sound come from, what direction ?—A. From the direction of Richmond property in the direction of a place they call Fig Tree Bay.
- Q. About how far is that from your home ?—A. About 20 chains.
- Q. Did you go towards the sound ?—A. Yes, sir.
- HIS HONOUR : Immediately ?—A. Immediately after the sound of the firearm I heard a voice calling for help.
- Q. Did you recognise the voice ?—A. No, sir.
- Mr. MURAD : You went off towards Fig Tree Bay property ?—
30 A. Yes, sir.
- Q. What happened ?—A. While I was on the way going I still heard the voice calling help and I go to the sound of the voice.
- Q. You went into the property ?—A. Yes, sir.
- Q. Saw anybody ?—A. Yes, sir.
- Q. Whom did you see ?—A. I saw Cyril Waugh.
- Q. That is the accused man ?—A. Yes, sir.
- Q. He had anything with him ?—A. Yes, sir.
- Q. What ?—A. He had a long gun in his hand.

Ex. 3 shown to witness.

- 40 Q. Look like that ?—A. Yes, sir.
- Q. Spoke to him ?—A. Yes, sir, I say "Cyril, what is wrong" ?
- Q. What he said ?—A. He said "you know that boy Phillip that is along with Samuels daughter from Lewis ?" and I said yes.
- HIS HONOUR : You said you knew him ?—A. Yes, sir.
- Q. Then he said ?—A. "I buck up on him with this bag with coconuts."

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No. 24.
Deposition
of Thomas
Ridley,
1st March
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No. 24.
Deposition
of Thomas
Ridley,
1st March
1949,
continued.

Mr. MURAD : When he said that, did he do anything, did the accused man do anything ?—A. No, sir.

HIS HONOUR : He pointed to the bag of coconuts ?—A. Yes, sir.

Mr. MURAD : Was there a bag of coconuts there ?—A. I saw a bag.

Q. Could you see the coconuts ?—A. No, sir.

Q. A bag, with something in it ?—A. Yes, sir.

HIS HONOUR : “ I buck up on him ” ?—A. “ And I called to him and he dropped the bag and fling this piece of iron at me.” At that time he showed me the bit of iron.

Q. Where ?—A. On the ground a little way from him. “ And 10 coming towards me with a long cutlass, and I fired the gun.” I said to him “ you believe it shot him ? ” and he said “ yes, I believe he got the bullet somewhere on his foot, and he gone to the direction of the gully.” I asked him which direction did the man turn and he showed me.

Q. He pointed ?—A. He pointed the direction. I said “ come along with me Cyril let us search for the man Phillip.” Both of us stepped off in the direction in which he pointed to me.

Mr. MURAD : Did anybody join you ?—A. Shortly after he spoke to me, one—

Q. That is before you stepped off, did anybody come up before you 20 stepped off ?—A. No, sir, I don't remember ; there were people ; there was one Tait coming behind me.

HIS HONOUR : Seaford Tait came behind you ?—A. Yes, sir.

Q. But you are not quite sure when he arrived at the spot ?—A. Yes, sir.

Mr. MURAD : Just look at the iron and the bag of coconuts please.

WITNESS : This resembles the piece of iron that was pointed out by the accused man on the ground.

Q. Look at the bag ?—A. The bag not looking so much the same, it wasn't torn. 30

HIS HONOUR : The bag wasn't as torn as it is now ?—A. No, sir.

Mr. MURAD : You stepped off in the direction both of you ?—A. Yes, sir.

Q. You noticed anything ?—A. Just a few steps I saw marks of blood.

HIS HONOUR : Blood on the grass ?—A. Yes, sir. Both of us went following the blood, it ran 1½ chains from the spot going in the direction of the blood marks. There were people coming from the eastern direction on the beach and Waugh turned back, and I followed the blood reaching to the gully where I saw no blood again. While I was going 40 up and down the coast, I heard a groaning over the other side of the gully and I crossed and go over.

Q. And you found Newby ?—A. Yes, sir.

Mr. MURAD : While walking along following the blood-stains what sort of ground did you walk on, was it a track, a path or was it trampled grass ?—A. It wasn't an original track, it was just through the grass where I sent because blood was all in that direction.

Q. And the spot when you came first on Cyril Waugh, the accused man, what sort of place ?

HIS HONOUR : Does that matter. You spoke to the deceased ?—

A. Yes, sir.

Q. He was conscious ?—A. Yes, sir.

Q. And you saw his intestines protruding ?—A. Yes, sir.

Mr. MURAD : Did you go for the police ?—A. Well, I saw people come along and I call to the crowd. I sent someone to inform the police.

10 Q. Did you search for a cutlass later that evening ?—A. Yes, sir, I was in company with the searchers.

Q. Did you find any ?—A. No, sir.

HIS HONOUR : This spot where you walked along following the blood track it was through grass ?—A. Yes, sir.

Q. Was the grass tall or not ?—A. You had about 2 chains before you reach to the tall grass, 2 chains on the common and then you go into the tall grass. There was a lower grass a little way off.

HIS HONOUR : Was it freshly sprung ?—A. Spring long time.

Q. It had not been fed ?—A. No, sir.

20 A. No, sir. Q. When you walked along the spot did you notice any cutlass ?—

Q. When you first walked you did not see a cutlass ?—A. No, sir.

Mr. MURAD : When you got there the crowd had not arrived yet ?—A. No, sir.

HIS HONOUR : It's a gully course ?—A. Yes, sir.

Q. Was there any water in it ?—A. Yes, sir.

Q. Dirty water ?—A. Dirty water. It is not really a running stream. It is a dry gully. When rains fall the mouth widens out.

Q. And the mouth fills up and it becomes stagnant just there ?—A. Yes, sir.

30 Q. While crossing would it be possible for you to have seen anything lying on the ground in the gully course in the water ?—A. If you take note it would be possible to see something.

Q. Did you look afterwards to see if the cutlass was in the water ?—

A. When we went with the company we observed in the water, but there was no machete.

Q. You did look into the water but you saw no cutlass ?—A. No, sir.

Mr. MURAD : Were you present when Sgt. Wright and the accused man came back to the spot ?—A. Yes, sir.

40 A. Yes, sir. Q. Did the accused man point out certain spots to Sgt. Wright ?—

Q. And where you present when the Surveyor, Mr. Rickard, came to the spot, that was on the 13th of December ?—A. Yes, sir.

Q. And did you see Sgt. Wright point out different spots to Mr. Rickard ?—Yes, sir.

Q. You also pointed out spots ?—A. Yes, sir.

Q. And those were the same spots the accused man had pointed out ?—A. Yes, sir.

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No. 24.
Deposition
of Thomas
Ridley,
1st March
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continued.

In the
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—
No. 24.
Deposition
of Thomas
Ridley,
1st March
1949,
continued.
Cross-
examina-
tion.

Cross-examination by Mr. Moody.

Q. The people you said you saw come up after you when you heard the voice calling out for help, those people would have come from where? Where is the nearest district or area where people live?—A. Priory.

Q. That would be the same place in the district that the deceased lived, the man that is dead?—A. Yes, sir.

Q. He lives at that district too?—A. Yes, sir.

Q. What direction would these people have come from to the spot where the thing happened?—A. They come from the eastern part along the sea-beach. 10

HIS HONOUR : From beyond the gully?—A. Yes, sir.

Q. The incident happened here, the gully is here, and they came from there, that way. (*Indicating*)?—A. Yes, sir.

Mr. MOODY : The track that you followed leading up to the deceased what side is it, on your right as you go?—A. There is a cane plantation.

Q. What was the state of this plantation at the time, how high were the canes?—A. It was about 5 to 6 feet.

Q. Thick?—A. Yes, sir.

Q. As far as you know was any search made in this cane plantation?—A. We searched a portion of the canes entering to the gully. 20

Q. Only that portion?—A. Yes, sir, because the deceased went across a little in the canes.

HIS HONOUR : As he approached the gully he went through the canes?—A. Yes, sir, before approaching the gully he pushed through canes and entered the gully.

Mr. MOODY : Were you at Waugh's house the evening?—A. After the occurrence, yes, sir.

Q. Did any member of the police speak to you in relation to the bag of coconuts. Did anybody say anything about it?—A. I was asked if you see the bag I see down there (*pointing to the one in court*). 30

Q. Did they ask you anything about the condition of the bag as to whether it was in the same condition or not?—A. No, sir, it was not the same condition.

Q. You saw some coconut husks?—A. At that said evening after we went back.

Q. Where?—A. Somewhere a couple of chains from the place where the shooting take place.

HIS HONOUR : Later on your return you saw some coconut husks about 2 chains from the spot where the prisoner had pointed out the shooting took place?—A. Yes, sir. 40

Mr. MOODY : Do you know if there is a pathway by the seashore going to Llandoverly or the adjacent properties?—A. No, sir.

HIS HONOUR : You don't know or there is none?—A. There is none, sir.

Mr. MOODY : Have you ever been that way yourself on the seashore?

HIS HONOUR : You want him to admit he was trespassing?

Q. Have you walked that way, taken a short-pass across the property there?—A. No, sir, but I have walked that way after the incident.

Q. Not before?—A. No, sir.

Mr. MOODY : As far as you know is it a route used by anybody ?

HIS HONOUR : Do you work at Richmond ?—A. Yes, sir.

Q. And what Counsel is leading up to to ask you is whether anybody but the ranger or employees on the property had any business there ?—

A. I shouldn't think so, because he was not employed.

10 Q. There is no path he could have taken as short cut ?—A. No, sir.

Q. So at the least he was a trespasser ?—A. Yes, sir.

Q. And had no business there ?—No answer.

HIS HONOUR : I wish other witnesses gave evidence as clearly and distinctly as you did.

Mr. MOODY : Who called for help ?—A. I recognised the last " help " was from Waugh, because I run in the direction of the " help " and I run right up and just a chain the last " help " was from Waugh.

HIS HONOUR : As you ran up you realised that the shouts of " help " was from the prisoner ?—A. Yes, sir.

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No. 24.
Deposition
of Thomas
Ridley,
1st March
1949,
Cross-
examina-
tion,
continued.

No. 25.

20

DEPOSITION of Seaford Tait.

SEAFORD TAIT, sworn.

Examined by Crown Counsel.

Q. Is your name Seaford Tait ?—A. Yes, sir.

Q. You live at Priory in St. Ann ?—A. Yes, sir.

Q. Are you a mechanic ?—A. Yes, sir.

Q. On the 25th of October last year were you at home ?—A. Yes, sir.

Q. You heard anything ?—A. Yes, sir.

Q. What you heard ?—A. I heard an explosion of firearm.

Q. What time was this ?—A. About 4.15.

30 Q. And where did this sound come from, which direction ?—A. Fig Tree Bay.

Q. Did you go in that direction ?—A. Yes, sir.

Q. Saw anybody ?—A. Yes, sir.

Q. Whom did you see ?—A. I saw the ranger, Cyril Waugh.

HIS HONOUR : You went towards the sound and you saw Cyril Waugh ?—A. Yes, sir.

Mr. MURAD : Was this in the property ?—A. Yes.

Q. Anybody else ?—A. No.

40 HIS HONOUR : Were you the first to arrive, or somebody got ahead of you ?—A. Yes, sir.

Q. Who got there ahead of you ?—A. Thomas Ridley.

No. 25.
Deposition
of Seaford
Tait,
1st March
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No. 25.
Deposition
of Seaford
Tait,
1st March
1949,
continued.

Mr. MURAD : Anybody else ?—A. Mr. Leslie Trench.

Q. Did the accused man have anything ?—A. Yes, he had a bit of iron in his hand and a gun, and the bag tied up on the ground.

Mr. MURAD : Show them to him please.

Q. It look like that, the bit of iron ?—A. Yes.

Q. Look like that gun ?—A. Yes, sir.

Q. Look like that bag there ?—A. Yes, sir.

Q. Did you examine the bag when you went and saw it ?—A. I saw the bag tied up.

Q. You didn't pay much attention to it ?—A. No, sir. 10

HIS HONOUR : You didn't recognise what the bag contained from the shape outside ?—No answer.

Mr. MURAD : Did you speak to the accused man ?—A. Yes.

Q. What did you say ?—A. I asked him what happened.

Q. Did he say anything ?—A. He said the man was resisting against him with a cutlass to cut him and he shoot him, and he showed me the direction in which the man run. On the knee of his pant I saw blood.

HIS HONOUR : On the knee of the trousers the accused was wearing you saw blood ?—A. Yes, sir, and I ask him how the blood catch him, and he said he was trailing down the man after he got shot and he ran through 20 the river.

Mr. MURAD : Went through the river, the accused man ?—A. No, sir, the man that get shot. He then take up the bag and gun and the bit of iron and went away.

Q. What about Thomas Ridley, was he there ?—A. Yes, sir.

Q. Did the accused man walk with Ridley and look for the man ?—A. I don't know.

HIS HONOUR : Did anybody go and look for the man who got shot ?—A. Me and Ridley.

Q. Did you go together or Ridley went first ?—A. Ridley went first. 30 When I reached the side of the river I heard groaning on the other side.

Q. You eventually saw the man ?—A. Yes, sir.

Mr. MURAD : You knew him before, Phillip Newby ?—A. Yes, sir.

Cross-
examina-
tion.

Cross-examination by Mr. Moody.

Q. How far in front was Ridley ?—A. You said Ridley went first ?—A. Yes, sir.

Q. How far in front was he ?—A. He was in search of the man that got shot before.

Q. Did he reach the spot before you did ?—A. No, sir. I heard the sound and called to him about 2 chains from me and he come towards me 40 and we went together.

HIS HONOUR : So he got to the gully before you ?—A. Yes, sir.

Q. And you heard the groaning and you called him and two of you went ?—A. Yes, sir.

Mr. MOODY : At the time you went up Waugh was at the back ?—A. He went away before. I went up in search of the man.

HIS HONOUR : Waugh left before you followed Ridley ?—A. Yes, sir.

Q. Ridley left and Waugh left and you went after Ridley and then you found the man ?—A. Yes, sir.

No. 26.

DEPOSITION of Mary Jane Newby (recalled).

MARY JANE NEWBY, recalled.

HIS HONOUR: Your son, Phillip, was he a right-handed man or a left-handed man?—A. His right hand.

Q. Which hand he used when working?—A. His right hand.

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Court of
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of
Jamaica.*

No. 26.
Deposition
of
Mary Jane
Newby
(recalled),
1st March
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No. 27.

PROCEEDINGS.

Mr. MURAD: That is the case for the Crown, Your Honour.

Time: 10.32.

10

THE DEFENCE.

Mr. MOODY: I do not propose to put the accused in the box.

HIS HONOUR: You call no evidence?

Mr. MOODY: No, Your Honour.

Mr. MURAD addresses the Jury—10.35 to 10.55.

Mr. MOODY addresses the Jury—10.55 to 11.25.

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No. 28.

JUDGE'S SUMMING-UP.

The Hon. Mr. Justice MACGREGOR'S Summing-up. *Time 11.25 a.m.*

20 Members of the Jury,

Counsel started his address by saying this was an unusual case, a strange case. Well, I do not know where he gets that idea from. It is a case similar to what happens day after day. Praedial thieves are caught and shot by rangers. It is perhaps unusual in that in this case a statement has been tendered to you by a man who has since died, which statement was not given on oath. It is not unusual for statements to be tendered to jurors from persons who have since died. Usually those statements have been given on oath, and a jury has been entitled to consider those statements. This case is different. This man was dying—in imminent
30 danger—and he gave a statement; and as I will explain later that

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statement becomes admissible ; and if I may say so, as far as I can see that is the only difference between this case and many others which possibly you have had in this parish, and certainly have had elsewhere.

Well, Members of the Jury, I myself make the comment, and no doubt you will agree with me that this case has not been presented to you as you would expect. It seems quite clear that until the papers reached the Resident Magistrate as Coroner for this parish, the police seems to have considered "oh, here is a thief, a coconut thief who has got his deserts, let us get rid of it in the easiest possible way." How such an idea could have remained in the minds of any responsible officer, 10 any officer of experience after they had read that statement which the deceased gave on the night that he was shot, I do not know. But what has been the result ? It was six weeks afterwards before the clothes of the dead man were obtained from the family. It was six weeks before that gun was examined by the Chemist. It was six weeks before those clothes were examined by the Chemist. Can you imagine what would have happened if worms had got in and made little holes in those clothes which might have had the appearance of pellet holes ? And Members of the Jury, not only that. We have got no evidence of it, evidence which 20 in the normal course you and I would have been entitled to expect ; who is the owner of that crocus bag ? Who is the owner of that piece of iron ? Not one investigation apparently made. Were they the deceased's ? Were they for the other man referred to in the deceased's statement, or for the prisoner himself ? Was the owner someone else ? We have no evidence before us, evidence which would have been useful. Evidence, which as I said before, you would be entitled to expect as to the ownership of those articles which were seen there by Ridley and Tait when they came up. And what is the result ? You have got to adjudicate this case, I may almost say, on unsworn statements. Two men were present at the time, one has since died, and the other has not seen fit to go into 30 that witness-box and tell you what happened. He is relying on statements which he made from memory afterwards, and has not seen fit to go there in the witness-box and say "the statement that I gave is true word for word, and I stand up here and submit myself to cross-examination to have my story tested." He has not done it. Why not ? You are entitled to ask yourselves that. Two persons were present ; one is dead and the other is in the dock and he does not tell you his story.

Now, Members of the Jury, the prisoner stands indicted with the offence of murder, and as I indicated, as far as I can see there are only two verdicts which are open to you. The first that he is guilty of murder, 40 and the second that he is not guilty. I cannot see that any verdict of manslaughter is open to you in this case. You will no doubt follow what I mean when I tell you what the offence of murder is.

Members of the Jury, murder is the wilful killing of a human being without lawful excuse. Killing with the intention to kill, or killing with the intention to inflict grievous bodily harm. And if death results after a blow is struck with that intention then that is murder. Manslaughter differs, in that it is the killing by means of an unlawful act, without any intention at the time to cause death or grievous injury.

Now, before you can convict the prisoner on the indictment, the 50 Crown must prove to your satisfaction, beyond reasonable doubt, a phrase

which I shall explain to you in a few minutes, I say the Crown must prove to your satisfaction first of all that Phillip Newby is dead. Well, Members of the Jury, you have the evidence of the Doctor who performed the operation on his body, who told you that he died a few hours later. You have the evidence of his mother who buried that body the following day. Then if you are satisfied as to his death, you must be satisfied that he died from a gunshot wound. Well, again you have the evidence of the Doctor, and I do not suppose you will hesitate very long in accepting his evidence that this injury to the abdomen and the genitals caused

10 hæmorrhage and shock which eventually caused this unfortunate man to die.

Then you have to be satisfied that that shot was fired by the prisoner. As I have said before, he has not said so from there (pointing to the witness-box), but if you accept the evidence of Ridley, of Tait, and of Sergeant Wright, these witnesses have told you that at different times and on different occasions the prisoner admitted that he fired the shot from that gun ; and it is for you to say whether it is a reasonable inference for you to draw that that injury which he received came from the shot fired from that gun by the prisoner. Now, Members of the Jury, if you

20 accept that, you will be satisfied that the deceased died from a gunshot wound inflicted by the prisoner.

There in one more ingredient which the Crown has to prove, the intention which I told you of a few moments ago ; the intention to kill or the intention to inflict grievous injury. You no doubt ask yourselves how can you sit here on the 1st of March and judge what was the man's intention on the 25th of October last year. The Crown has to prove it. How can the Crown prove it ? Members of the Jury, the answer is purely common sense. You judge the man's intention by his actions and by his words. If a man picks up a dangerous weapon like a knife and drives

30 it into the body of another human being, what intention is disclosed by the act of so driving that knife into another's body ? What possible intention is there but the intention to kill or to inflict grievous injury ? And in the same way, ask yourselves, if a man picks up a gun which is loaded and points it at the body of another and pulls the trigger, what intention could he have at the time when he pulled that trigger but to inflict grievous injury.

Members of the Jury, as I have said before it is common sense. You have to judge all the surrounding circumstances, and from those surrounding circumstances you as twelve men and women are entitled

40 to draw reasonable inferences. It is your duty to do so. But Members of the Jury, it is not in all cases where a person fires a gun or stabs with a knife or uses some other dangerous weapon, it is not in all cases where death results that the circumstances necessarily indicate that the offence of murder has been committed. A person is entitled to defend himself, and if another is attacking him and is putting him in fear of death or in fear of receiving serious bodily injury, he is entitled to defend himself too, to defend himself to the extent of taking the life of his assailant. But self-defence is not retaliation. Before killing can be excused as an act done in self-defence, you must be satisfied first, that the necessity

50 for the prisoner to defend himself arose. Secondly, that it was necessary to protect his own life or to protect himself from serious bodily harm

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which he had reasonable grounds to apprehend. And thirdly, that there were no other means of resistance or escape open to him. Before killing can be excused as self-defence, you must be satisfied of those three things. The necessity to defend himself to protect himself from serious injury, no other means of defence open. That does not mean that you have to retreat and retreat and retreat until you cannot go any further. After all an attack may be pressed home so severely that the only thing to do is to kill immediately. Members of the Jury, again it is a matter of common sense. It is a matter for your consideration what you as reasonable men and woman would consider ought to be done under the 10 circumstances which you are satisfied existed at the time. That is all.

Law in many cases seems difficult, but you will find in most cases it is common sense. So, Members of the Jury, you have to ask yourselves first of all, what took place out there that day? What were the circumstances under which the prisoner discharged that gun at the person of Phillip Newby, and when you have decided what those circumstances are, then it is your duty to apply the law, as I have just told you: self-defence, or intentional killing?

Now, Members of the Jury, may I remind you that the duty is on the Crown to prove its case beyond a reasonable doubt. By reasonable 20 doubt I mean that doubt which you as business men and women of this community would allow to influence you in matters of importance in connection with your business which arise from day to day. If you have decided on a certain course of action and a doubt arises in your minds as to whether you should follow that course of action, that is a reasonable doubt. It is not any mere fancy, it must be a reasonable doubt, and only if you have a reasonable doubt can you then say the Crown has not proved its case beyond a reasonable doubt, and therefore the prisoner is entitled to be acquitted. I say the Crown's duty is to prove its case 30 beyond a reasonable doubt, to prove that the deceased died, he died from gunshot wounds from a gun fired by the prisoner, and that when he fired he had the intention of inflicting grievous injury or to kill.

Now, one other matter before I come to the evidence. Please remember it is your duty to decide what are the facts that are proved to your satisfaction. It is your duty to decide what are the reasonable inferences to be drawn from those facts. If I express any view of my own, even if Counsel have expressed any views of their own, you are not bound by those views. If you agree with them, of course it is open to you to adopt them as your own. If you disagree, your duty is to discard 40 them and substitute your own. It is your verdict on the facts that is asked for. It is your duty to decide what inferences may be drawn from those facts. It is your duty to apply the law as I have just told you.

Now, Members of the Jury, we come to the facts. As I have said before, you had only two persons present when that shooting took place. One was Phillip Newby who is now dead and the other was the prisoner. Phillip Newby has been unable to come into the witness box to give evidence before you. If you accept the evidence of Dr. Jacobs, of Sub-Inspector Johnson and of Sgt. Wright, on that evening after he was shot, when he was on the operating table, he gave a statement which was taken down in writing. Now, Members of the Jury, it is my duty, it 50 was my duty to decide whether that statement was admissible in evidence.

I decided that it was. I having decided it was admissible, that statement was read to you, and it is now your duty to decide whether to accept the facts as stated in that statement or to reject it. It is your duty to decide what weight is to be given that statement. All I say is, it is evidence admissible for a Jury to consider. Having been admitted, you have got to consider it and say what weight is to be given this statement. It is for you to decide whether you accept or reject it. If you have a reasonable doubt, reject it. That is a matter for you.

- Now, I have told Jurors many times before now, and I tell you now.
- 10 Your verdict generally has to be decided on the evidence which you hear from the witness box. It is not to be decided on statements which were given outside on other occasions. But there are occasions when a jury is entitled to consider a statement which was made elsewhere than in the witness box. There are occasions that you are entitled to consider the facts given in a statement made elsewhere as proof of the facts contained in this statement. This is one of those cases where the law permits a statement made under certain circumstances to be considered by you. Now, Members of the Jury, I cannot do better than to use the words of a Judge used many many years ago to explain to you the circumstances
- 20 of a dying declaration for your consideration. "The general principle on which this species of evidence is admitted is that they are declarations made in extremity when the party is at the point of death and when every hope of this world is gone. When every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth, a situation so solemn and so awful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice."

- Members of the Jury, I cannot improve on these words. You have heard the evidence of Dr. Jacobs, but it is better if I come back to the
- 30 evidence of Dr. Jacobs. You have heard the evidence of those two men Ridley and Tait, that on the afternoon they came upon the deceased man lying near the bank of that gully, and that at the time they saw him he was groaning and that his intestines had come out through that wound. He was conscious. Well, Members of the Jury, that is the first thing for your consideration. Here is a man knowing himself to be seriously and gravely injured; his intestines protruded out of the wound in the stomach. You have heard from the Doctor that a portion of his genitals were shot off. Now, with that knowledge, what happens? Eventually he loses consciousness and he is taken to the hospital. If you accept the evidence
- 40 of Dr. Jacobs, he is on the operating table; he is given a local anæsthetic, and what happens, he regains consciousness and spoke to the Doctor. He said that he felt that he was dying, and that he would like to give a story to the police before he died. Bear in mind, Members of the Jury, if you accept the evidence of these witnesses he then knew that he had received this injury which was to prove mortal. The Doctor continued his evidence and said, "after he made the statement I told him he was a dying man and that if he wished I would send for the police there in the operating theatre." The deceased asked him to do so before he died, and the Doctor tells you he thereupon called in the police. Sgt. Wright
- 50 and Sub-Inspector Johnson came in and proceeded to take the statement which this man gave up to the time he lost consciousness. Now, Members of the Jury, I have said before I had to be satisfied before I admitted

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that statement that the deceased knew that he had a settled hopeless expectation of death; that he had abandoned all hopes of living. You will have to consider the same circumstances which I considered, and you have to form your own opinion as to whether, in the circumstances to which you heard the Doctor depose, you are satisfied that this man at that time had this settled hopeless expectation of death; that he knew that death was approaching, that he had no hopes of recovering, and that whilst he was in that frame of mind the statement that he made was the equivalent to a statement given on oath. That is the matter which you have to consider. But to consider this circumstance and to arrive at the conclusion as to whether you feel justified in saying to yourselves that you are satisfied that this man was in that condition of hopelessness, no hope for the future, you must be satisfied that he would be in the condition that any statement he gave would be the truth. Members of the Jury, as I have said before that is your duty. I read to you the statement: "I got shot innocently, I was going to bathe going from Llandoverly direction and about half chain from the seaside and just about to take off my clothes behind a grass root I saw a man approach with a gun and he shoot me innocently and the man say that anybody he saw down there he is going to shoot because they are stealing coconuts down there. I was not carrying any bag with coconuts. I was not carrying any iron, not even a pocket knife. After I shot I feel it. When I feel the shot I try to run, because the man say he was going to shoot me. When he fire the shot he missed the other man." 10

Now, Members of the Jury, just one comment I wish to make at this stage. It is suggested to you that because he said he was half chain from the seaside, and because the prisoner has told other people that it happened about two chains from the seaside, the spot the prisoner pointed out and was measured by the Surveyor as a little under two chains, that therefore this statement must be rejected. Well, Members of the Jury, it is not for me to say, but I cannot see the force of that argument. First of all Newby says half chain; secondly, the prisoner has pointed out the spot as being two chains away. Therefore, Newby is a liar. That is the argument. It may be the prisoner is a liar. But if it was two chains, if the prisoner's description of the spot is correct that it was two chains, you are asked to reject the statement because Newby said half chain. Bear in mind the condition of the man's mind, his knowledge of impending death, the possibility of his ability to estimate distance or otherwise; and Members of the Jury, comparé that statement with the prisoner's statement "five yards," when in fact it should have been 7 feet in another circumstance. 30

The only other comment I will make at this stage in connection with that statement is the very last sentence, "when he fire the shot he missed the other man." That is the only statement we have had throughout the case of the other man. Again, Counsel for the Defence suggested to you that from that night the Police knew of the possibility of another man. Well, Members of the Jury, the only people who knew whether there was another man was Newby, who is dead, and that man (meaning the prisoner). He has told you of no other man. He has not gone into the witness box and told you of any other man. If you accept that evidence, what does it disclose? "I was on the property, I saw a man approach with a gun and he shoot me innocently." Well, Members of the Jury, 50

I do not know whether the word "innocently" in that statement is intended to mean that he was judge of his own guilt or not, or whether it was intended to mean that he had done nothing to justify the shooting. It is for your consideration. After all you are familiar with persons of this type, you meet them every day in connection with your work, and no doubt you will know what he meant by that statement. Does it mean "I wasn't doing anything at the time to justify the shooting?" Well, if you accept that evidence, this man was there, he was suspected by the prisoner to be a thief, and the prisoner there and then without any further argument, without any questions, raised the rifle and fired. Then, Members of the Jury, if you accept that, I do not see how you could find him guilty of anything else but murder. That was the statement of Phillip Newby; that is the statement which you have to consider in arriving at your verdict.

Now, the only other person present at the time, apart from this other man who is mentioned only by Phillip Newby, was the prisoner, and he has given five accounts of what took place. The first account he gave to Ridley immediately after the shooting. When I say immediately, I mean a matter of a few minutes depending on the length of time it would take Ridley to go to the spot from his home at Priory, which he estimated as being about 20 chains away. The second account was the one he gave Tait, who came up a matter of a few minutes after Ridley. The third account was the account he gave to Sgt. Wright when Sgt. Wright visited him at his home that same evening. The fourth account was the account which was also given to Sgt. Wright at the spot and which may or may not have been accurately expressed by the time it eventually reached the Surveyor. By that I mean, Members of the Jury, they went back to the spot and the prisoner pointed out certain distances. He may or may not have been accurate. It wasn't until two months afterwards or thereabouts that Sgt. Wright returned to the spot and to the best of his recollection attempted to point out those same spots to Mr. Rickard. So we have up to that stage two possibilities of mistakes, all of them originating from the prisoner being recorded by Mr. Rickard as the spots which were shown to him. That is the fourth account. The fifth account is the statement which the prisoner gave at the Police Station that same evening.

Now, the first account is that which was given to Ridley. You have heard it this morning, and may I remind you of it. This is Ridley's evidence. He had gone in the direction where he heard the sound of a gun and when he reached there he saw the prisoner, and he said to him "Cyril, what happened man?" and the prisoner said "you know that fellow Phillip that is always with Samuels daughter from Lewis?" I said "yes". The prisoner then said "I buck up on him with that bag of coconuts and I call to him and he drop the bag and fling this piece of iron at me and coming towards me with a long cutlass and I fired the gun." Then Ridley said "you believe you shoot him?" and the prisoner replied "yes, I believe he got the bullet somewhere on his foot and he is gone to the direction of the gully." That is the first statement made by the prisoner immediately after this shooting. Assuming that you accept the evidence of Ridley, that he has told us to the best of his recollection what he said, the prisoner stated he believe he had shot him in his foot.

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Well, he is followed a few minutes later by Tait, and as far as I understood the evidence, it would appear that Ridley arrived first; Ridley had the talk with the prisoner, and Ridley went off to look for the man who had been shot. Tait comes up and asked the prisoner what happened and went to assist Ridley in the search and eventually they found Newby. Well, Tait said when he came up and asked the accused what happened, he said the man was resisting against him with a cutlass to cut him and he shot him. Well, that is very brief, a very short account and no doubt if it stood by itself would not help you very much.

Then we come to the third statement, and the third statement is the 10
statement which was given that evening, perhaps half an hour after, or
perhaps an hour afterwards when the Sergeant and other officers reached
the home of the prisoner, and then on that occasion the Sergeant asked
him a question. The Sergeant said: I do not know that it matters very
much—he asked him one question, what caused him to shoot Newby?
It was suggested to him that he had asked something else. Of course,
there is nothing to support the suggestion, but whatever the question
was seems to me to be a matter for your consideration. One question is
as likely as the other, because no doubt the Sergeant had heard long before
that the man had been shot by the prisoner. After all, he saw Ridley 20
at the spot and he saw Newby lying on the ground. Well, the Sergeant
asked a question, and has told you that this is the statement the prisoner
made to him in reply to that question: "I was patrolling that part of the
property by the sea called Fig Tree Bay when I came upon a man carrying
a bag of coconuts. I said to him: 'it is you stealing the coconuts down
here,' and the man threw a piece of iron at me and attempted to chop me
with a machete and I fire the gun, I don't know if it catch him but him
run towards the river." But it is not that in the first statement: "I think
it catch him in the foot." "I don't know if it catch him, the man ran
towards the river. I chased after him and saw bloodstains along where he 30
ran. I turned back and took the bag of coconuts and the iron and bring
them here." Well, following that, the Sergeant took him to the spot,
and he there pointed out these spots, the two spots marked "A" as being
where they were when the prisoner first saw the deceased, two spots marked
"B" as to where they were when the iron was flung. At that time the
prisoner had advanced from A to B, a distance of 6 feet, advanced to meet
the deceased, who in that time had only advanced 2 feet, the two spots
marked "C" where the shot was fired from and where the deceased was
when he received the shot. He also pointed out two spots 7 feet 6 inches
apart. The spot where the prisoner was, he had apparently retreated 40
3 feet. The spot where the deceased was, he had apparently advanced
towards the prisoner a distance of 2 feet to 2 feet 6 inches, a measurement
which I think you will consider is of some importance. Of course, bearing
in mind, Members of the Jury, that those are all spots which originated from
the prisoner. They were all pointed out to the Sergeant by the prisoner
as being his account of what took place.

Well, from there they go to the Police Station and the prisoner gave a
statement. Again may I read the statement to you. I do that again
because it is on that statement that the prisoner rests his case before you
to-day, and it is on that statement that he does not go into the witness box 50
and now tell you what he says happened.

“ I am a ranger employed to the Richmond Estates in St. Ann and I live on the property three miles from St. Ann’s Bay. I knew Phillip Newby by sight but not his name.” Well, there is a discrepancy between what he says and what Ridley says. The prisoner says he did not know the name of Newby until after the incident. Ridley says, you remember as he arrived with the prisoner said to him, “ you know this boy Phillip that is along with Samuels daughter from Lewis.” That is a discrepancy in the statement, I do not know if that is important. The prisoner continued : “ I always saw him working at Richmond Estates after the

10 crop working in the field. On the 25th October 1948 about 4.15 p.m., I was patrolling alone on a portion of the property known as Fig Tree Bay with the single barrel cartridge gun belong to the estate. This section is by the seaside. On arriving at that section I saw a man carrying a crocus bag with something in it over his left shoulder and a cutlass under his left arm and a piece of iron in his right hand.” No doubt the piece of iron may be suitably—Members you know more about it than I do—employed to husk coconuts. After all if you can husk coconuts first you can carry away many more. “ That was in the coconut plantation and he was coming from the inner part of the property towards the

20 seashore.” Bearing in mind the evidence of Ridley that at that spot there was no path, there was no business for anyone to be there, and presumably anyone who was there was either a trespasser, perhaps in search of a bath, or a prædial thief or a thief. “ When I first saw him he was about 8 yards from me.” The distance given by the surveyor, the actual measurement of this spot was 14 feet, less than 5 yards. “ When I first saw him he was about 8 yards from me. A young almond tree was between us and that is why I didn’t see him before.” You have heard that the almond tree is some distance away. It may well be that when he was coming through the pasture this almond tree must have hidden

30 the deceased from him until after he had passed around it. “ I recognised his face to be the man I always saw working on the estate, and whom I got to know later to be Phillip Newby. I call to him saying ‘ it is you taking away the coconuts from down here ? ’ As I said that to him he fling the piece of iron at me that he had in his right hand.” You will note that he does not say he was hit by it. “ He was then about 7 feet from me.” This, Members of the Jury, is where this extraordinary alteration was made by the Sergeant. “ He was about 5 yards from me,” that is the distance the Sergeant says he told him. It is suggested in

40 cross-examination that it may well be that the accused has thought it over afterwards in his mind when he estimated the distance at about 5 yards, but when he went to the actual spot and pointed it out it was only 7 feet. Some of us are better judges of distance than others, and it may well be that 5 yards was a genuine mistake. At any rate, 5 yards was the distance which he had previously pointed out as being 7 feet. “ He was then about 5 yards from me. The iron didn’t catch me,” and now we are coming to the material part of his statement ; “ he then drew his machete from under his arm ” ; we have heard from the mother of the deceased that he was a right-handed man ; “ he then drew his cutlass from under his arm, dropped the bag and started to approach me with the

50 machete raised in his hand.”

Now, Members of the Jury, come back to the plan ; B1 is the spot where the prisoner said the deceased was when he threw the iron. C1 is

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the spot where the prisoner says the deceased was when he the prisoner fired. The distance from B1 to C1 according to the Surveyor is a distance of about 2 feet or 2 feet 6 inches, less than a good step. I read again what the prisoner said. "He drew the machete from under his arm, dropped the bag and started to approach me with the machete raised in his hand. I stepped back and said to him 'stop.' I raised the gun, but he didn't stop." Presumably he continued to approach. "He didn't stop and I fired one shot at him." After a distance which the prisoner afterwards pointed out to be 2 feet or 2 feet 6 inches. Of course, Members of the Jury, the prisoner may have been mistaken when he pointed out the spot to the Sergeant. The Sergeant may have been mistaken in his recollection of the spot. All these things you have to consider. To continue the statement : "I fired one shot at him. He turned and started to run inwards the property towards the river. I ran after him and bawled out 'help, help' several times. I chased him for about 2½ chains in some tall grass and I noticed blood stains along the path he was running." Members of the Jury, that is the last account the prisoner has given of what took place. The account which is not on oath, an account which was given and which has not been subject to any test or cross-examination. It is a matter for you to bear in mind when considering what weight you should give to it. 10

Now, as I said before, only two persons, as far as we know were present, the deceased and the prisoner. Is there anything in the rest of the evidence which can assist you in arriving at a conclusion as to whether you should accept the evidence of the one or the evidence of the other ?

Well, the first thing is, where is the cutlass ? Here is this man dangerously injured running away. Would you consider—

(A Juryman left the courtroom from 12.15 to 12.17.)

I just got to the stage where I was asking you to consider whether there is any evidence which can assist you in arriving at a decision. Can I accept "A" ? Can I accept "B" ? The first thing for your considera- 30
tion is, where is the cutlass ? Now, bear in mind the circumstances, the condition which existed then. Here is this incident taking place in a grass piece in the vicinity of a cane cultivation ; the deceased crossing a gully, which is suggested to the Sergeant as being only a pond, but I think the prisoner himself describes it as a river, stagnant water said to be 3 to 4 feet deep, bearing in mind that this man was suffering from a grievous injury, you have got to ask yourselves whether under those circumstances you consider it reasonable that he would want to or that he would be able to fling away that cutlass as he ran. On the other hand, it may well be that whilst pushing through the portion of the canes as described by Ridley, 40
just before he reached the gully he might have dropped it, and it may well be that in going through the gully itself he dropped the cutlass. But the fact remains that that cutlass has not been found. A search took place that evening in the cane piece, along the route that he took, and as Ridley says, he looked in the water where the man crossed and there was nothing. It may well be also that some light-fingered gentleman seeing an opportunity of acquiring a nice long cutlass may have helped himself to it when he found it. Those are matters for your consideration. It is a matter for you to say whether you think there is anything there which can help you one way or the other.

Then we have the evidence of the Chemist that because of the tests that he has made by firing that same gun with similar cartridges at different 50

targets, and because of his examination of the pieces of trousers and under-pants which had one hole, he was able to judge the approximate diameter of that hole. He said it was about 1 inch in diameter. On examination of the trousers he found no powder marks, and because of the tests he made, and because of the fact there were no pellet holes in the clothes other than that one hole through which the wadding and the mass of pellets passed, he therefore formed the opinion that the muzzle of the gun must have been between 2 to 3 feet from the deceased's stomach at the time when it was fired.

- 10 Members of the Jury, not because the Chemist gives you that opinion of his must you automatically accept it. You will consider the reasons he has given and if you consider that the reasons are sound it is open to you to accept the explanation. His explanation was this, at 2 feet the target had powder marks. At 3 feet it had none. Therefore, as there were no powder marks on the trousers it must have been fired at more than 2 feet. Then he continues at 5 feet there was made in the target an irregular hole measuring from 1 to $1\frac{1}{4}$ inches across and about 19 pellet holes outside. At 2 feet it had none, therefore it must have been fired at less than 3 feet. If you think that is reasonable, you can accept his conclusion
- 20 that that shot was fired when the muzzle was between 2 to 3 feet from the body of the deceased. More than 2 feet because there were no powder marks, less than 3 feet because there were no pellet holes. Does that help you in arriving at a conclusion? You have got to ask yourselves that. Taking into consideration the rest of the evidence, in particular the Doctor's evidence with which I shall deal in a few minutes, can you say it is inconsistent with the statement of Newby that the prisoner came right up to him armed and fired at him? Can you say it is inconsistent with the attack which the prisoner says was made on him by this man with the raised cutlass coming towards him?
- 30 Then you have the evidence, if you accept it, of Ridley and the evidence if you accept it of Tait. There on the spot was the bag of coconuts. There is evidence that nearby were four husks, apparently the coconuts were freshly husked. There was the piece of iron when Ridley and Tait came, a piece of iron which could have been used, you probably know better than I do, but which possibly could have been used by the thief to husk these coconuts. If you accept that evidence, if you accept that that bag was there, that that piece of iron was there, then presumably there is some evidence on which you can say that therefore Newby was a
- 40 thief, stealing the coconuts; and that therefore when he said in his statement "I didn't carry any bag of coconuts, I didn't carry any iron," if you are satisfied that he was the person who brought them there, then certainly in that respect in that part of the statement he would be a liar, and in spite of the fact that death was so close, in spite of the fact that he knew he was going to die, he told a lie. If you are satisfied that that was so, you have got to ask yourselves, can you therefore accept any portion of his statement, which although not given on oath was given in such circumstances that it had all the sanctity of an oath? It is a matter for your consideration; bearing in mind we have had no explanation about it from the prisoner. But dealing with that for the minute, it has been suggested
- 50 to you how did Newby know that there was this bag of coconuts? How did he know there was the piece of iron, unless he himself brought them there? Well, Members of the Jury, I can see one obvious explanation.

*In the
Supreme
Court of
Judicature
of
Jamaica.*

—
No. 28.
Judge's
Summing-
up,
1st March
1949,
continued.

*In the
Supreme
Court of
Judicature
of
Jamaica.*

No. 28.
Judge's
Summing-
up,
1st March
1949,
continued.

When he fell at that spot across the gully, when he was found there by Ridley and Tait, when he was seen there by Sergeant Wright some hour after the shooting took place, if the estimates of time are correct. Ridley said about 4.15. Sergeant Wright said he got there at 4.50, and I think it took him 10 to 15 minutes to get there. By the time Sgt. Wright got there somewhere around 5 o'clock, perhaps a few minutes after 5, the deceased was still conscious. Ridley went up and spoke to him. It may well be that then and there he heard that it was being alleged against him that he had been stealing coconuts and had attacked the ranger; that was what the ranger told Ridley, that was what the ranger told Tait that Newby had attacked him, Newby had stolen coconuts. It may well be that those two men or some others told Newby what had been reported to them. It may well be that it is the reason why when on the operating table giving a statement he said: "I wasn't carrying any coconuts, I wasn't carrying any iron." 10

Members of the Jury, it is also a peculiar thing, having stated that, not having been questioned, he did not state: "I had no cutlass." And if he did have the coconuts, and if he did have the piece of iron, but if he did not have a cutlass, what is the position? If he had no cutlass what of this statement "he dropped the bag and started to approach me with a machete raised in his hand." If Newby had no cutlass what of that statement given by the prisoner? A statement which he has not supported in the witness box on oath. Well, Members of the Jury, it is for you to say, it is your duty, it is your decision to be made as to that. Then we have the fact that it was almost immediately after the shooting that the prisoner there and then told his story. He told it immediately, he told it at the time when you might say it is possible that he did not have time to think out a good lie, and therefore, because of the fact that he had told it so soon afterwards it might be true. It is a matter for your consideration. 20

And then we come to what I consider the most important evidence of all; a matter for your consideration as to what weight you give it, and that, Members of the Jury, is the direction of the wound. I repeat again, I read again the statement of the prisoner as to the shooting, the only statement we have of what he actually said: "he then drew his machete from under his arm, dropped the bag and started to approach me with the machete raised in his hand. I stepped back and said to him 'stop.' I raised the gun, but he didn't stop and I fired one shot at him." Now as far as I can see that is the only statement we have by the prisoner as to what actually happened. The statement he gave the Sergeant first was: "the man threw a piece of iron at me and attempted to chop me with a machete and I fire the gun." In his statement at the Police Station: "I raised the gun and I fired one shot at him." Now, it has been suggested in cross-examination that the gun had been raised only to the hip. Members of the Jury, there is no evidence before you to support that suggestion. It was a suggestion which has been put, but we do not know whether the prisoner raised the gun to the hip or raised it to the shoulder. What was the direction of the wound? The pellets entered the lower portion of the left abdomen, it took a downward course on the front of the body, injured the genitals and then came to rest on the inside of the upper right thigh. The Doctor describes it as a direction "it was definitely not in front, but in front and to the side, in front above and to the side and downwards 30 40 50

- across the body." Members of the Jury, if that is so, if you can accept that evidence, the left side of the deceased must have been turned towards the prisoner. Not only that, the shot must have been fired from above downwards. We have heard no evidence as to whether these two men were standing at different elevations. The evidence was that it was a grass piece 2 chains away from the sea. I think the evidence was that Newby was a little shorter than the prisoner. Therefore, if the gun was raised up and pointed down sufficiently close, it is possible you could have that downward direction; sufficiently close 2 to 3 feet Mr. Barnett says.
- 10 But as I have said before, the prisoner has not told you how it happened. You have not been able to ask him one question; the one person who is alive to-day to tell us what happened, does not see it fit to go there (*pointing to the witness box*) and tell you what happened. It is suggested, has been suggested to the Doctor that the arm may be raised, and the Doctor has agreed to that. But you must bear in mind, if you accept the evidence of the mother, that the deceased was right-handed; and if you accept the evidence of the Doctor, the wound started from the left side. What explanation have we got as to how it was this man received the injuries in the way he did? Does it suggest to you that he started to
- 20 approach the prisoner with the machete raised with a view to attacking him with that machete? Members of the Jury, that is for your consideration. I do not know if you can think of any good explanation. I do not know if I can.

- Well, Members of the Jury, I think that completes my review of the evidence. As I have said before, two persons were present; one has since died, he died after giving a statement in circumstances which make it your duty to decide the weight to be given to that evidence. The other person is the prisoner in the dock who gave an account on the same day that this thing happened and has given no further account since. If you
- 30 accept the evidence of the prisoner that this man Newby was approaching him with a raised cutlass; that the necessity for him to defend himself arose; that it was necessary to protect his own life or to protect himself from serious bodily harm which he had reasonable grounds to apprehend, and that there was no other means of resistance or escape than that, then he is entitled to be acquitted. And after all, Members of the Jury, if a man is coming at you with a cutlass and you have a gun, what better means of defending yourself is there than to shoot him, whether you shoot at his legs or anywhere else. If those circumstances existed you are entitled to defend yourself. And if that is what happened, the prisoner
- 40 is entitled to be acquitted. But on the other hand not because a man is a prædial thief, not because a man is stealing coconuts, are you entitled to shoot him there and then. And if you are satisfied that this man went there; Newby went there either for a bath or perhaps for stealing coconuts, and that the prisoner there and then met up this man and shoot him, then, Members of the Jury, whatever are your feelings in the matter, you have a duty to perform and that duty would be to find him guilty of murder.

- The case is an extremely difficult one. It is a matter for your consideration. The task is on your shoulders. You have to decide what
- 50 facts are proved to your satisfaction. You have to decide what inferences are proper to be drawn from those facts so proved, and having so decided,

*In the
Supreme
Court of
Judicature
of
Jamaica.*

No. 28.
Judge's
Summing-
up,
1st March
1949,
continued.

*In the
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Court of
Judicature
of
Jamaica.*

No. 28.
Judge's
Summing-
up,
1st March
1949,
continued.

it is then your duty to apply the law as I have told you and to come to a conclusion one way or the other.

I must remind you that if you have a reasonable doubt the prisoner is entitled to be acquitted. May I, in conclusion, say this, you would be failing in your duty if because you have a difficult decision to make you seek an easy means out. If you have a reasonable doubt the prisoner is entitled to be acquitted, but do not take that as an easy way out of a difficult case. Members of the Jury, as I said, your task is a difficult one. Will you please consider your verdict?

Time : 12.37 p.m.

10

No. 29.
Proceedings
Verdict and
Sentence,
1st March
1949.

No. 29.

PROCEEDINGS, VERDICT AND SENTENCE.

Jury retires at 12.38 under sworn guard.

Jury returns at 1.00 p.m.

Jury Roll Call made.

Clerk Courts : Mr. Foreman, please stand.

Foreman stands.

Clerk Courts : Are you unanimously agreed upon your verdict?—
A. No.

HIS HONOUR : I must ask you to return and consider your verdict again ; this is an important matter, and there must be a unanimous verdict. The law does not allow anything under an hour but a unanimous verdict one way or the other ; so I must ask you to retire again.

Jury retires again at 1.02 p.m.

Jury returns at 1.29 p.m.

Roll Call made.

Clerk Courts : Mr. Foreman, please stand.

Foreman stands.

Clerk Courts : Are you unanimously agreed upon your verdict?—
A. Yes.

30

Q. How say you, do you find the prisoner guilty or not guilty of murder?—A. Guilty with mercy.

Q. You say the prisoner is guilty, that is your verdict and so say you all?

Voices : Yes.

Clerk Courts (*to Prisoner*) : Cyril Waugh, have you anything to say before sentence is passed upon you?

Prisoner : I am asking, sir, for mercy.

Proclamation read by Sergeant.

SENTENCE.

HIS HONOUR (*to Prisoner*) : Cyril Waugh, the Jury have found you guilty and they have added a recommendation for mercy, which I can assure you will be forwarded to the proper quarters together with such recommendation as I may see fit under the circumstances to add.

10 Cyril Waugh, the sentence of the Court is that you be taken hence to the jail from which you came, and thereafter at such time as His Excellency the Governor of this Island elects to appoint and within the jail in which you shall be then confined that you be taken to the place of execution and that there and then you be hanged by the neck until you be dead and may The Lord have mercy upon your soul.

Prisoner led away.

Adjournment taken at 1.30 p.m.

*In the
Supreme
Court of
Judicature
of
Jamaica.*

No. 29.
Proceedings
Verdict and
Sentence,
1st March
1949,
continued.

EXHIBITS.

5. STATEMENTS of Prisoner.

20 STATEMENTS RE DEATH OF PHILLIP NEWBY OF PRIORY ST. ANN, BY
GUNSHOT WOUND INFLICTED BY CYRIL WAUGH OF RICHMOND ON
THE 25.10.48.

CYRIL WAUGH states :—

I am a ranger employed to the Richmond Estates in St. Ann and I live on the property. My postal address is Laughlands. I live 3 miles from St. Ann's Bay. I knew Phillip Newby by sight but not his name. I always saw him working at Richmond estates after the crop working in the field. On Monday the 25th October 1948 about 4.15 p.m. I was patrolling alone on a portion of the property known as Fig Tree Bay, with the single barrel cartridge gun belonging to the Estate. This section
30 is by the seaside. On arriving at that section I saw a man carrying a crocus bag with something in it over his left shoulder and a cutlass under his left arm and a piece of iron in his right hand. That was in the Coconut plantation and he was coming from the inner part of the property towards the seashore. When I first saw him he was about 8 yards from me, A young Almond tree was between us and that is why I didn't see him before. I recognised his face to be the man I always saw working on the estate and whom I got to know later to be Phillip Newby. I called to him saying : " Its you taking away the coconuts from down here ? " As I said that to him he flung the piece of iron at me that he had in his right
40 hand. He was then about 7 feet from me. The iron didn't catch me.

Exhibits.

5

Statements
of
Prisoner,
25th
October
1948.

Exhibits.

 5
 Statements
 of
 Prisoner,
 25th
 October
 1948,
continued.

He then drew his machette from under his arm, dropped the bag and started to approach me with the machette raised in his hand. I stepped back and said to him, "Stop." I raised the gun, but he didn't stop and I fired one shot at him. He turned and started to run inwards the property towards the river. I ran after him and bawled out help, help, several times. I chased him for about $2\frac{1}{2}$ chains in some tall grass and I noticed blood stains along the path he was running. As I saw the blood, I turned back to the bag and then about 3 minutes after I saw Thomas Ridley and Seaford Tait, coming. Shortly after I saw Leslie Trench, known as Trenchie, come on the scene. No one was present when the incident 10
 between us took place. I showed them where Newby ran and the blood-stains on the grass along the path. A crowd come on the scene, and I took the bag and contents which I found was coconuts and the iron to my house. I didn't find the machette. He had run with it. Shortly after the Police came and I showed them the bag with coconuts and the iron Newby was carrying and told them of the incident. I then took the Police back to the spot and along the path Newby ran. By that time Newby had been taken away to the hospital so I didn't see him. I then went to the St. Ann's Bay Police Station and gave this Statement which was read over to me and which is correct. 20

(Sgd.) CYRIL WAUGH.

25.10.48.

Taken by me this 25.10.48 at about 8 p.m. at
 St. Ann's Bay Station and read over to the witness.

J. WRIGHT, Sgt.

9th
 November
 1948.

CYRIL WAUGH further states :—

At the time I spoke to Thomas Ridley who first came on the scene I did not say to him : "You know the boy Phillip that is along with Samuels daughter from Lewis?" What I actually said to him was : "The boy that is along with Joe Samuels daughter from Lewis." I 30
 couldn't mention his name then for I never knew Newby's name before.

(Sgd.) CYRIL WAUGH.

9.11.48.

8. WARRANT.

Exhibits.

Petty Sessions (Form G).
 JAMAICA SS.
 Parish of Saint Ann

Warrant on Information.

8.
 Warrant,
 18th
 November
 1948.

To the Constables of Saint Ann and to all other Peace Officers of the
 Parish of Saint Ann.

10 WHEREAS Information hath this day been laid before the under-
 signed one of His Majesty's Justices of the Peace in and for the said
 parish of Saint Ann for that Cyril Waugh of Richmond Estate of the said
 parish, to wit, on the 25th day of October in the year of Our Lord One
 thousand nine hundred and 48 at the said parish and within my jurisdiction
 unlawfully did murder one PHILIP NEWBY and oath being now made
 before me, substantiating the matter of such Information.

THESE are therefore to command you in His Majesty's name,
 forthwith to apprehend the said CYRIL WAUGH and to bring him
 before some one or more of His Majesty's Justices of the Peace in and for
 the said parish to answer to the said Information, and be further dealt
 with according to Law.

20 Given under my hand this 18th day of November in the parish of
 Saint Ann in the year of Our Lord one thousand nine hundred and 48,
 aforesaid.

(Sgd.) C. H. SCOTT,
 Justice of the Peace, Saint Ann.

ON BACK.

920/48.

Executed by me this 19.11.48.

(Sgd.) J. WRIGHT, Sgt.

Remanded in custody for 3 days.

30 (Sgd.) C. A. PARSONS,
 J.P. St. Ann,
 19.11.48.

Exhibits.

9.
 Govern-
 ment
 Chemist's
 Certificate,
 30th
 November
 1948.

No. F326/48

9. Government Chemist's Certificate.

3760.

JAMAICA.

CERTIFICATE

for the purposes of Government Chemist's Certificate Laws—1902 & 1916.

I, the undersigned, Government Chemist for Jamaica, do hereby certify that I received on the 23rd day of November, 1948, from Sergeant J. A. Wright articles contained in three sealed parcels for analysis.

10

The seals were intact on delivery.

CYRIL WAUGH—For Murder.

On the 29th November, 1948 I received from Sergeant J. A. Wright a sealed envelope which was labelled as follows :—

“ One spent Eley cartridge (No. 12) received from Cyril Waugh on the 25.10.48 used in shooting Phillip Newby when he was attacked by Newby on Richmond Estate on the 25.10.48.”

I also received from Sergeant Wright an envelope containing two Eley cartridges “ received from the home of the accused Cyril Waugh.”

I also received from Sergeant Wright some other cartridges for the purpose of test.

I made an examination of the exhibits and I carried out experiments therewith and I found as follows :—

Parcel marked “ A ” contained one 12 guage Ivor Johnson shot gun No. 24357 K H. The barrel of this gun contained a residue of recently fired smokeless powder. The pull on the trigger was 5½ lbs.

Parcel marked “ B ” contained one pair of Khaki trousers having both legs cut downwards and part of the front missing, one blue shirt and one merino. I was unable to find any shot gun marks or pellet holes in these garments.

30

Parcel Marked “ C ” contained a portion of the front part of a pair of Khaki trousers. There was a jagged semi-circular portion at the part corresponding to the top of the left leg. There were no powder marks or pellet holes. I tested the fibres round this jagged hole and I detected lead therein from which I am of opinion that this hole was made by a discharge of lead shot. There was also a pair of torn underpants. There was a gun shot hole in the front of the left leg which corresponded with the hole in the portion of trousers. The diameter of this hole was about 1 inch. No pellet holes or powder marks were observed.

40

The empty shot gun cartridge was a 12-guage Eley Kynoch smokeless powder. I carried out firing experiments at ranges of 2 feet, 3 feet and 5 feet using white cardboard targets. For these tests I used the two

Eley Kynoch cartridges which had plain cases and which were similar to the empty cartridge case submitted by the Police, and I also used another Eley Kynoch cartridge.

At a range of 5 feet there was made in the target an irregular hole measuring from 1 to $1\frac{1}{4}$ inches across and about 19 pellet holes outside and about 2 inches away there was another hole which was made by the wadding.

At a range of 3 feet there was formed a hole about 1 inch across which was irregular and which had about 6 pellet holes outside.

10 At a range of 2 feet there was formed a round hole about 1 inch in diameter with no pellet holes outside. Some slight blackening of the paper target was observed.

I am of opinion from my observations of the targets that the range of firing from the muzzle of the gun to the deceased was between 2 feet and 3 feet as no pellet holes were observed round the gun shot hole in the trousers.

As witnessed my hand this 30th day of November, 1948.

At the Government Laboratory,
Hope
Kingston P.O.

20

(Sgd.) W. L. BARNETT,
Government Chemist.

10. STATEMENT of Deceased with Endorsement.

PHILLIP NEWBY states :

I got shot innocently, I was going to bathe going from Llandovery direction and about $\frac{1}{2}$ chain from the seaside and just about to take off my clothes behind a grass root I saw a man approach with a gun and he shoot me innocently and the man say that anybody he saw down there he is going to shoot because they are stealing coconuts down there.

30 I was not carrying any bag with coconuts. I was not carrying any iron—not even a pocket knife. After I shot I feel it. When I feel the shot I try to run, because the man say he was going to shoot me. When he fire the shot he missed the other man. The man has an old grudge for me simply because

The above incomplete and unsigned statement was taken partly by Sgt. Wright and partly by Sgt.-Major Johnson at the St. Ann's Bay Hospital about 6.30 p.m. on the 25.10.48. It was not signed or read over to the deceased as he fell apparently in a state of coma.

40

(Sgd.) J. WRIGHT, Sgt.
16.11.48.

Exhibits.

9.

Government
Chemist's
Certificate,
30th
November
1948,
continued.

10.
Statement
of
Deceased,
25th
October
1948.

Endorse-
ment,
16th
November
1948.

*In the
Court of
Appeal,
Jamaica.*

No. 30.
Notice of
Appeal,
4th March
1949.

No. 30.

NOTICE OF APPEAL.

IN THE COURT OF APPEAL
JAMAICA

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL AGAINST
CONVICTION OR SENTENCE

Name of Appellant *Cyril Waugh*

Convicted at the Circuit Court held at *St. Ann's Bay*.

Offence of which convicted *Murder*

Sentence *Death*

10

Date when convicted *1st March, 1949*

Date when sentenced passed *1st March, 1949*

Name of Prison or Appellant's address *St. Catherine D.P.*

I, the above-named Appellant hereby give you notice that I desire to appeal to the Court of Appeal against my *Conviction and Sentence* on the grounds hereinafter set forth on page 2 of this notice.

(Signed) *Cyril Waugh,*
Appellant.

Dated this *4th* day of *March* A.D. 1949.

20

QUESTIONS

1. Did the Judge before whom you were tried grant you a Certificate that it was a fit case for Appeal ?

No.

2. Do you desire the Court of Appeal to assign you legal aid ?

Yes.

If your answer to this question is "Yes," then answer the following questions—

(a) What was your occupation and what wages, salary or income were you receiving before your conviction ?

Ranger on Property 30
25/- per week.

(b) Have you any means to enable you to obtain legal aid for yourself ?

No.

3. Is any Solicitor now acting for you ? If so, give his name and address :

No.

4. Do you desire to be present when the Court consider your appeal ?

Yes.

5. Do you desire to apply for leave to call any witnesses on your appeal ?

No.

40

If your answer to this question is "Yes," you must also fill in Form 21, and send it with this notice.

No. 31.

GROUNDS OF APPEAL.

GROUNDS OF APPEAL OR APPLICATION

1. The evidence given by the witnesses was contradictory.
2. Counsel will submit other grounds.

(Sgd.) CYRIL WAUGH.

ADDITIONAL GROUNDS OF APPEAL DATED 8TH MARCH, 1949, AND FILED
ON 10TH MARCH, 1949

3. The dying declaration was wrongly admitted in Evidence.
- 10 4. The Honourable Judge repeatedly commented on the fact that the accused did not give evidence on oath to the great prejudice of the accused in the minds of the jury.

(Sgd.) CYRIL WAUGH.

*In the
Court of
Appeal,
Jamaica.*

No. 31.
Grounds of
Appeal,
8th March
1949.

No. 32.

SUPPLEMENTAL GROUNDS OF APPEAL.

REX *vs.* WAUGH—Murder.

5. (A) The Learned Judge misdirected the Jury as to the onus of Proof in that he failed to explain that if there was reasonable doubt as to the defence of self defence the prisoner should be acquitted.
- 20 (B) Further the Learned Judge did not adequately explain that a finding that the killing was intentional still left the prosecution, in the particular circumstances of the case, with the onus of showing that it was not justifiable.
6. The Learned Judge misdirected the Jury as to the Prisoner's right to defend himself in circumstances where he is defending his person and or his master's property and wrongly told the Jury that he was bound to retreat as far as it was reasonably possible.
7. The repeated comment by the Learned Judge as to the Prisoner's failing to exercise his right to give evidence or [*siz*] oath in the circumstances
30 went beyond what was fair and must have created a wrong and prejudicial impression in the minds of the Jury.
8. The Learned Judge did not adequately deal with the statement of the deceased and misled the Jury as to the weight to be attached to it :—
 - (A) He led the Jury to believe that a statement admitted as being made in expectation of death was necessarily true or had a peculiar weight attaching to it.
 - (B) He failed to direct the Jury that the evidence for the prosecution negatived the very foundation of that statement.

No. 32.
Supple-
mental
Grounds of
Appeal,
4th April
1949.

*In the
Court of
Appeal,
Jamaica.*

No. 32.

Supple-
mental
Grounds of
Appeal,
4th April
1949,
continued.

(c) He failed to direct the Jury that if they believed the statement was knowingly untrue in a material particular the rest of the statement should be received with extreme caution and only acted on in so far as corroborated or in so far as other evidence tended to establish the truth of any particular portion thereof.

9. On the evidence as a whole it was unsafe to ask the Jury to convict. Alternatively the Jury should have been warned that the evidence might well be regarded as not sufficient to support a conviction of Murder.

L. T. MOODY. 10

4.4.49.

No. 33.
Minute of
Judgment
of the
Court of
Appeal,
4th April
1949.

No. 33.

MINUTE OF JUDGMENT of the Court of Appeal.

“ The 4th April 1949.

Application for leave to appeal refused.

(Initialled) H. H. H.

C. J.”

No. 34.
Oral
Judgment
of Court of
Appeal,
4th April
1949.

No. 34.

ORAL JUDGMENT of Court of Appeal delivered by the Chief Justice.

It was submitted to us that the learned Judge had misdirected the Jury in regard to various matters which are referred to in the supplementary grounds of appeal, but we do not think that those submissions have any substance. On the contrary we think that although the applicant did not give any evidence at all, the judge stated very fairly to the jury that they might acquit him and very adequately stated the relevant law on the subject of self-defence which was advanced on his behalf.

The Judge admitted the Dying Declaration of the deceased and nothing that has been said leads us to think that he wrongly exercised his discretion in doing so. We would refer in this connection to the case of *Rex vs. Perry* [1909] 2 K.B. 697. 30

Finally it was argued that the Judge commented unduly on the fact that the applicant had not given evidence. We do not agree with this criticism and in this connection we would refer to what the Lord Chancellor said in *Kops v. The Queen* [1894] A.C. 652 :—

“ It is legitimate for the Judge in commenting upon the facts to refer to the capacity of the prisoner to give evidence on his own behalf and so explain matters which would be naturally within his own knowledge and of which an explanation would be important in view of the evidence already given.” 40

We see no reason to give leave to appeal and the application is therefore refused.

No. 35.

REGISTRAR'S CERTIFICATE.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

S.C.C.A. 32/49.

THE KING

V.

CYRIL WAUGH.

I, LESLIE ALEXANDER GALE, Acting Registrar of the Supreme Court of Judicature of Jamaica, DO HEREBY CERTIFY that the 10 foregoing 106 pages contain a true and correct copy of the Record in this case.

Dated this 10th day of May, 1949.

(Sgd.) L. A. GALE,

Registrar of the Supreme Court of Judicature
of Jamaica (Acting).No. 35.
Registrar's
Certificate,
10th May
1949.

No. 36.

ORDER of His Majesty in Council granting Special Leave to Appeal.

AT THE COURT AT BUCKINGHAM PALACE

The 28th day of July, 1949.

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Present

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

SIR ALAN LASCELLES

LORD PAKENHAM

LORD PATRICK

MR. ALEXANDER

SIR OLIVER FRANKS

MR. DUGDALE

*In the
Privy
Council.*No. 36.
Order of
His
Majesty
in Council
granting
Special
Leave to
Appeal,
28th July
1949.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 19th day of July 1949 in the words following, viz. :—

L.S.

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“ 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 Cyril Waugh in the matter of an Appeal from the Supreme Court of Judicature Jamaica between the Petitioner Appellant and Your Majesty Respondent setting forth : that the Petitioner was tried in the Supreme Court of Judicature Jamaica by a Judge and jury

*In the
Privy
Council.*

No. 36.
Order of
His
Majesty
in Council
granting
Special
Leave to
Appeal,
28th July
1949,
continued.

on a charge of murder and was found guilty of murder with a recommendation to mercy and sentenced to death on the 1st March 1949 : that the Petitioner sought leave of the Court of Appeal Jamaica to appeal against the conviction and sentence and the application was refused on the 4th April 1949 : that the main ground on which the Petitioner seeks leave to appeal is that the learned Judge influenced the jury unduly by repeatedly emphasising the fact that the Petitioner did not give evidence at his trial the fact being that the Petitioner was at all times ready and anxious to give evidence on oath but accepted the advice of his Counsel not to do so : that a further ground of appeal rests on the manner in which a dying declaration was put to the jury : And humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from his conviction and sentence dated the 1st March 1949 and for such other relief as may to Your Majesty in Council seem proper :

“ 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 Judgment of the Supreme Court of Judicature Jamaica dated the 1st day of March 1949 :

“ And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

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.

Whereof the Captain General and Governor in Chief or Officer administering the Government of the Island of Jamaica and its Dependencies for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.

In the Privy Council.

**ON APPEAL
FROM THE COURT OF APPEAL JAMAICA.**

BETWEEN

CYRIL WAUGH - - - - - *Appellant*

AND

THE KING - - - - - *Respondent.*

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RECORD OF PROCEEDINGS.

HUTCHISON & CUFF,
5 STONE BUILDINGS,
LINCOLN'S INN,
LONDON, W.C.2,
Solicitors for the Appellant.

BURCHELLS,
9 BISHOPSGATE,
LONDON, E.C.2,
Solicitors for the Respondent.