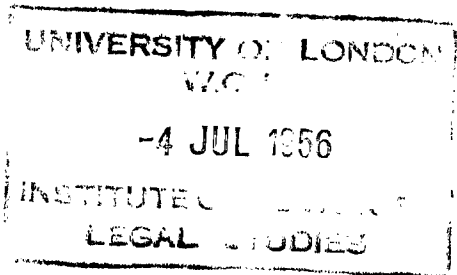


29, 1955

~~GH 462~~

43603



IN THE PRIVY COUNCIL

No. 45 of 1954

ON APPEAL FROM THE WEST AFRICAN COURT
of APPEAL

B E T W E E N

1. SAMUEL ALADESURU
 2. FOLAHAN AKINSANYA
 3. KOLA LADEJO Appellants

- and -

THE QUEEN Respondent

CASE FOR THE APPELLANTS

Record

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1. This is an Appeal by Special Leave from orders made on the 21st July, 1953 by the West African Court of Appeal (Verity C.J., Jibowu and Hurley J.J.) striking out certain of the Appellants' grounds of appeal and dismissing their appeal on other grounds. The Appellants' said appeals were from their convictions on the 11th May, 1953 in the Supreme Court of Nigeria (Gregg J. sitting without a jury or assessors) on two counts namely (1) of making and (2) of publishing a false statement of Account contrary to Section 436(a) of the Nigerian Criminal Code and from the sentences of five years imprisonment imposed on each of the Appellants on each count, the sentences on each count being ordered to run concurrently.

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2. The Appellants desire to raise two points in their appeal. The first point is that the order of the West African Court of Appeal striking out certain of the Appellants' grounds of appeal without allowing or hearing



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argument thereon deprived the Appellants of a right of appeal granted by Statute and amounted to a denial of justice. The second point is that the Prosecution failed to prove that the Appellants were Directors of the Standard Bank of Nigeria which was an essential element in the charges against them.

3. The Appellants together with another accused (who was acquitted and is hereinafter referred to as the "acquitted accused") were charged on the 2nd March, 1953 before the Supreme Court of Nigeria on an indictment containing 6 counts. The first four Counts charged the Appellants being Directors of the Standard Bank with stealing property of the Bank. The fifth Count charged the Appellants, being Directors of the said Bank, and the acquitted accused, being the Auditor of the said Bank, with making a written Account namely the Balance Sheet of the said Bank which was to their knowledge false in certain particulars with intent thereby to deceive any member shareholder or creditor of the said Bank. The Sixth Count charged the acquitted accused with being an accessory after the fact to the offence charged in the Fifth Count. To these Counts all the Accused pleaded Not Guilty and the trial was adjourned. On the 13th April, 1953 the case came on for hearing and the Prosecution applied to the Court for leave to add a further and Seventh Count charging the Appellants, being Directors of the said Bank, and the acquitted Accused, being Auditor thereof, under the said Section 436(a) of the Criminal Code with publishing the said Account referred to in the Fifth Count with intent to deceive. Counsel for the Appellants objected to the additional Count and submitted that the Fifth Count should be struck out, on the ground that the Appellants could not be charged with these offences unless they had been arrested under a warrant. The Trial Judge over-ruled the objection of the Appellants but said :-
- " This is an interesting point and may
- p.1 and 2. 10
- p.2, 1.35
p.3, 1.21 20
- p.3, 1.22 -
39. 30
- p.7-8 40
- p.8, 1.20

perhaps be definitely decided on appeal. As things are, however, I adhere to my original ruling and allow the new Count to be added".

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10 4. During the course of the case for the Prosecution the Appellants through their Counsel objected on a number of occasions to the admissibility of certain of the evidence but their objections were over-ruled and the evidence admitted.

5. At the close of the case for the Prosecution it was submitted on behalf of all the Accused that there was no case to answer on any of the Counts. Counsel for the Appellants also made further submissions on points of law or of mixed law and fact.

20 6. The learned Trial Judge ruled against the Accused on all their submissions. None of the Accused gave evidence and Counsel on their behalf addressed the Judge on the evidence. On the 11th May 1953 the Trial Judge delivered Judgment. He acquitted the Appellants on Counts 1 - 4 and the Accused on Counts 5, 6 and 7 but he convicted the Appellants on Counts 5 and 7. In his judgment the Judge dealt very shortly with the Prosecution's case on these two Counts.

30 "I now come to the remaining counts (Nos. 5 and 7) against the three accused Both these counts are based on the balance sheet Exhibit "Q" as printed and published in Exhibit "R" and Exhibit "O.O.O.2"

p.21, 1.13

40 On the evidence before me - particularly that of Mr. H.W. Long (Prosecution Witness 21); Oshinyemi (Prosecution Witness 20); J.O. Odowu (Prosecution Witness 17); J. Agbaje (Prosecution Witness 18) and J. Onyenkala (Prosecution Witness 19) - I am satisfied that the balance sheet of the Standard Bank of Nigeria Limited, as shown on Exhibits "Q", "R" and "O.O.O.2" is in

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fact false and misleading. I am aware that the evidence of Oshinyemi (Prosecuting Witness 20) must in this connection be regarded as that of an accomplice - albeit an unwilling one - and I warn myself to regard it with caution, but, taking the evidence of this witness in conjunction with that of other witnesses for the prosecution, I am satisfied that it can be accepted and I accept it accordingly.

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I am also satisfied beyond reasonable doubt, on the evidence before me, that Nos. 1, 2 and 3 accused did concur in the making of the said false balance sheet knowing the same to be false with intent to deceive any member shareholder or creditor of the Standard Bank of Nigeria Limited, and that further, as stated in Count 7, they published the said false balance sheet, with the same knowledge and intent as aforesaid, before the said Bank went into liquidation in September 1952.

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There is no doubt in my mind that in making Exhibit "Q" which is signed by all three accused, the Chief Accountant Oshinyemi (Prosecution Witness 20) acted not only with the concurrence of Nos. 1, 2 and 3 accused, but also under their directions; and I hold the same with regard to the publication of Exhibit "Q" which was sent in printed form by Oshinyemi, the Chief Accountant, to the Acting Chief Secretary on the 20th August, 1952 and marked on the covering letter as received by Financial Secretary on August 25, 1952 (See Exhibits "O.O.O.1" and "O.O.O.2").

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p.22, 1.8

The learned Trial Judge then proceeded to deal with the submission made on behalf of the Appellants that the Prosecution had failed to prove that they were Directors of the said Bank. The learned Trial Judge found that the Prosecution had proved that the Appellants were Directors and convicted them

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as aforesaid.

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7. The learned Trial Judge then sentenced each of the Appellants to 5 years imprisonment with hard labour on each count, the sentences to run concurrently.

p.28, l.30.

10 8. The Appellants desired to appeal against their conviction and sentences. Under Section 10 of the West African Court of Appeal Ordinance, 1948 a convicted person may appeal as of right against his conviction on any ground of appeal which involves a matter of law alone. He may further appeal with the leave of the Court of Appeal or upon a Certificate of the Trial Judge on any ground of appeal which involves a question of fact alone or a question of mixed law and fact or any other ground which appears to the Court to be a sufficient ground of appeal.

See Annexe

20 9. The Appellants desiring to appeal on fact as well as law and having failed to apply to the Trial Judge for a Certificate filed application to the West African Court of Appeal for leave to appeal on fact as well as law. The Appellants filled in and signed Notices of application for leave to appeal on Forms made in accordance with the West African Court of Appeal Rules. These Forms were filled in by the Appellants in jail without the benefit of any legal advice. In a marginal note to the said forms the Appellants were asked to state as clearly and concisely as possible the grounds on which they desired to appeal. All the Appellants stated the grounds as follows :-

See Annexe

30 "(1) That the judgment is against the weight of evidence.

(2) That in view of the evidence as a whole the learned Trial Judge was wrong to rely upon the uncorroborated evidence of an accomplice.

(3) The learned Trial Judge was wrong in holding that the Crown had proved that I was a Director

p.29.

Record

so as to bring me within the mischief of the Section of the Criminal Code under which I was charged.

- (4) The learned Trial Judge was wrong in not holding that the trial was irregular.
- (5) The learned Trial Judge was wrong in admitting inadmissible evidence".

The applications came on for hearing before the West African Court of Appeal on the 21st day of July 1953. It appears from the Note of the Proceedings made by the Chief Justice that the Court granted the application for leave to appeal before hearing any argument. It then appears that Counsel for the Crown objected that grounds 1, 4 and 5 set out above were not in order. The Court then struck out these three grounds and would not hear any argument by the Appellants' Counsel on these grounds. The Note of the Chief Justice indicates that the ground (5) was abandoned but in fact (as was later made clear in the Reasons for Judgment) this ground was also struck out. In the Reasons for Judgment delivered on the 29th day of July the Court gave the following reasons for their decision.

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p.33

p.33, 1.23

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(See Petition
page 4)
p.35,1.37

"Five grounds of appeal were put forward but only two, namely, the second and 3rd were argued as the 1st, 4th and 5th were struck out. The 1st ground of appeal that "judgment is against the weight of evidence" is no ground of appeal in criminal matters but is an appropriate ground in civil matters where verdicts are to be arrived at by pre-ponderance of evidence. In criminal matters the proper ground of appeal is that "the verdict is unreasonable and cannot be supported having regard to the evidence". This difference has been pointed out by this Court times without number and so we have no sympathy for any Appellant who still puts up a wrong ground of appeal. Even if we had

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granted an amendment of the ground of appeal we would not have been disposed to hear arguments on facts.

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The 4th ground of appeal failed to furnish particulars of the irregularities complained of in the trial and the 5th ground also did not set out the particulars of the inadmissible evidence alleged to have been wrongly received as required by the Rules of the Court"

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10. On behalf of the Appellants it is respectfully submitted :-

(1) There is nothing in the Rules of the West African Court of Appeal which requires the Appellants to furnish in their Notices of Application for leave to appeal the Particulars referred to by the Court of Appeal.

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(2) The Appellants had never been asked by the Crown or the Court to furnish such particulars before the hearing of their Application.

(3) Their applications for leave to appeal appeared to have been granted before the grounds were struck out.

(4) The Court could have ordered or allowed the Appellants to file a Notice of Appeal giving fuller particulars if they thought it was desirable to do so.

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(5) If the Court desired to treat the Notice of Application for leave to appeal as Notices of Appeal as they appear to have done they should have permitted the Appellants to amend their Notices if they thought that the Notices required amendment.

(6) If there was any infringement of the Rules of the West African Court of Appeal in the form in which the Notices had been filled in by the Appellants the Court of Appeal had power to waive the infringement under Rule 68 if the Court

See Annexes

Record

considered that such non-compliance was not wilful and that it was in the interest of justice that the non-compliance be waived. In this case there was no suggestion that the Appellants had wilfully refused to comply with the Rules and it was manifestly in the interests of justice that the Appellants should be allowed to argue their appeal by their Counsel on any ground which could be covered by their Notices of Application for Leave to Appeal.

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(7) It was manifestly wrong for the Court to grant the Appellants' application for leave to appeal on fact (as well as law) and then state that the Court would not have been disposed to hear arguments on facts.

11. The Appellants appreciate that it is not the practice of this Board to hear appeals on fact or on other matters which are more suitable for argument before a Court of Criminal Appeal and for that reason they do not ask the Board to review the evidence for the Prosecution in this case or to consider in detail the other points which the Appellants desired to raise before the West African Court of Appeal. The Appellants submit that it is sufficient for the purpose of this appeal if they satisfy the Board that this was a case in which there should have been a hearing of the appeal in the West African Court of Appeal on the facts or on any of the other grounds set out in the application for leave to appeal which were summarily dismissed by the Court of Appeal, since if that is established then the Appellants have suffered a denial of justice. The Appellants contend that in considering the question it is not possible to go behind the action of the Court of Appeal in granting the Appellants' applications for leave to appeal. It is submitted that it cannot now be contended that that application should not have been granted and that there should not have been any appeal in this case on the facts or the other grounds therein disclosed. If contrary to the Appellants' submission the Board desire to

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10 consider whether an appeal to the West African Court of Appeal on the said grounds should have been heard on their merits, the Appellants will contend that in the first ground the Appellants clearly intended to apply for leave to appeal on the facts and the Appellants will rely on the following matters as showing that there should have been in this case a hearing of appeal on the facts. The Prosecution's case on the two counts on which the Appellants were convicted depended very largely on the evidence of one Emanuel Adebisi Oshinyemi (P.W.20) the Chief Accountant of the said Bank who had prepared the said Account which was alleged to be false. This witness was clearly an accomplice. That the Account contained figures which were false was corroborated by other evidence, but as to two points which were vital to the Prosecution's case, namely, that the Accounts were prepared and published on the instructions of the Appellants and that the Appellants knew that the said Account contained figures which were false, the case depended entirely on the evidence of P.W.20. The Trial Judge treated P.W.20 as an Accomplice, but accepted his evidence "after taking it in conjunction with other evidence for the prosecution". The Trial Judge did not review the case for the Prosecution on these counts, nor did he give any reasons for accepting the evidence of P.W. 20 nor did he indicate what was the other evidence which caused him to accept the evidence of P.W.20. It is submitted that this was clearly a case where the whole evidence should have been reviewed by the Court of Appeal by hearing an appeal on the facts.

40 12. It is further submitted that it would be wrong for the case now to be remitted to the West African Court of Appeal so that the appeal on the facts could there be heard. If the Appellants have been denied justice by the refusal of the Court of Appeal to hear their appeal on fact, it is submitted that justice requires that this appeal should be allowed and their convictions now be quashed.

Record

13. As to the 4th ground of appeal, namely, that the Trial Judge was wrong in holding that the Trial was not irregular, it is clear that the Appellants desired to raise the point as to the irregularity of Counts 5 and 7. The point as stated in paragraph 3 above had been described by the Trial Judge as "an interesting point which may well be decided definitely on appeal". As to the 5th ground of appeal, the Appellants had as stated in paragraph 4 objected during the trial to the admissibility of the evidence on a number of occasions.

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14. The second point in this appeal is whether it was proved that the Appellants were the Directors of the said Bank. It is conceded that there was evidence that the Appellants were known by witnesses to act as Directors and that certain documents were signed by the Appellants purporting to sign as Directors. But it is submitted that this evidence amounted to nothing more than that the Appellants acted as de facto Directors of the Bank. This is not enough. There must be evidence that the Appellants were properly appointed as Directors of the Bank and there was no such evidence. For this proposition the Appellants rely on the cases of Rex -v- Atkins (1900) 64 J.P. 361) and Dean -v- Heisler (1942) 2 A.E.R. 340).

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15. The Appellants respectfully submit that their appeals should be allowed and their convictions quashed for the following (among other)

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R E A S O N S

- (1) Because the refusal by the West African Court of Appeal to permit argument on the grounds set out in the Appellants' Notice of Application for Leave to Appeal amounted to a denial of justice to the Appellants

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- (II) Because in granting the Appellants' Application for Leave to Appeal the West African Court of Appeal recognised that this was a case where there should be a hearing of an appeal on the grounds set out therein and the West African Court of Appeal by striking out the grounds in the Appellants' Notice of Application in effect denied to the Appellants the right which it had granted to the Appellants
- (III) Because in the circumstances justice would not be manifest if the case be remitted to the same Court of Appeal to hear the said Appeal
- (IV) Because there was no sufficient evidence that the Appellants were Directors of the said Bank.

CHRISTOPHER SHAWCROSS

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D. A. GRANT

A N N E X E

The Criminal Code (Laws of Nigeria, 1948, Vol.11.
page 26.) S.436.

"Any person who, being a promoter, director, officer, or auditor, of a corporation or company, either existing or intended to be formed, makes, circulates or publishes, or concurs in making, circulating, or publishing, any written statement or account and which, in any material particular, is to his knowledge false, with intent thereby to effect any of the following purposes:-

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(a) to deceive or to defraud any member, shareholder, or creditor, of the corporation or company, whether a particular person or not;

(b) to induce any person, whether a particular person or not, to become a member of, or to entrust or advance any property to, the corporation or company, or to enter into any security for the benefit thereof;

is guilty of a felony, and is liable to imprisonment for seven years.

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The offender cannot be arrested without a warrant".

The Criminal Procedure Ordinance (L. of N. '48,
Vol.II. p.204) S. 156

"For every distinct offence with which any person is accused there shall be a separate charge and every such charge shall be tried separately except in the cases mentioned in sections 157 to 161".

S.157

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(1) "When a person is accused of more offences than one committed within the period of 12 months from the first to the last of such offences whether in respect of the same person or thing or not he

may be charged with and tried at one trial for any number of them not exceeding three".

(2) Any offence shall be deemed to be an offence of the same kind as an attempt to commit such an offence where such attempt is itself an offence".

S.158

10 "If in one series of acts or omissions so connected together as to form the same transaction or which form or are part of a series of offences of the same or a similar character more offences than one are committed by the same person charges for such offences, whether felonies, misdemeanours or simple offences, may be joined and the person accused tried therefor at one trial"

The West African Court of Appeal Ordinance

(Laws of Nigeria, 1948, cap 229)

"Appeals in Criminal Cases

Right of Appeal and Determination of Appeals

Right of appeal in criminal cases

20 10. A person convicted by or in the Supreme Court may appeal to the court of appeal -

(a) against his conviction on any ground of appeal which involves a question of law alone; and

30 (b) with the leave of the court of appeal, or upon the certificate of the judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the court to be a sufficient ground of appeal; and

(c) with the leave of the court of appeal against the sentence passed on his conviction unless the sentence is one fixed by law;

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Determination 11. of appeals in ordinary cases

(1) The Court of Appeal on any such appeal against conviction shall allow the appeal if they think the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment of the court before which the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

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Provided that the court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has actually occurred".

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West African Court of Appeal Rules 1950 (Colony and Protectorate of Nigeria: Rules of Court, No.2 of 1950)
"Criminal Appeals

"Obligation on appellant to fill up forms of appeal notices and answer questions thereon. Criminal Forms 1-4 and 6".

43. A person desiring to appeal to the Court against conviction or sentence shall commence his appeal by sending to the Registrar of the Court below a notice of appeal or notice of application for leave to appeal or notice of application for extension of time within which such notice shall be given, as the case may be, in the form of such notices respectively in Forms 1 to 4 or 6 in Appendix C, and in the notice or notices so sent shall answer the questions and comply with the requirements set forth thereon. The answers to the questions which an appellant is by this rule required to make in

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support of his request to be present at the hearing of his appeal shall be deemed to be applications to the Court in such matter".

49. Where the Court has, on a notice of application for leave to appeal duly served and in Form 2 or 3 in Appendix C, given an appellant leave to appeal, it shall not be necessary for such appellant to give any notice of appeal, but the notice of application for leave to appeal shall in such case be deemed to be a notice of appeal".

"Notice of application for leave to appeal".

10. 68. Non-compliance on the part of an appellant with these Rules or with any rule of practice for the time being in force shall not prevent the further prosecution of his appeal if the Court consider that such non-compliance was not wilful and that it is in the interest of justice that non-compliance be waived. The Court may in such manner as they think right, direct the appellant to remedy such non-compliance, and thereupon the appeal shall proceed. The Registrar shall forth-
20 with notify the appellant of any directions given by the Court under this rule, where the appellant was not present at the time when such directions were given".

"Waiver of non-compliance with rules".

"Criminal Form 2

IN THE WEST AFRICAN COURT OF APPEAL

NOTICE OF APPLICATION FOR LEAVE TO APPEAL AGAINST

A CONVICTION

(Rule 43)

Rex v.

30 To THE REGISTRAR OF THE

I, having
been convicted of the offence of
and now being a prisoner in His Majesty's
Prison at

"Here state the offence e.e. larceny murder, forgery etc."

"Where applicant for any reason not in custody"

(or now living at) and being desirous of appealing against my said conviction, DO HEREBY GIVE YOU NOTICE that I hereby apply to the Court for leave to appeal against my said conviction on the grounds hereinafter set forth.
(The first part of Criminal Form 2 ends as follows:-)

"... on the grounds hereinafter set forth.

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(Signed)

(or mark)

Applicant

Signature and address of witness attesting mark.

Dated this day of 19

"PARTICULARS OF TRIAL & CONVICTION

"Fill in these particulars"

- 1. Date of trial
- 2. In what Court tried
- 3. Sentence

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Grounds of Application:

"Here state as clearly and concisely as possible the grounds on which you desire to appeal against your conviction.

- 1. If you desire to be present when the Court considers your present application for leave to appeal, state -
 - (a) whether or not you are legally represented and
 - (b) the grounds on which you submit that the Court should give you leave to be present thereat.
- 2. The Court will, if you desire it, consider

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17.

your case and argument if put in writing by you or on your behalf, instead of your case and argument being presented orally. If you desire to present your case and argument in writing set out here as fully as you think right your case and argument in support of your appeal.

State if you desire to be present at the final hearing of your appeal".

No. 45 of 1954

IN THE PRIVY COUNCIL

ON APPEAL FROM THE WEST AFRICAN
COURT OF APPEAL

B E T W E E N

1. SAMUEL ALADESURU
2. FOLAHAN AKINSANYA
3. KOLA LADEJO Appellants

AND

T H E Q U E E N Respondent

CASE FOR THE APPELLANTS

REXWORTHY, BONSER & WADKIN
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Solicitors for the Appellants