

matters which, in view of the definition of the word "proved" in section 3, the Jury should take into consideration before arriving at a verdict. It was therefore a misdirection to tell the Jury "as a matter of law" that they "must not pay the slightest attention" to evidence of the accused's good character. Such evidence may of course in the facts of a particular case carry little or no weight but cannot properly be declared to be totally irrelevant. In *Rex v. Noble*<sup>1</sup> the accused put his character in issue, but the Chairman "categorically told the Jury that this consideration was immaterial and not for them". The Court of Criminal Appeal in England quashed the conviction on the ground that there was misdirection. The majority of us think that this decision should be applied in the present case.

The only question which remains for consideration is whether the conviction of the appellant can be upheld notwithstanding the ruling that there has been misdirection in law. There was a conflict of evidence with regard to the circumstances in which the deceased was stabbed, and the majority of us find ourselves unable to arrive at the conclusion that the Jury, if properly directed, would not have taken a view favourable to the defence. We cannot therefore say that no substantial miscarriage of justice has actually occurred. The conviction is accordingly quashed and the appellant is acquitted.

*Accused acquitted.*

1949

*Present: Gratiaen J.*

HEEN BANDA, Appellant, and HERATH, Respondent

*S. C. 614—M. C. Kandy, 2,849*

*Companies Ordinance, No. 51 of 1938—Keeping of proper books of account by company—Director's liability for failure—Meaning of "proper books"—Difference between section 120 and section 262.*

There is a sufficient compliance with the provisions of section 120 of the Companies Ordinance, No. 51 of 1938, if the books of a Company contain an accurate record of each and every transaction which the section requires to be recorded. It cannot be said that the books are not "proper books" so long as they correctly embody at all relevant times such information as is necessary to enable an auditor periodically to prepare the Company's profit and loss account and balance sheet as required by the Ordinance.

**A**PPEAL from a judgment of the Magistrate, Kandy.

*H. V. Perera, K.C., with C. S. Barr Kumarakulasinghe, A. I. Rajasingham and B. S. C. Ratwatte, for defendant appellant.*

*N. E. Weerasooria, K.C., with C. E. S. Perera and D. S. Jayawickrama, for complainant respondent.*

*Cur. adv. vult.*

<sup>1</sup>20 Cr. App. Rep. 191.

September 16, 1949. GRATIAEN J.—

The accused was throughout the year 1947 the Managing Director of a company in the Kandy District. The Company was registered under the Companies Ordinance, No. 51 of 1938, and the object of its incorporation was to maintain an omnibus service along certain prescribed routes. The learned Magistrate points out in his judgment that its affairs had, as so often happens, been entrusted since its inception to persons who, though no doubt well-intentioned, possessed no previous experience of modern methods of business or accountancy.

The charge against the accused is that during his period of office the Company had failed, as required by Section 120 (1) of the Ordinance, "to keep proper books of accounts with respect to (a) all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure took place; (b) all sales and purchases of goods by the Company; and (c) the assets of the Company", and that the accused was guilty of an offence under Section 120 (3) in that he had failed in his capacity as Director "to take all reasonable steps to secure compliance by the Company" with those statutory requirements. The learned Magistrate found the accused guilty and sentenced him to pay a fine of Rs. 40. This lenient sentence was imposed because in the Magistrate's view there was nothing to indicate any fraud on the part of the accused but only negligence, attributable largely to ignorance, in the manner in which the Company's affairs were carried on.

The background of these proceedings is not unusual in Companies of this particular description. The directors had fallen out among themselves, and representations against the accused were made by the members of one disgruntled faction to the Director of Commerce and Industries who appointed a Chartered Accountant, Mr. Satchithananda, to investigate and report upon the affairs of the Company under Section 133 of the Ordinance. The report was duly referred to the Attorney-General but he apparently decided that no prosecution or other action was called for in the public interest (*vide* Section 134 of the Ordinance). Nevertheless the complainant, who owns shares in the Company, was dissatisfied with this result and he accordingly prosecuted the accused in the present action on his own initiative.

The only witness called at the trial was Mr. Satchithananda to whom I have already referred. As he is an expert in matters of accountancy his evidence would undoubtedly have been of great assistance if it had been confined to his observations on the alleged inadequacy of the Company's books with reference only to the question whether or not they had failed to comply with the special statutory requirements of Section 120 of the Ordinance. Unfortunately this was not done, and his oral evidence introduced a great deal of extraneous matter relating in a general way to the conduct of the Company's affairs with which the Court was not concerned at the trial. His report P 1 addressed to the Director of Commerce and Industries and setting out the conclusions arrived at by him in the course of his roving investigation of the Company's activities was also read in evidence. All this inadmissible evidence only served, I fear, to cloud the issue upon which the Magistrate was required to adjudicate. In the circumstances the accused's conviction must be quashed unless I can satisfy myself that he has not been prejudiced by

the improper reception of evidence at the trial. This could only arise if there is on the record other evidence which is relevant and demonstrably establishes his guilt.

Before I refer to the evidence it is necessary to examine the provisions of Section 120 of the Ordinance. This Section has been taken over *verbatim* from Section 122 of the Companies Act, 1929, of England. The various transactions in respect of which books must be maintained by a Company are set out in detail, but there is nothing in the section which gives any indication as to when the books of the Company, even though they contain accurate and complete information as to the requisite items, may nevertheless be regarded as not having been "properly" kept. This omission is not without its significance, because I find that Section 262 of the Ordinance (*vide* also the corresponding Section 274 of the English Act of 1929) which imposes heavier penalties on directors if "it is shown that *proper books* of accounts were not kept *throughout the period of two years immediately before the commencement of the winding up*" of a Company, contains an express declaration as to the circumstances in which "*for the purposes of this Section*" proper books shall be deemed not to have been kept. Having regard to this important difference in the language of two sections of the same Ordinance, I am inclined to the view that there is a sufficient compliance with the provisions of Section 120 if the books of a Company contain an *accurate* record of each and every transaction which the section requires to be recorded. It cannot, I think, be said that the books are not "proper books" so long as they correctly embody at all relevant times such information as is necessary to enable an auditor periodically to prepare the Company's profit and loss account and balance sheet as required by the Ordinance. In other words, Section 120 seems to lay down not a counsel of perfection, but only to prescribe the minimum standard of reliable book-keeping which the Directors must observe at their peril. If, as I have said, this minimum standard is satisfied, the mere fact that it would take an auditor or an official inspector some little time to ascertain the true financial position by a reconstruction of the relevant facts which are *accurately* revealed in the Company's books, an offence punishable under Section 120 (3) is not disclosed. In other words, the section is satisfied so long as a set of "books of original entry" is maintained in one or other of which books every transaction is faithfully recorded at the time when it occurs.

Applying this test, I am not convinced that the guilt of the accused has been brought home to him by the relevant evidence, and in that state of things I am constrained to hold that the reception of a volume of inadmissible evidence at the trial vitiates his conviction. It may well be that if the only issue before the Court had been more satisfactorily investigated, the result would have been different, and the accused would do well to realise that non-compliance with the strict requirements of a statute enacted for the protection of the shareholders of public companies cannot be lightly condoned. In the present case he has at any rate been acquitted by the learned Magistrate of fraud or bad faith. For this reason I am content not to order a retrial. I quash the conviction and acquit the accused.

*Conviction quashed.*