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Court : Privy Council

Decided On : Jul-26-1934

Judge : Lords Atkin, Macmillan & Wright

Appeal No. : Privy Council Appeal No.32 of 1934 (From: Bermuda)

Appellant : Warren Ducane Smith

Respondent : The King

Advocate for Pet/Ap. : L.M. Minty and John Fennell, for Appellant; Kenelm Preedy, for Opposite Party. Solicitors for Appellant, A.L. Bryden and Co., Solicitors for Respondent, Burchells.

Judgement :

Lord Atkin:

In this case the appellant was tried before the Chief Justice and the Assistant Justice of Bermuda and a special jury on an indictment charging him with the murder of two children on 22nd November 1933. The trial took two or three days. The jury on the last day of the trial were unable to come to an agreement, and were absent about three hours. They announced to the Chief Justice, who was presiding at the trial, that they were still disagreed. Then they were, by the Chief Justice, sent back for consideration for the night to their hotel, where they were staying during the trial. According to the shorthand note of the proceedings, the next day at 10.15 the Court opened. The Registrar said : "Gentlemen, have you

agreed on your verdict ?" (Foreman of Jury) : " No Sir." (The Chief Justice) :

" Gentlemen, I am obliged to you. I am sorry you have not agreed on your verdict, but you will be discharged now and you will be exempted from service on a jury for the next two years."

It seems to follow from that that the trial was at an end and the jury were discharged. Then the foreman of the jury rose from his seat. (The Chief Justice) : "Do you wish to say anything ?" (Foreman of Jury) : " I cannot very well now, sir." Then the Chief Justice and the foreman of the jury Conferred together, apparently without the parties' counsel knowing what was taking place. Then the Chief Justice gave a further instruction to the jury, and they retired, and after half an hour they returned a verdict of guilty. Now the appeal is on the ground that the verdict is not competent and the conviction is wrong, because the jury had been discharged. The Crown in their case says this :

" In view of what is recorded as having transpired in respect of the discharge of the jury it is on behalf of the respondent admitted that in the circumstances the 'verdict' cannot be supported as the verdict of a competent jury, and that therefore the conviction and sentence passed upon the appellant cannot stand."

It appears to their Lordships that that admission on the part of the Crown, is, as might be expected, a very reasonable and proper admission and justified by what took place. In the result therefore this man has not been duly convicted because there was a verdict by a jury which was not competent at that time to give a verdict. It had been discharged. There are other irregularities suggested in the course of the trial with which it becomes unnecessary to deal; but they are serious irregularities which their Lordships are relieved from having to deal with, and they say nothing more therefore upon that topic in view of the ground of their decision, which is, that there was no verdict of a competent jury, and therefore the conviction must be set aside. Their Lordships will humbly advise His Majesty accordingly.

Conviction set aside.