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Messrs Cherer & Co

Shorthand Writers 2. New Court, Carey Shreet. Western Circuit .

IN THE COURT OF CRIMINAL APPEAL.

Royal Courts of Justice.

Monday, 18th. May, 1931.

Before:

THE LORD CHIEF JUSTICE OF ENGLAND

(LORD HEWART OF BURY)

MR JUSTICE BRANSON

MR JUSTICE HAWKE.

WILLIAM HERBERT WALLACE.

(Transcript from the Shorthand Notes of Cherer & Co., 2, New Court, Carey Street, London, W.6.2).

Counsel for the Appellant: - MR ROLAND OLIVER, K.C. and MR S. SCHOLEFIELD ALLEN.

Counsel for the Crown:- MR E.G. HEMMERDE, K.C. and MR LESLIE WALSH.

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NOTES OF PROCEEDINGS.

THE LORD CHIEF JUSTICE: You appear for the Appellant, Mr Oliver?

MR ROLAND OLIVER: Yes, my Lord, with my friend Mr Scholefield Allen.

THE LORDCHIEF JUSTICE: And you appear, Mr Hermerde, for the Crown?

MR HEMMERDE: Yes, my Lord, with my learned friend Mr Leslie Walsh.

MR ROLAND OLIVER: May it please your Lordships, this Appellant was convicted of murder at the Liverpool Assizes on the 25th. April last before Mr Justice Wright. The Notice of Appeal which is before the Court contains many grounds. In so far as those grounds consist of criticisms upon the summing Up, I should like to say at the outset that several of them are misconceived. I say that because I should like the Court to know at once that that Notice of Appeal was drafted without any shorthand note of the Summing Up, and there are certain criticisms of the Summing Up which I do not support and shall not seek to support. I make that apology and give that reason at the start. With regard to the rest of it, the main grand of appeal is one. It may be put in various ways: It may be said that in this case the Prosecution never sustained the onus of proof; it may be said, to use a different formula, that the evidence, taken as a whole, if it was consistent with guilt was also consistent with innocence; or it might be put, to use a different formula, that where a prosecution is relying upon circumstantial evidence that circumstantial evidence must at least be sufficient to exclude the reasonable possibility of someone other than the Appellant having committed the crime. I say that those formulae can all be used, but the real ground here is this, that a man who may well be quite innocent has been convicted of murder and sentenced to death. That is the topic which I propose to develop this morning.

I think I should like at once to refer to two passages in the summing Up, in which Mr Justice Wright put the matter in language which I respectfully adopt. The only criticism that I have of him is that if that statement of the law which he gave

is correct, this case should not have gone to the Jury. The passages that I should like to read are on page 315 of the Transcript, and a little more than half-way down that page he begins by saying this: "There it is. There is certainly no eyewitness except the actual murderer, besides the dead woman, and therefore the evidence in this case, and the evidence that can be brought against anybody here, is purely circumstantial. You know in many cases, especially of murder, the only evidence that is available is circumstantial evidence, but circumstantial evidence may vary in value almost indefinitely. There is some circumstantial evidence which is as good and conclusive as the evidence of actual eye-witnesses. In other cases the only circumstantial evidence which anyone can present still leaves loopholes and doubts, and still leaves possibilities of other explanations, of other persons, and still leaves the charge against the accused man little more than a probability and nothing that could be described as reasonably conclusive. If I might give you an illustration" --- I do not think I need trouble with the illustration. Then a little further on, on the next page, he » says: "The real test of the value of circumstantial evidence is: Does it exclude every reasonable possibility? I can even put it higher: Does it exclude other theories or possibilities? If you cannot put the evidence against the accused man beyond a probability and nothing more, if that is a probability which is not inconsistent with there being other reasonable possibilities, then it is impossible for a jury to say: 'We are satisfied beyond reasonable doubt that the charge is made out against the accused man'. A man cannot be convicted of any crime, least of all murder, merely on probabilities, unless they are so strong as to amount to a reasonable certainty. If you have other possibilities, a jury would not, and I believe ought not, to come to the conclusion that the charge is established".

THE LORD CHIEF JUSTICE: You do not complain of that?

MR ROLAND OLIVER: On the contrary, my Lord, so far from

complaining of it, I am adopting it, and I am saying that that is what I submit is absolutely correct. Where I respectfully differ from the learned Judge is this. If the circumstances of this case, as I shall hope to persuade the Court, were such that they did not exclude other reasonable possibilities, then a jury could not and ought not to find, and ought not to be allowed to find, and if they did so find ought to be reversed ---- THE LORD CHIEF JUSTICE: What you are really saying to us is this, is it not, that the case ought to have been withdrawn from the Jury?

MR ROLAND OLIVER: Yes, I am saying that; I do say that.

THE LORD CHIEF JUSTICE: There is no evidence to go to the Jury?

MR ROLAND OLIVER: Yes, my Lords, I go as far as that.

MR JUSTICE BRANSON: There was no submission?

MR ROLAND OLIVER: There was no submission, and I was about to explain why there was no submission. If the learned Judge had been of the view that I am suggesting, he would himself have intervened. With the jury I had before me I did not desire to make a submission of that kind which would be unsuccessful, and I did not make it for this reason: I assumed that if the learned Judge had been of that view, he would himself have withdrawn the case from the Jury. That is the only reason why it was not made. At least I can submit this before I go further, that no support for the case for the Prosecution was obtained from the Appellant. In my submission no admission of any sort, and no further material to assist the Prosecution was obtained from him in the witness box.

Now, my Lords, the Appellant is a man of 52, and as your Lordships see, a tall and rather striking-looking man. He has been married for 18 years, and the evidence was all one way, that during that time and right up to the end of that time he had lived with his wife on the terms of closest affection. No semblance of a motive existed; and yet it was the case for the Prosecution that not only did he murder his wife, but that he

murdered her in a most deliberate fashion, having planned out the murder at least 24 hours before, and carried it out with complete callousness. It was not only a calculated murder, but it was a most ferocious murder that this man, who according to all the witnesses was a placid, kindly man, with no sort of violence about him, should have beaten his wife to death with some sort of iron instrument, and smashed her head to pieces as the result of a calculated plot at least 24 hours old.

Now it is my purpose, if your Lordships think it convenient --- I have no doubt your Lordships have considerable knowledge of the facts, but I thought it might be convenient that I should summarise very briefly the story, pointing out what to me appear to be the salient facts, and then proceeding to examinè some of the evidence. He was a weekly collector for

the Prudential Insurance Company, and had held that position for many years; and the evidence was --- I know suggestions were made to the contrary, but the evidence was --- that his average weekly cash collections would be in the neighbourhood of 325 to \$30, and that once a month they would amount to 280 to \$100, that sum consisting of small notes like £1 notes and cash. The ordinary day for Prudential canvassers to account to the Company for moneys that they had mllected, would be Wednesday, and therefore Tuesday night, which was the night of the murder, would be the day when in the ordinary way, if he had accounted on Wednesday, he might have been expected to be in the possession of the most cash. That was his position. On the 19th. January, some 24 hours before the murder, someone rang up a chess club which was situated in a restaurant in the City of Liverpool, and rang up that chess club from a telephone box which was about 400 yards away from the Appellant's house. The message that the voice delivered from the telephone box was to the effect that: "Was Mr Wallace expected at the Chess Club that evening?", to which the reply was "Yes",

and then a message was given that there was some business awaiting him --- I shall read the evidence at a later stage --- or

some business to be got if he went the next evening at halfpast seven and called upon a man named Qualtrough, who lived at 25, Menlove Gardens East. It afterwards turned out that that was a non-existent address, and that that was a bogus message, whoever sent it. It was the case for the Prosecution that the Appellant sent that message himself. As to that I can only submit that the evidence was exactly the other way. There was no evidence that he sent it himself, unless it was to be assumed that he was the murderer. Once he is assumed to have been the murderer, then it could be said that he must have sent it to himself; but the evidence about the voice, to which I shall call your Lordships! attention when I come to it, was to the contrary, that by no stretch of imagination could the receiver of the message, who had known this man for eight years, imagine that that was the Appellant's voice. On the 20th. , the day after the message, which was delivered to Wallace that evening, the 19th., when he went to the Chess Club --- on the next day, the 20th., he was doing his insurance collections as usual, and was behaving as usual, and about six o'clock, I think there was no dispute about this --- he got to his home, where his wife was, and had tea with her. He left --- and this again is common ground within a minute or two --- he left her at about a

quarter to seven, he says to go and find and do the business with the man Qualtrough who had left the message. It was the case for the Crown that sometime between half-past six, which was their case, when she was last seen alive --- sometime between half-past six and about a quarter to seven, when he must have left the house, he had murdered her, and murdered her in circumstances in which, according to all the evidence he must have been heavily

splashed with blood. He had murdered her in that time and contrived so to cleanse himself that when he was examined by the police later on in the evening not a single trace or speck of blood was upon him or any of his clothing or his boots. That was their proposition.

May I ask your Lordships now to look at this map which shews the locality. It is the big Ordnance Map, Exhibit NO. 15, which was put in at the Trial. These routes are a little important, and the map is very big, but I have contrived to fold my copy so that the routes appear. Your Lordships will see that there are delineated two different routes, one in red and the other in green, and the house where the Appellant lived is situated in a black ring near the point where those two red and green lines converge. They very nearly meet, and your Lordships will see that the Appellant's house, No. 29 Wolverton Street, was in the black ring between the two. The green line represents the route that he would take to get to the Cafe or Restaurant in which the Chess Club was situated, some 23 miles away, and the red route illustrates the journey that he would have to make to get to the neighbourhood of Menlove Gardens. That red route divides itself into various stages. First of all, the first ring of it, where it begins, is a church to which he would walk to get on to a tram to go to Menlove Gardens. The second ring, following it along to the right, is a place where he would change trams; that is a place called Lodge Lane. The third ring is another place where he would change, called Penny Lane; and finally, the last ring at the end of the line, is at the end of a place called Menlove Gardens West.

Now I said that he had left the house at about 6.45. He was first seen, to be recognized, at the second of the two rings, the first tram change at Lodge Lane, and it was there --- one can place the matter I think within a minute or so --- at six minutes past seven. From there he went on by various trams to

the neighbourhood of Menlove Gardens, and having there alighted, again within a minute or so of 7.20, he remained in that neighbourhood till about 8 o'clock, making enquiries and seeking to find the address of the man who had sent him this message. It was nature and the case for the Crown that the/extent of those enquiries was suspiciously long. I leave that for the moment, but that was the



point which was made about those. At 8.45 he was found by two neighbours of his, named Johnstone, outside his own back entrance. There is an exhibit which shews the neighbourhood, and I think the best one is Exhibit No. 15 which shews the neighbourhood of his house. There are two exhibits in one.

MR JUSTICE HAWKE: Is it Exhibit 15 or Exhibit 14?

MR ROLAND OLIVER: Exhibit 14 shews in detail his house, and exhibit 15 shews the neighbourhood of his house. Exhibit 14 would do equally well for this purpose, but the Exhibit: 15 and 16 is important.

THE LORD CHIEF JUSTICE: Which one are you looking at? MR ROLAND OLIVER: I am looking at Exhibit 15, but I will take whichever one your Lordship has before you. The only.

THE LORD CHIEF JUSTICE: I have 14 and 15. lolot MR ROLAND OLIVEIR: Am I right in thinking that it is marked 15 and

MR JUSTICE HAWKE: They are the same document.

MR ROLAND OLIVER: The left hand one of this Exhibit shews the

neighbourhood of Wolverton Street, and the red mark upon it to shews the walk that he would have to make from the back of his house to the tram to go to Menlove Gardens. Now I had just got in my narrative to the moment when at 8.45 he was found outside the back entrance into his house which your Lordships see has

two entrances, one on to Wolverton Street and one on to a kind. of alley way at the back. He was found there by Mr and Mrs Johnstone, who were not summoned by him, but happen end to be coming out at that particular time, and found him outside. He complained to them that he had been unable to get into his house, and they waited with him while he went and succeeded in getting in at the back, and then made the discovery. I am passing these things by quite quickly because I only want to get the main narrative before the Court. It was made part of the case for the Crown that the difficulty in getting in at the door of his house was a pretended difficulty, and that it did not really exist. What his object was in pretending not to be

able to get into his house one does not quite understand, and it was never made clear at all events to me. If the object was suggested to be that he wanted someone to go in with him, then one would have thought that instead of waiting about outside on the mere chance of someone coming out at a quarter to nine that evening, he would have gone and roused his neighbours and asked them to come in. However, that matter was left there.

The body of this unfortunate woman was lying in a sitting room nearest to Wolverton Street on the plan No. 14. It is the one nearest the bottom of the plan. She had, as I have said, had her head beaten to pieces with a series of something like eleven blows, with, presumably, an iron instrument. Blood was splashed all over the room, practically. The only other blood in the house was first of all a very small clot which was found on the edge of the pan in the bathroom, and secondly a slight smear which was described as a smear apparently of a bloodstained thumb having been lightly drawn across the centre one of four el notes which were in a drawer upon the mantle- the piece in the bedroom. It was made part of the case of my learned friend in opening that those blood marks upstairs were of the be highest significance as shewing that the person who had left them, wax the murderer, had knowledge of the internal economy of the house, and had been very careful to leave very little blood. At the end, after the evidence, which I shall have to call your Lordships' attention to, my learned friend was telling the Jury that they could not attach very much importance to them. Indeed, in my submission, they were completely disposed of upon any fair review of the evidence, but there they were. chomd. One of the difficulties of the Prosecution was obviously this: No clothing that the Appellant could have been wearing could possibly have been destroyed in the time at his disposal, even assuming that the last time the woman was seen alive was half-past six. No clothing could possibly have been destroyed by him, or washed, between half-past six and a quarter to seven,

and so for the first time at the Trial the Prosecution put forward the theory that the assailant was naked, dressed in a mackintosh. That theory made its appearance for the first time at the Trial, one supposes, because the hopeless difficulty about the clothing had impressed itself upon the prosecution. A mackintosh was found by the body, and the body was upon the mackintosh, as I shall hope to satisfy your Lordships. It was underneath the shoulders of the body. It was partly burnt, and it was suggested by the Prosecution, and indeed in a somewhat dramatic opening my learned friend Mr Hemmerde devoted what now occupies nearly two whole pages of the transcript towards impressing upon the Jury that no one but the Appellant could possibly have ever sought to burn the mackintosh; it would not have been of any use to anybody but him to try and burn the mackintosh, and that therefore, if it had been attempted to be burnt, he was the man who had done it. During the course of the Trial it developed that the woman's skirt was also burnt, and obviously burnt from having fallen upon the lit gas fire in the room, the theory for the Defence being that that mackintosh which was found under her shoulders had been round her shoulders at the moment of the assault, and put round her shoulders because she, suffering from a cold, had just gone to the Wolverton Street door to let in the man who had decoyed her husband away, she had had it round her shoulders when she took him into the sitting room, had then lit the fire, and had been attacked by the person, so that her skirt and the mackintosh, in one and the same accident, had got themselves burnt. That at least was consistent with the position in which the mackintosh was found, under her shoulders, and the fact that the right hand side of it, which would be the side which would have swung upon the fire if she fell upon the fire, was burnt.

The Prosecution were left in this difficulty with regard to the mackintosh, that if it was burnt, and burnt in the same accident in which the woman's skirt was burnt, it was, one

must not say certain, because nothing is certain, but almost certain that the mackintosh had been upon the woman's shoulders, and that the accident was not two, but one, the only one which burnt it. However that may be, my learned friend, who had made such a feature of the burning of the mackintosh in his opening, at the end had had to accept that it was burnt probably by accident.

Those are the main features of the case. There were a number of things which I am going to deal with. I do not seek to part from one of them. There are a number of incidents which were said to be suspicious, and there were a great many --- I do not think I ever remember a criminal case in which there were anything like as many statements taken from this man by the Police. I only desire to say of those statements --- I am not going to read them --- that Mr Justice Wright who tried the case said of them that it was wonderful how consistent they were, and how very very few matters of criticism or comment could possibly be made about them.

THE LORD CHIEF JUSTICE: In the Summing Up he said that.

MR ROLAND OLIVER: Yes, my Lord, in the Summing Up. Except in certain matters, I have of course no complaint of his Summing Up. There is one quite vital matter which I am coming to in its place, but I do not want your Lordships to think that I am suggesting that Mr Justice Wright did not fairly sum this case up. On the contrary, he meant to be most fair.

Now my Lords, in my submission, upon those facts, just taking that statement of facts as it stands, no Jury could say that it was not possible, not reasonably possible, that some criminal, knowing the Appellant as a collector of cash, having the best of reasons to believe that on Tuesday evening he might be expected to be in possession in cash of anything between \$30 and £100, having the means of knowing, as I shall shew your Lordships he had the means of knowing, where the Appellant would be on the 19th., the evening when the telephone message was sent, having the means of watching him leave his house, and being, if he were watching him, then in the position to go and use that

very telephone box which was used --- I submit that no Jury could say that such a thing was impossible or not reasonably possible.

If that be so, then the Prosecution have not, in my submission, and cannot have, satisfied the onus of proof which is upon them. It is often said, and one is glad to think is almost always said, that juries can be trusted not to go wrong on matters of this kind. However that may be, one wonders whether it is so universally true of a case like this, which had been the nine days' wonder of the Liverpool District, and the reports in the Police Court of which, containing many inaccurate statements, had been circulated by and large throughout the district, so that it was as certain as anything can be that, if not the whole, the majority of the Jury had read and steeped themselves in the prosecution, little dreaming that they would ever be called upon to be jurymen in it; and it is almost certain that many of them had expressed views, strong or otherwise, about the guilt or innocence of the person whom they had of course at that time no idea that they were going to try. When it is said that juries can be trusted, one wonders whether that element, which certainly existed in this case, renders it more likely or less likely that they can be trusted. In my submission it must be obvious that many jurymen in those circumstances must come into a jury box with their minds at any rate very largely biassed, let me say one way or the other, by all means, with regard to a case of this kind, who do not come, as they should come in my submission, to hear only the evidence and to judge from that.

I have said that this was a murder of calculation, and I have said that it was a murder of extreme ferocity, and I now wish to draw your Lordships' attention to what the evidence was about the man who is said to have committed it, and what the evidence was about his relations with his wife. I have necessarily, I am afraid, to trouble your Lordships with a certain amount of the Shorthand Note. I have cut it down to what I

think to be the barest essentials, but if I am seeking to read to your Lordships anything which you know, or do not desire to have read, I know that you will indicate it to me. I THE LORD CHIEF JUSTICE: Do not leave out anything which you think is material, Mr Oliver; but you may take it that we are aware of what took place in the Court below.

MR ROLAND OLIVER: Yes, my Lord. I am in your Lordships' hands, but I want to read this.

THE LORD CHIEF JUSTICE: Please read whatever you desire to read. MR ROLAND OLIVER: On page 29 a man named Caird, who had known the Appellant for some 15 years, gave evidence about him and his relations with his wife. Having said that in the evening, at the Chess Club, he noticed nothing wrong about his manner, Mr Caird says at the bottom of page 29: "You have known him for 15 years? (A) Yes. (@) What sort of a man is he as known to you? (A) Well, a man who is intellectual and varied in his habits of study and that sort of thing. (Q) With regard to his behaviour is he a violent person or what? (A) on no, not at all, a placid man. (Q) Have you ever seen any signs of violent temper about him or anything like that? (A) Nothing whatever. (Q) Would it be right to describe him as a studious man? (A) Yes. (Q) You knew his wife, did you not? (A) Yes. Y) And family? (A) Yes. (Q) Are his habits known to you scientifically? (A) Yes. (Q) He has some kind of laboratory fixed up in his house? (A) Yes, in the back room he had a chemical laboratory. (Q) Do you know that at one time or other he was giving lectures? (A) Yes, in the technical school in Byron Street. (Q) And playing a violin - music? (A) Yes, he was only a beginner at that. (Q) and chess? (A) Yes. (Q) How long had you know his wife? (A) Well, not quite that long. (Q) But a good many years? (A) Yes, years, as to how long I could not exactly say. (Q) Have you seen them often together? (A) Yes, I have met them many a time. I used to meet them in the Park and in the street. (Q) Would it be right to say as far as you know they were generally together when he

was not at work? (A) Oh yes. (Q) so far as their relations were concerned were they happy? (A) Yes. (Q) so far as you could observe? (A) So far as I could see. (Q) You have never seen anything to the contrary? (A) Nothing whatever." --- And he went on to say that when Wallace was ill with kidney trouble the year before he had gone to his house on several occasions. Then on page 31 he was asked: "Were their relations still just the same? (A) Yes, quite good. (Q) Would it be fair to suggest that from your observation they were a devoted couple? (A) Yes. (Q) would that be putting it too high. Use your own phrase? (A) Well, I should say they were a happy couple, a very happy couple. (Q) Did she appear to take an interest in his health? (A) Oh yes,". Then my learned friend Mr. Hemmerde in re-examination said "(Q) Can you tell us as to which of them seemed more interested in the other? (A) I should think it was a but even. (Q) you think it was? (A) Yes."

Then Mr Crewe, who was the Superintendent under whom he worked for the Prudential Company, on page 66 was asked, about two-thirds down the page: "How long have you known Mr Wallace? (A) 12 years and a few months. (Q) What is your opinion of his character? (A) An absolute gentleman in every respect. (Q) Have you ever seen any sign of violence or ill temper about him? (A) None whatever. (Q) Scrupulously honest? (A) Absolutely" --- Then a little lower down: "(Q) Did you know his wife? (A) Yes. (Q) Have you been to their home and seen them together? (A) Yes. (Q) What do you say about their relations with each other? (A) The best possible. (Q) Is there any possible foundation for suggesting that he was indifferent to her as far as appearance went? (A) None whatever. I suggest that Mr Wallace appeared to be very fond of her. (Q) I think the phrase you used before was that 'they appeared to be all in all to one another? (A) That is so". I will not trouble with Mr. Johnstone, who did not know them so well, but there was this additional fact, that the

Appellant had for some three years kept diaries recording in most thoughts, and very largely his relations with his wife. Except for one record of some small dispute in which he had upbraided her for buying too many newspapers some 23 years ago, and had afterwards apologised, there was not in that diary, which obviously did contain his own secret thoughts, a single word to suggest that his relations with his wife were otherwise than perfect. I am going to trouble your Lordships to look at one passage which was given in the evidence of Inspector Gold on page 220, as typical of what was in the diary, and this is an entry made within a fortnight of the murder. "On the 7th. January, 1931, that is last January, just a fortnight before the murder, you find this entry: 'Night of keen frost and heavy fog caused a wonderful appearance on all the plants and trees!

--- I am afraid it is not all here, but he went on to give a rather romantic description of the appearance of the Park, and then he said "After dinner persuaded Julia! --- that is his wife --- to go into Stanley Park, and she was equally charmed". That is within a fortnight. I will not trouble with it. Your Lordship will see that that at all events appears to be an inti

mate record of what he really felt and thought about things.

There was absolutely no motive, therefore, but on the contrary a motive against seeking to get rid of his wife, so far as the evidence goes. He was in no financial trouble. For people in the position he was in, he was well off. He was in regular employment; he had £152 in a bank of his own, and his wife had, I think, something like £90 in the Savings Bank of hers; but I do not think it was ever suggested by anybody that he would have sought to murder her for the sake of possessing himself of the 290 in the Savings Bank when he had £150 of his own. There was no suggestion that there was any other woman in the case; not a word of suggestion was put to him of anything of the kind, and the matter was therefore left, before the Jury, as that of a man who not only had no motive, but had on the contrary the



strongest motive, one would have thought, according to all humanity, the other way, a man of apparently a gentle kindly disposition. For another there may well have been a motive, as I have submitted to you, and this is a part of the case about which I desire to lay some emphasis, because the learned Judge in his summing up repeatedly told the Jury that if there was no motive for the Appellant, there was no motive for anyone else.

With regard to the cash that he might have been reasonably expected to have been in possession of, my learned friend Mr. Hemmerde, both in his opening and in his final speech, was impressing and impressing upon the Jury that there was not any motive for anybody else, that he could not be expected to have any cash, and so forth. How my learned friend was able to do that when his own witness that he had called from the Insurance Company had told the Jury what cash he might be expected to have, and when if learned friend desired to differ from the evidence of his own witness, he had plenty of time to send for a witness from the Prudential Insurance Company to prove accurately what he had as cash --- how my learned friend could do that, I do not know; but the effect of it apparently was that it got into the mind of the learned Judge that the evidence about the cash really did not matter, and that there would not be any cash.

THE LORD CHIEF JUSTICE: There was no evidence, was there, that any cash was missing.

MR ROLAND OLIVER: Yes, my Lord, there was. There was evidence that £4 was missing.

LORD CHIEF JUSTICE: £4?

MR ROLAND OLIVER: Yes, and that was all there was. For reasons that I can shew your Lordships, all in the evidence, that was all that there was in the cash box that night. There would ordinarily have been much more, but that had been a peculiar week. It was all in the evidence. He had had a somewhat larger payment out than usual to make; he had not in fact collected on the Saturday because he had been ill; and although the ordinary.

He had only collected some \$14 odd, and had paid away some 10 on some claim under the National Health Insurance Act, which left him with 24. I am going to ask your Lordships to accept it that the figures are accurate, because they were challenged,

and it has never been proved that they were otherwise. MA HEMMERDE: My learned friend must not take me as admitting that 84 in money was missing from the house, because 84 was found in another part of the house. MR ROLAND OLIVER: I am not asking my learned friend to admit that, at all. The evidence about the £4 in the drawer which was referred to was that it was not the exact sum of \$4 which was missing. The money which was missing was not all £1 notes, but it should have been largely silver. It did happen as a coincidence that £4 was found in a drawer upstairs, but it can be nothing more than that. I think that suggestion only came from my learned friend in the last minute of his speech to the Jury.

I said that I would endeavour to satisfy your Lordships as to what might be expected to be there according to the evidence for the Crown. On page 67 Mr Crewe gave evidence about it, and about one-third down that page, in cross-examination he was asked "(Q) Was his job in life collecting money for the Prudential? (A) Yes. (Q) How long had that been his job? (A) 15 years. (Q) when he had collected the money did he account to you for it? (A) He accounted to the office each week. (Q) What did he do with the cash? (A) Keep it. (Q) HOW did he get rid of it eventually? (A) He had to remit it each week. (Mr Justice Wright) Remit where? What do you mean? (A) Remit the cash to the District Office in Dale street. (Mr Roland Oliver) You mean hand the cash over to the District Office? (A) Yes. (Mr Justice Wright) What day of the week? (The Witness) Wednesday and sometimes Thursday. (Mr Roland Oliver) Was Wednesday the normal account day? (A) Wednesday was the normal day. (Q) Would the account include Wednesday's money or only Tuesday's money? (A) It would include the

Wednesday morning. (Q) At any rate, anyone who knew him or knew about his habits or employment might expect him to have the bulk of his cash by Tuesday night? (A) Yes. (Q) What sort of sum would he collect, because they were not always the same but ordinarily what sort of sum would he be collecting a week? (A) Anything from £50 to sometimes over £100" --- The witness subsequently corrected that to £30 --- "(Q) sometimes over £100? (A) Yes. (@) And sometimes less than £50? (A) Anything from £30 I said. (Mr Justice Wright) I thought you said £50. (Mr Roland Oliver) so did I, my Lord. (The Witness) I said £30. (Q) Some of his collections would not be much, I suppose? (A) I suggest mostly cash. (Q) would he occasionally collect a cheque?" --- I do not think I need trouble with any more of that. Then on page 71 there is some more. My learned friend Mr Hemmerde re-examined him, and the witness said, at the top of that page: "(A) Our accounts are all dated for the Monday of that particular week. The agent is debited with an amount each week on a Monday, whatever day he brings it in during that week; it is all for that Monday. On the 5th. January Mr Wallace paid in 255. 2. 11. On the 12th. January, that is for the Monday, he paid in \$89.0.9.". Again, the figure of \$55 is wrong, and it should be £35; apparently the witness had a way of mispronouncing that particular word. Then he goes on to explain, and I do not think I need read that evidence, that once a month, by reason of certain monthly collections as opposed to weekly ones, the collection would be very much more heavy than the ordinary weekly collection. So that that evidence came to this, that he would normally collecting cash anything round about £30 each week, and that once a month he would normally collect anything between £80 and £100. That witness was in the box with the figures, and ready to give them. My learned friend at a later stage in the case said something about Mr Crewe being obviously a friend of the Appellant's. I dare say he was, but if my learned friend was contending that those figures given by Mr Crewe were not correct, Mr Crewe had

then there with him in the witness box, and he could have called someone from the Prudential Company. There was plenty of time. This was on the first day, and my learned friend left the matter there, and so did I. The Appellant gave evidence to the same effect, and he was in my submission quite unshaken about it, and that was all the evidence that there was. How, in the face of that evidence, my learned friend could be heard to contend to the Jury that there would not be any money there, or there was not likely to be any money there, I do not know. That is the only thing that matters; it does not matter what was there, but it would be likely to be there that matters.

The trouble about that is that Mr Justice Wright was apparently persuaded that that was the correct view. I do not know whether it is going to be said that we ought to have called evidence from the Prudential Company to support the witnesses for the Crown; but all that I have to say about that is this, that if that is to be said, what's owing to some unfortunate miscalculation, most unfortunate for the Defence, the learned Judge was told that the case could be finished in three days, and that resulted in our sitting on the first day from 10 o'clock till 6, on the second day from 10 o'clock till 6, and on the third day from 10 o'clock till 7; and that, with a client in custody, your Lordships see makes it practically impossible to get evidence, or indeed to do much more than try and rest between such days as those. That is what happened. Now what I complain about in the Summing Up with regard to that is this, that on page 315 -----

MR JUSTICE HAWKE: Was it suggested that people might not think he might have money in the house?

MR ROLAND OLIVER: No, my Lord, what was suggested was that it was absurd to suggest that anyone could think he would be likely to have money there. That is what was suggested, and your Lordship sees that it went to the whole point of the Defence. The whole point of the Defence was: "I can shew that any criminal could have had knowledge of his movements" --- I am going to shew your

Lordships how in a moment ---- "and could have had accurate knowledge of his movements, and could have had knowledge or a belief that at a particular time, say Tuesday evening, or some other evening, he would be likely to have in his possession a very considerable quantity of cash". That is all. That was motive. Of course we could not prove that it happened, but that was possible motive. What I am upon is this: Did the case for the Prosecution exclude other reasonable possibilities?

Now what the learned Judge said was this. There is passage after passage in the shorthand Note. On page 315, about the middle of the page he said: "I disregard the little smear upon the note, which I will say something about later, but even that is not a finger-print; it is a mere smear; and no weapon that can be traced anywhere, and, so far as can be ascertained, no conceivable motive in any human being" -- That is one passage. The next one is on page 317, where he deals with a motive a little more at large, where he says: "Now when one comes to consider the evidence here on the question of motive, I do not think I can say anything at all. All the evidence is that the prisoner and his wife to all appearances were living together in happiness and amity. You have heard the evidence. There was no pecuniary inducement that one can see for the prisoner to desire the death of his wife; she had a small insurance policy on her life, a matter of 220, and she had something like 90 in the Savings Bank. But there is no reason to think that he wanted that 820, for if he did want it he could have got it, because he had a bank balance of his own. There was nothing that he could gain, so far as one can see, by her death. It can also be pointed out that there is no one else, as far as can be seen, who had anything to gain by her death" -- - Now this is how he deals with the Defence --- "if you exclude the hypothesis of the unknown robber who it is suggested (and it is a suggestion you will have to consider very carefully) may have committed this crime!! --- There is that.

Then on page 319, about three-fourths

down the page he says: "Of course, if there were some other outside criminal planning, with ingenious cunning, the purpose which he carried out to the last, for a motive which no one can understand and apparently is undiscoverable, it might be material for consideration" --- Then on page 328 he says -----

THE LORD CHIEF JUSTICE: Ought you not to read the next sentence, Mr Oliver?

MR ROLAND OLIVER: Certainly, my Lord "it might be material for consideration; but you have got to ask yourselves: What is the reasonably certain evidence substantially excluding other possibilities to such an extent that you can find the fact established to your reasonable satisfaction that it was the prisoner who rang up that night?" --- Is that what your Lordship meant?

THE LORD CHIEF JUSTICE: Yes, thank you. \* motive. but have MR ROLAND OLIVER: Then on page 327, at the bottom of the page the learned Judge says: "Indeed, the evidence is quite consistent with some unknown criminal for some unknown motive having got into the house and executed the murder and gone away" --- Your Lordships will see that the learned Judge himself is there saying that the evidence is consistent with that, and if that be the true view, in my submission this man ought not to have been convicted, because it is not enough that a case should be proved for the Crown which is consistent with guilt, but it has got to be inconsistent with innocence, as this Court has so often pointed out. The last passage is on page 332, about the middle of the page, where he says "If she had been told, as the prisoner said, that the prisoner was seeking an interview with Qualtrough, and if he was admitted, he would soon find out where the prisoner was and find out that he was not in the house; on the other hand, if he found he was in the house he could go away. It makes it difficult to conceive what motive there might have been, if it is difficult to conceive there was such a person who could devise all these things".

So that your Lordships will see that on no less than

five occasions, the evidence being as I have said it was, and my learned friend Mr Hemmerde having been contending to the Jury that there was no possible motive, the learned Judge on those five occasions was telling the Jury that there was none. In my submission the mischief of that was this, that it would encourage the Jury to disregard the evidence that there was of motive. It would encourage them to do that. They would say "Mr Hemmerde told us there was none, and now the Judge tells us there was none. How can we possibly imagine someone doing all this out of the street who had not got any motive, and no money to be got or anything?"

The other matter in connection with that was this, that I said I would shew your Lordships that there was evidence of some outside criminal not only having a motive, but having an opportunity of knowing what the prisoner's movements were. The Chess Club that I told your Lordships about was situated at a very populous restaurant called The City Cafe. It was said that upwards of 100 people a day used it. The Chess Club had no rooms in it at all, but they only had the privilege, on the nights of their meetings, of occupying certain tables in the open restaurant. Quite near the doorway of the restaurant there was posted a notice board, which had upon it the fixtures of the Chess Club. I do not know whether your Lordships have the photographs. I am not sure that this one was put in, but it depicts the big notice board with these things upon it. I will not trouble with it, but anyone who studied that, who was interested in knowing Wallace's movements, could during the months of November, December, January and February have read that he was due to appear at this Chess Club on the 19th. January, and if he read the rules --- I am not sure if your Lordships saw them, but they were shewn to the Jury --- he would read that he had got to be there at half-past seven to play. That was the time to play. That, then, would give him the opportunity.

Then stress was laid upon the telephone box being so

close to the Appellant's home. If he was being watched, that is the obvious telephone which would be used, because the last person to whom the unknown criminal would desire to speak would be Wallace himself, because if it was about insurance business that he wanted to know he might be exposed by a very few questions with the man himself, and if he were watching, and desiring to communicate a message to a man he did not want to speak to himself, knowing where Wallace was going that night he could, and would quite naturally, if you can conceive such a person, go to the nearest public call office and send the message which was sent. It might be said "Why would he not go in on that Monday night, seeing Wallace go off to the Chess Club?" It was said in fact. The answer seems to me to be twofold. Firstly he would not know for certain that Wallace had gone to the Chess Club, and secondly, Tuesday would be a very much better night than Monday night, because Tuesday was the day before what was the usual accounts day.

I submit therefore, on this part of the case, that the evidence is that for the Appellant there was the reverse of a motive, and for someone else there was a motive, and an opportunity of knowing all that he would have to know in order to do the things that were done in this case.

Now I pass from that part of the case, and I come to another part, and I make a most serious complaint of one thing that was done. Professor McFall, who is the Police Surgeon and also occupies one of the Pathological Chairs at the Liverpool University, for no motive that I can suggest, except the motive to try and get this man convicted, went out of his way to force upon the Court and the Jury the view that the nature of the blows struck showed that the assailant was in a frenzy and was insane. The mischief of that suggestion was quite obvious. Here was a case in which the Jury were faced with the terribly grave task of saying: "How can we think, if there is any other possibility, that a man with this record, and a man who has no motive, and a man



whose relations with his wife were such as they were --- how can we be asked to think, unless we are forced to it, that he should do such a thing as this?" And that outburst by Professor McFall may have had just the very mischievous effect of making them say

Never mind about that. You know Professor McFall said he might have done it". I want to read that passage, because I attach great importance to it. I need hardly remind your Lordships of what has been said in this court about the introduction of the question of insanity by the Prosecution. I am not blaming my learned friend about this, in the least; it was not in the least done with his encouragement, but it was forced out by the witness. Your Lordships will remember that in the case of Oliver Smith, which was before this Court, which was reported in 6 Criminal Appeal Reports at page 20, the Lord Chief Justice said this: "The question came up seven or eight years ago, when a practice arose of the Crown calling the prison doctor to prove insanity. All the judges met and resolved that it was not proper for the Crown to call evidence of insanity, but that any evidence in the possession of the Crown should be placed at the disposal of the prisoner's counsel to be used by him if he thought fit". SOLID Now let me read this passage in the evidence of Mr McFall, which occurs at page 138. My learned friend's examination in chief of this witness had ceased, and I had risen to cross-examine him, and I began with this: "You were a Police Surgeon before you held your present position? (A) I am still a Police Surgeon. (Q) You are still? (A) Yes. (Q) I want to begin with the lastbit of your evidence. (A) May I put this before that. You have not had the position of these blows put in and I have a note I made at the postmortem showing the position. I have not given the position I found at the post-mortem examination, which is very important. (Mr Justice Wright) You have a sketch? (A) This I made as I was making the post-mortem examination. It shews the position after the hair is removed and the head shaved. It shows the cuts. (Mr Roland Oliver) I do not want to stop

anything, but how can that indicate who did it? (Mr Justice Wright): No, of course not, (Mr Hemmerde): The Professor thinks it important I hesitated to ask him" --- I do not take that as meaning that my learned friend knew what he was going to say, but that he would hesitate not to ask him --- "The Witness): I have a great reason for this myself" --- One wonders what it was --- "(Mr Justice Wright): Counsel must conduct the prosecution and he will ask you or not ask you as to anything that occurred. (Mr Hemmerde): Can you give quite shortly what your reason is? (A) I can. I formed an idea of the mental condition of the person who committed this crime. I have seen crimes, many of them of this kind, and know what the mental condition is" --- He did not profess to be a mental expert; he was a Police Pathologist --- "I know that it was not an ordinary case of assault or serious injury. I was a case of frenzy" --- My Lords, I said that Professor McFall was a pathologist. I ought to have said that he occupied the Chair of Forensic Medicine.

THE LORD CHIEF JUSTICE: He is a Professor of Forensic Medicine and Examiner in Medical Jurisprudence. MR ROLAND OLIVER: Yes, my Lord, I am sorry that I mis-stated that. Then Mr Justice Wright mest unfortunately gave countenance to this which is being done. He said: "We may have already formed that opinion. Where blows are struck by anyone that probably does produce frenzy, but that is a matter for the Jury". Then I cross-examined him: "With reference to the last matter, you have noticed that my client has been under medical observation as to his mental condition ever since his arrest? (A) I know that he will have been. (Q) If there is anything to be said about his mental condition there are people competent to say it who have lived with him? (A) Yes, I do not wish to express any opinion. (Q) If this is the work of a maniac and he is a sane man he did not do it. Is that right? (A) He may

be sane now. (Q) If he has been sane all his life and is sane now it would be some momentary frenzy? (A) The mind is very peculiar. (Q) It is a rash suggestion, is it not? (A) Not the slightest. I have seen this sort of thing before, exactly the same thing. (Q) Rash to suggest in a murder case, I suggest to you? (A) I do not suggest who did it at all (Q). The fact that a man has been sane for 52 years and has been sane while in custody for the last three months would rather tend to prove he has always been sane, would it not? (A) NO, not necessarily. (Q) Not necessarily? (A) NO, we know very little about the private lives of people or their thoughts."

THE LORD CHIEF JUSTICE: Forgive me a moment, Mr Oliver. what I do not understand is this, and perhaps you can help me. Suppose for the moment that this witness was right in inferring from the blows that the person who had committed the crime was in a frenzy, how does that theory point to the appellant more than to somebody else?

MR ROLAND OLIVER: Because of this, amongst other things, my Lord, the person who did this murder had planned it apparently 24 hours before. What this witness was obviously trying to do, in my submission, and it is the very meaning of the words, was to let the jury know there are very peculiar cases you may get with a man of this kind, he may go off his balance temporarily and do a thing like this, I have known lots of other cases like this, and that

would account for the difficulties.

THE LORD CHIEF JUSTICE: I was not saying that against you, I was not putting the point against you.

MR ROLAND OLIVER: No, my Lord, and I hope I did not convey by my manner that your Lordship was; I was only trying to answer what your Lordship put to me. I should have thought the whole of this was most mischievous for the defendant, because the whole thing, reading between the lines, is: I do not want to express this kind of opinion, but I know all about this kind of thing, I have known lots of cases like this, it is almost telling the jury in spite of the difficulties about motive that they have Mr Mc Fall's word in this sort of crime, obviously meaning, I should have thought, this was -- otherwise it is quite irrelevant -- not at all unusual in crime. I do not know what impression it makes upon your Lordship. May I just finish reading it: "(A) We know very little about the private lives of people or their thoughts. (Q) I want to deal with evidence and not speculation? (A) You asked me I think". It was a little hard; once he had forced that view upon the Court, I had to ask something particularly as the Judge countenanced it. I strongly rely upon that as an absolutely unwarrantable thing introduced, in my submission, quite obviously in order to impress upon the jury that the difficulties with regard to this man did

knows much about the private thoughts and lives of other people, and so on. The whole suggestiveness of it, in my submission, it is entirely for your Lordships, leaps to the eye, and the motive is quite obvious. It completely forces it upon the Court. I have said that the learned Judge at that time gave countenance to that in the Summing-Up. All he said about it is on page 314.

THE LORD CHIEF JUSTICE: Before you leave that, will not you read the next two or three questions, 1901 to 1903?

MR ROLAND OLIVER: About demeanour. May I read those, my Lord, in another connection which I am coming to almost in a moment. They come back in another part of the argument, if your lordship pleases. THE LORD CHIEF JUSTICE: Very well. MR ROLAND OLIVER: All the learned Judge said about that is at page 315, and he does it strictly correctly, but in quite a colourless way. It is about one third down the page: "It is not uncommon in the annals of crime that the murderer, having struck one blow, in some sort of insensate frenzy goes on to strike other blows. It does not follow merely from that that there can be any suggestion that the murderer was insane. In this case there is no question of insanity to be considered: It could only be raised by the defence, and it obviously was not raised, and could not be raised, in the present matter, because it is perfectly clear that whoever murdered this woman did so in pursuance of a plan made the day before and commencing with the telephone message". That is all he said about it. I had I am afraid ventured to express myself more stringly.

MR JUSTICE BRANSON: Does not that indicate what was in the learned Judge's mind when he said if a person strikes a blow that very often he goes off into a sort of frenzy. MR ROLAND OLIVER: That is the way the learned Judge was putting it. I am not dissenting from that proposition.

MR JUSTICE BRANSON: That is the only way one can put it; when

blows are struck by anybody that probably does produce the frenzy. He is not suggesting the first blow was struck in a frenzy, but the battering which this poor head had suffered was due to frenzy.

MR ROLAND OLIVER: Yes, my Lord. If I may be allowed to say so, I am not in the least criticising the learned Judge, he had to make up his mind upon a totally unexpected situation in a moment. I am not emphasising that too much; it is the view that I ask the Court to draw from those answers of that witness showing that he had from some species of malevolence introduced that matter with a view to prejudicing the appellant's case. THE LORD CHIEF JUSTICE: Is it necessary to say malevolence?

MR ROLAND OLIVER: The Police did press this case very hard.

MR HEMMERDE: Well!

MR ROLAND OLIVER: I am going to show you presently, I do not say this without material, I am going to show what material I rely on for saying that. THE LORD CHIEF JUSTICE: I was thinking rather of the word "zeal".

MR ROLAND OLIVER: Enthusiasm; malevolence was the wrong word; may I withdraw that, and substitute "zeal". It was the very next thing I wanted to say. I will make good or fail to make good, what I say from the Shorthand Notes. As I say, the Police were pressing this case very very hard. I will show your Lordships one witness who was called, a man named Rothwell, on page 31. This is a witness talking about the day of the murder, but some three hours before it. He said he was bicycling along a road at 3.30 p.m. and he saw the appellant. Then over the page Mr Hemmerde asks at question 399: "What was he doing. Did you notice anything about him? (A) His face was haggard and drawn and he was very distressed -- unusually distressed. (Q) What signs of distress did he show? (A) He was dabbing his eye with his coat sleeve and he appeared to me as if he had been crying. (Q) Had you ever seen him like that before? (A) I have never seen him like that before! That, I suppose, was acute distress apparently caused by the contemplation of the crime he was going to commit in three hours' time. That is the case. The cross-examination of that witness

is at page 33 at Question 416: "(Q) I wonder if it occurred to you that your eyes could water in the cold. Has that ever happened to you? (A) Yes. It is quite possible. (a) And you might rub them? (A) Yes, quite possible. (Q) He is rather a sallow complexioned man? (A) Yes. (Q) Do you know he was doing his work among his clients the whole of that afternoon right up to 6 o'clock? (A) He may have been. (2) What I am suggesting to you is that you are mistaken in thinking that the signs you saw were signs of distress occasioned by committing a crime" -- it ought to be contemplating a crime -- "(A) NO, I do not think so. (Q) About his being distressed you do not think you could be mistaken? (A) No. (a) Although you never spoke to him? (A) He gave me that impression, as if he had suffered from some bereavement. (Q) Have you ever made a mistake in your life? (A) I dare say I have. (Q) If I were to call about 25 people who saw him that afternoon about that time or round about that time and they said he was just as usual, would you say they had made a mistake? (A) No. I should stick to my opinion. (Q) You would? (A) Yes. (Mr Roland Oliver. Then I shall have to call them". I am glad to say I did not have to call all of them, but I called enough to show the ridiculousness of that position. A much more serious matter was the matter your Lordship invited me to read some answers about just now, and that was this. A great feature was made at this trial of the fact that after the murder the demeanour of the appellant was cool, collected, callous, and a great feature was made of it. At the Police Court, although all the same witnesses had been examined, not one word had been said about it. The comment is this, and it is a very obvious one: If there had really which been anything about his demeanour \*/was unusual, these people who were called at the Police Court with great circumstance where the case lasted many days, including the Superintendent of Police and Professor McFall and all the rest of them, had not one word to say about there being anything peculiar about the appellant's demeanour after the murder. At the trial after the opening by my friend, Mr Hemmerde, that his demeanour was cool and callous

witness after witness was called, all the same witnesses who gave evidence one after the other, Professor Mc Fall and Superintendent Moore. I would like to read the way Professor McFall put it, because he was not content with the mere description of the demeanour, but he went much further. At page 136 your Lordship will see the Professor is giving his evidence in a somewhat didactic fashion as if lecturing to a class. At Question 1881 he is asked: "Can you tell my Lord and the jury what was the demeanour of the accused when he was there? (A) I was very much struck with it; it was abnormal. (Q) In what way? (A) He was too quiet, too collected, for a person whose wife had been killed in that way that he described. He was not nearly so affected as I was myself". The mischief of this sort of thing is it alienates the sympathies of a jury more quickly than anything to be told that a man whose wife was just brutally murdered, was cool, and callous and collected, even the moment when she had just been killed. It is most mischievous and most unfair.

MR JUSTICE BRANSON: Is it unfair if it was true?

MR ROLAND OLIVER: I am suggesting if it were true it must have been

done before; why this sudden excavation of the demeanour after the proceedings at the Police Court had passed, and not a word said?

THE LORD CHIEF JUSTICE: That I understand to be your point, that there was not a word of this at the Police Court.

MR ROLAND OLIVER: Not a word of it; that is my point. My learned friend who was there says that the Police Court hearing lasted several whole days before the Police Court Magistrates. I respectfully protest and say: It is very very hard in a murder case, that of all others, a matter so terribly calculated to prejudice a jury against me as this should be introduced with this sort of circumstance.

MR JUSTICE HAWKE: At the Police Court did Mrs Johnstone give her evidence about the man's distress?

MR ROLAND OLIVER: No.

MR JUSTICE HAWKE: She was not cross-examined.

MR ROLAND OLIVER: No, she was not. Your Lordship sees this was



not given by the prosecution in answer to what Mr Johnstone had said, because it was opened by my learned friend that it was going to be made part of his case at the trial. I will go on at Question 1883: "(Q) Do you happen to remember anything particular that led you to that conclusion? (A) I think he was smoking cigarettes most of the time. Whilst I was in the room examining the body and the blood he came in smoking a cigarette, and he leant over in front of the sideboard and flicked the ash into a bowl upon the sideboard. It struck me at the time as being unnatural. (Q) To do that would he have to lean across anything? (A) He did not come forward. I can recall his position at the moment: He leant forward so as not to step on the clot", that does not matter. The other passage about this is at page 139. I cross-examined him a little over half way down. This is the cross-examination at Question 1901: "(Q) Let us go back. You have told the Jury that you were very much struck with his demeanour. You noticed it at the time and were very much struck with his callous demeanour? (A) I was. (Q) Why did not you say so at the Police Court? (A) Because I was not asked. (Q) You do not mind volunteering things. You have been volunteering things for the last five minutes". That was just following upon the other passage.

THE LORD CHIEF JUSTICE: You are speaking there, are you not, that is your remark ?

MR ROLAND OLIVER: Yes, my Lord, that is my remark. I say that to him. He had volunteered the other things, and I say you are not a witness who minds volunteering things" He says: "There is a great deal I would like to volunteer that my Lord has pulled me up with on", and that cryptic remark the matter was left. I am not going to read to your Lordships the evidence of the Police about this except Superintendent Moore which is just worth while looking at.

THE LORD CHIEF JUSTICE: Will not you read Questions 1904 and 1905 on page 139?

MR ROLAND OLIVER: I am much obliged. "(Mr Roland Oliver) I will get this fact from you: Not one word about his demeanour was said by you at the Police Court? (A) No. (Q) And although you gave evidence for a long time and in detail? (A) Yes". I am much obliged to your Lordship. I had omitted to observe that.

I would like your Lordships to look at the evidence of Superintendent Moore upon this matter, because he is Superintendent Moore and not a Police Constable or a Police Sergeant. It is at page 182, Question 2440: "(Q) what was his demeanour ? (A) Quiet and collected, smoking cigarettes and talking generally". Then he is cross-examined at page 188, Question 2513, the second part of the question: "You talked about his demeanour being quite calm, smoking cigarettes; is that true ? ) (A) Quite. (Q) You have never mentioned it before to-day in public ? (A). I was never asked it." That is the Superintendent of the Liverpool city Police. "(Q) It only seems to have occurred to some one quite lately to ask that question. You attach importance to it, do you not ? (A) No, not that I, know of". If he did not, one wonders why such a parade was made of it, because without reading it all to your Lordships, every police witness, one after the other, went on and gave evidence to the same effect. Now, would your Lordships look at the evidence of the two Johnstones, who, after all, have this to be said for them, with regard to their observation 4

on his demeanour, that they were with him when he found his wife's body and for some considerable time before any police officer saw him. Lo At page 81, Mr. Johnstone is describing the actual emergence of the appellant, after he had gone into the house and found the body. At Question 1144: "(Q) You to remember before he passed your door, this time he came out: Can you say what he was like; did he run out, or just walk out ? (A) He hurried out. (Q) What did he say ? (A) He said: 'Come and see; she has been killed'. (Q) Are you sure that is what he said ? (A) Yes. (Q) What was his manner when he said that ?

(A) He seemed a bit excited". And at page 84, at the end of the examination-in-chief, Question 1196: "(Q) Can you tell me what his attitude, his demeanour, was during this time after he had gone in with you from the yard into the front room and gone into the kitchen, and reaching down this cash-box? (A) He

appeared to me as though he was suffering from a shock. He was quiet, walking round; he did not shout or anything like that".

Now Mrs. Johnstone said a good deal more, because owing to the fact that quite soon after the discovery Mr. Johnstone went out and fetched the police, Mrs. Johnstone was with the appellant alone for a very considerable time, and afterwards with the police. On page 89, Question 1267: "(Q) He came out and said, Come and see; she is killed' ? (A) Yes. (Mr. Walsh): What was his manner when he came out and said that ? (A) In a distressed tone, his words, and very hurried, you know. (Mr. Justice Wright): Do you mean agitated ? (A) Yes. (Q) He hurried as if he was agitated ? (A) Yes." Then at page 94, Question 1336: "(Q) Can you tell me what his attitude was the whole of this time ? Did he seem excited, or did he seem calm, collected, or what ? (A) At first he was quite collected. (Q) What do you mean by lat first! ? (A) Before my husband left for the police. (Q) He was quite collected ? (A) Yes. (2) And then ? (A) Then twice he showed emotion by putting his hands to his head, and he sobbed. (Q) Where were you when he did that ? (A) In the kitchen. (Q) Was there anybody else in ? (A) NO. (Q) How long would it be that he was showing this emotion by sobbing ? (A) Just momentary. (Q) Apart from that what was he like ? (A) He was mostly collected". Then he is cross-examined: "(Q) with regard to that, did he appear to be like a man who was suffering from a shock before your husband left ? (A) Yes, to an extent. (Q) It is very difficult to judge, of course, what is passing in other people's minds ? (A) Manners are so different, are they not ? (Q) Yes. Your husband said 'He appeared to me as if he was suffering from shock?! (A) Yes. (Q) Would you agree with that, as far as you are able to judge ? (A) Yes; he looked very pale. (Q) Twice you say while you were with him some time later he broke down alto. gether ? (A) Yes, he sobbed. (Q) I call that breaking down. It is not usual for a man to sob? (A) No. (Q) were both those

times when you were alone with him ? (A) Yes. (Q) From time to time police officers were coming in and out of the room ? (A) Yes. (Q) Afterwards. That was before they arrived, before Constable Williams arrived. (Q) The two times you saw him break down were before the police arrived at all ? (A) Yes. (Q) After that you were quite a time with him in the kitchen, were you not ? (A) Yes. (b) During that time did he not display emotion from time to time ? (A) Yes; and then if we were left in the kitchen alone he appeared as if he would break down, and he seemed to pull himself together when a great many were knocking about. (Q) When the police came ? (A) Yes. (Q) He made an effort to control himself? (A) Yes, he made an effort to control himself. (Q) But when you were alone with him before the police came he showed signs of breaking down ? (A) Yes. (Q) You were with him a considerable time ? (A) Yes. (b) Did you think there was anything suspicious about his manner from beginning to end ? (A) NO, I did not. (Q) Nor do you now? (A) No." . Their own evidence, 25 I shall show your cohort Now, my Lords, I may summarise what I have to say upon this topic in this fashion. The significance attaching to demeanour, the importance the prosecution attached to it at the Trial, may have been due to the realization of this great fact, that the appellant's demeanour during the whole of the time when he was plotting this crime, when he was at the Chess Club on the night of the 19th playing chess and winning his match after two hours! struggle, talking quietly to his friends and, later on, on the 20th, before the crime was actually committed, going his rounds in the ordinary way attending to his people, joking with his clients, having tea with one of them, that that was a situation so remarkable if he was guilty that it might be well that the Jury should be induced to realise that he was a man of exceptional coolness. I complain and I protest respectfully that that evidence was introduced at all at that stage.

THE LORD CHIEF JUSTICE: Was any notice given you of this additional evidence ?

MR ROLAND OLIVER: Absolutely none, and that applies to a very great deal more than I shall come to in its order; no notice of any kind.

Now, my Lords, I pass from that matter to something else. Now there were, in my submission, in this case two facts that were absolutely crucial; the first of them was this: Who sent the telephone message, or not, who sent the telephone message, but did the prosecution prove that the appellant sent the telephone message of the 19th? If he did, he was guilty; if he did not, he was innocent. It was absolutely crucial, was that telephone message. The second vital fact was this: At what time was Mrs. Wallace last seen alive, because the time when the appellant left his house could be fixed within a minute or two of a quarter to seven, and the time when she was last seen alive was absolutely vital. Their case was she was last seen alive at a quarter past six. That would leave, one would have thought, little enough time for this murder to be committed, but some time. Their own evidence, as I shall show your Lordships when I come to it, is tolerably plain, that she was seen alive very considerably after half-past six, and they did not call it; although it was evidence indeed by perfectly reputable people, the police elected, as I shall show your Lordships when I come to it, to stand upon the evidence of one little milk boy, the whole of whose evidence depended upon his reliability, when he said: Going round with my milk I passed a certain clock at 25 minutes past six on that night. The whole of their case with regard to that time was left dependent upon that little boy, although there were numerous other witnesses whom it was eventually left for the Defence to call, who could give vital evidence upon that matter. Those are the two crucial points. Let me deal with them one by one. There was first evidence, my Lords, about the voice in the telephone box, the only direct evidence there could be as to who sent it, and it was this. The sending of that telephone message occupied in all five minutes, owing to the reason he was not able to phone.

the fact that they were unable to effect a junction between the Call-box and the Restaurant in the City for five minutes. Three different telephone operators spoke to the voice; all said it was a male voice. The next person to whom the voice spoke was Miss Harley, a waitress at the Cafe; she said it was quite an ordinary voice. The next person to whom the voice spoke was Mr. Beattie, whom the appellant was a friend of for eight years, and knew him very, very well. I am going to point out to your Lordships what was the nature of the evidence of Mr. Beattie. Mr. Beattie's evidence about the voice was that it was not the appellant's voice, and, indeed, it would have required a great stretch of imagination to think that it could have been his voice. That is how the evidence stood about who sent the telephone message. I think I had better refer to Mr. Beattie's evidence at once. It is at page 22; it was only a few words in-chief. At the bottom of page 22, Question 280: "(Q) I am interested in the voice that addressed you on the telephone on this particular evening. How much conversation did you have with it? Could you reproduce the conversation for us, do you think?"

THE LORD CHIEF JUSTICE: This is your cross-examination

MR ROLAND OLIVER: Yes; in-chief there was practically nothing, because your Lordship sees they could only get in-chief what was repeated to the appellant. That is the way it was dealt with: "Could you reproduce the conversation for us, do you think? (A) Yes, partly. I can give you an idea of the conversation. (Q) The part I am interested in particularly is the part in which the voice told you about the business, whatever it was. Can you remember what the voice said about that? (A) Yes. I told you that Mr. Wallace was coming to the club that night and he would be there shortly, would he ring up again. He said: 'No, I am too busy; I have got my girl's twenty-first birthday on and I want to see Mr. Wallace on a matter of business; it is some thing in the nature of his business'. (Q) Something in the nature of his business, coupled with a reference to his daughter? (A) That was the reason he was not able to phone Mr. Wallace

himself later that night, because he was too busy with his girl's 21st birthday. (Q) In addition to that conversation, I suppose he spelt for you the name Qualtrough ? (A) Yes, at my request. (Q) And gave the address ? (A) Yes. (Q) And you had altogether quite a conversation with the voice ? (A) Yes, I should say so. (Q) You used an expression in your evidence at the Police court about the voice which you have not used to-day. You said a strong and gruff voice to-day ? (A) Yes. (Q) At the Police court you said it was a confident and strong voice ? (A) That means it was not a hesitating voice in answer to some question". I do not think the intervention matters much. Then, at the bottom:"(Q) Was it a hesitating voice that seemed to speak with difficulty ? (A) No. (Q) so far as you could judge, was it a natural voice ? (A) That is difficult to judge. (Q) I know it is, but did it occur to you that it was not a natural voice at the time ? (A) NO, I had no reason for thinking that. (Q) Do you know Mr. Wallace's voice well ? (A) Yes. (Q) Did it occur to you it was anything like his voice ? (A) Certainly not. (Q) Does it occur to you now it was anything like his voice ? (A) It would be a great stretch of the imagination for me to say it was anything like that".

With respect, upon what was the contention of the Crown based that the appellant himself sent that message ? There is not any evidence of it, unless you begin by assuming that the appellant murdered his wife. If you begin with the assumption that the appellant murdered his wife, you can say he must have sent the telephone message, but so far as the evidence goes, it is this, that the appellant did not send the telephone message; he did not. bourn or hours Then turning to the other matter, which I suggested was crucial, as to what time Mrs. Wallace was last seen alive, I have already indicated the vast importance we attach to it, because the murderer if he was the appellant had got to do many things besides butcher his wife. He has to do many things before he went out in the streets of Liverpool, calm enough not to attract attention, clothed and without a single mark or spot of blood

upon his hands, his nails, his hair, his face or his clothes, and if it is to be said it was done naked, that idea which occurred to the Prosecution between the Police Court and the Trial, then in addition, or not in addition, but in substitution for some of those things, he had to go upstairs, have a bath and dress. The number of minutes at his disposal, therefore, was absolutely vital, and every minute is vital. First of all, as to the time at which the woman was murdered, because that, of course, enters into it, even assuming that Wallace could have been in the house a sufficient time before a quarter to seven to have done it, the time when she was killed was, of course, of vital importance, as it might be that she was murdered after a quarter to seven, in which case he could not have done it, whatever time he had been in the house.

With regard to that, I do not wish to weary your Lordships by repeating a lot of evidence, but the evidence available appears to me material evidence, based upon Professor McFall and the other Police Surgeon, Dr. Pearce, upon observations that they said they had made with regard to the progress of rigor mortis.

THE LORD CHIEF JUSTICE: The learned Judge, in his summing-up, said the medical evidence did not help.

MR ROLAND OLIVER: That was the view I also urged upon the Jury, but the way it was put by Professor McFall and my learned friend, Mr. Hemmerde was this: That the medical evidence proves that

she must have been dead, says my learned friend, at least three

hours. In my submission, it proved nothing of the kind; it proved that she might have been dead three hours, but she might quite just as well have been dead 2 1/2 hours or 4 hours.

MR JUSTICE HAWKE: Three hours at what time ?

MR ROLAND OLIVER: Three hours from 10 minutes to 10, when Professor

McFall arrived, and professed -- I say professed for good reason because he has not made a note, but he professed, anyhow, to record a series of accurate observations as to the process of rigor mortis. May I point out one fact with regard to the reliability of the evidence on that matter. Professor McFall



arrives at 10 minutes to 10 and said that he found rigor mortis had proceeded as far as the neck and upper part of the left arm, and deduced therefore the time of death; Dr. Pearce, arriving two hours later, at 10 minutes to 12, said, when he arrived rigor mortis had progressed to the extent of the neck and the upper part of the left arm; in other words, that it had not progressed at all during the two hours that Professor McFall had been purporting to recall observations about its progress.

It was indeed farcical that the Jury should have been invited to attach any importance to a matter of this kind, in which the two gentlemen had not taken a single note, and which I submitted, and I submit, was a matter that they had not been particularly interested in, the time of death, at the time; they were taking notes of another kind, taking the directions of the blood splashes, and things of that kind, taking a picture of those things, but not a note about the rigor mortis. The matter stands in this way, without reading the evidence, because I know your Lordships have seen it and I do not wish to weary the Court by reading what I do not suppose anybody attached much importance to at the time. what I do protest against is it being put before the Jury as serious evidence, and that it showed she had been dead at least three hours, because at least three hours would bring it to 10 minutes to seven, just about the time that the appellant left the house. That was the only object of introducing it, as to the three hours.

MR JUSTICE HAWKE: The Professor put the murder before six ?

MR ROLAND OLIVER: Yes; he asserted in spite of the evidence of the milk boy that he was satisfied the murder took place at six, or before. It is difficult to cope with that. I shall have to make some other references to his evidence and other matters, but on that matter he apparently found no difficulty in saying although she was seen definitely alive, the question is at what time by all means, but definitely alive long after this, he was prepared to say she must have been dead before six. There is this too, that a newspaper had been delivered at the house about half-past six and that laid on the kitchen table, having apparently been read. That was another matter which showed fairly conclusively when this woman was last alive. The passage your Lordships had in mind was this: "You saw her at 10.10 ? (A) Yes. (Q) So if she was alive at half-past six, your opinion is wrong, is not it ? (A) Yes."

So much for the medical evidence. I can only submit with regard to that, and I am entitled to insist, am I not, upon the prosecution proving their case, not leaving it to chance, that there was no evidence at all reliable as to what hour that woman had met her death. The utmost that could be said was that the symptoms found were consistent with having been killed while the husband was still in the house, but beyond that you could not take it, and at this stage of the case I desire, if I may respectfully, to emphasise that is all this prosecution was ever doing, saying: You might have done it, it is consistent with your having done it; there are when certain suspicious things which look rather as if you did it, but they never got within, in my submission, an arm's length of what is called proof in our courts. and that matter, I submit, remained absolutely unproved when she was killed, according to the medical evidence. With regard to when she was last seen alive, which is, of course, not quite the same proposition, but rather akin to it, one has to rely, as I have told your Lordship, upon the evidence of that little milk boy, the whole of whose evidence entirely depended upon whether he could be relied upon as having accurately observed the time at 20 minutes past six.

THE LORD CHIEF JUSTICE: That was the boy close?

MR ROLAND OLIVER: Yes. Before I read close's evidence I want to remind your Lordships of a proposition which I should have thought hardly /needed authority, but which has been laid down by your Lordship in a case as recently as 1927. It is the case of *The King v. Dora Harris*, Reported in 1927, 2 King's Bench at page 590: "In civil cases the dispute is between the parties and the judge merely keeps the ring, and the parties need not call hostile witnesses, but in criminal cases the prosecution is bound to call all the material witnesses before the Court, even though they give inconsistent accounts, in order that the whole of the facts may be before the jury. The intervention of the judge by calling a witness is nearly always in the interests of the prisoner", that is something else. That is a proposition which I should have submitted is

fundamental, that it is not for the prosecution, particularly & prosecution conducted with all the resources of the Police of Liverpool, to pick and choose their witnesses, or to say that because it suits our case better that she was last seen alive at half past six we will not call any witnesses even though they may be witnesses of perfect good character who say she was seen alive & very considerable time after that; we will not call them.

MR LORD CHIEF JUSTICE: You do not say, I imagine, that the prosecution were bound to call a witness as to whom the prosecution are of opinion that the witness is lying?

MR ROTALD OLIVER: Certainly not. I tried to include that when I said that there is nothing against their character.

MR JUSTICE BRANSON: It may not be a question of "against their character".

MR ROLAND OLIVER: I see the distinction, my Lord.

MR JUSTICE BRANSON: A perfectly honest witness may have been making what the Police think is an obvious mistake.

MR ROLAND OLIVER: Well, my Lord, what had they to put against it; they had the reconstructed evidence, because it was the reconstructed evidence of this little boy which depended entirely upon his having looked at a clock at 25 minutes past six. The witnesses who were eventually called were people of equal credit to that little boy, and they had at all events so far as I can see just as good an opportunity as the little boy had of knowing the time. Why should not they be called?

MR JUSTICE HAWKE: When the boy was cross-examined, did not it finally come to this, that he could only say between 6.30 and 6.45?

MR ROLAND OLIVER: No, my Lord, he did not say that finally. As to how the thing came out I will call your Lordship's attention to the evidence in a minute. Of course this thing, as I said, was a Nine days wonder in the district, and the children in the streets were talking about it. Within 24 hours of the murder that little boy was talking to three or four witnesses whom I called, and the question then arose, he already having said to one of them about the time; one said to him: When was it you saw her last night, and he

said to them, all three of them, I do not suppose anybody suggested they were not telling the truth about this: "I saw her at a quarter to seven; thereupon they said : Well, but if you saw her at a quarter to seven, the news paper had published that Wallace went out at a quarter past six, want you ought to tell the Police, and therefore it is very important; people could not say it was Wallace if you saw her alive at a quarter to seven, and he left his house at quarter to six. The papers were wrong in saying that, but that is how the matter occurs within 24 hours of the time the boy had said to three witnesses that it was a quarter to seven that he had seen Mrs Wallace alive. I put that to him in cross-examination and said: Did not you say that, did not you say within 24 hours it was a quarter to seven; at first he said: No, I did not, and then eventually be admitted, and this is what I think Mr Justice Hawke has in mind: I did say it was between half past six and a quarter to seven.

MR JUSTICE HAWKE: If that is so, the evidence of the witnesses whom you say should have been called was not inconsistent with that.

MR ROLAND OLIVER: No, my Lord.

MR JUSTICE HAWKE: The Police, you say, should have called them?

MR ROLAND OLIVER: Yes, my Lord.

THE LORD CHIEF JUSTICE : Even if it had been inconsistent, I gather those two witnesses should have been called, and the difficulty in which the prosecution was should have been frankly laid before the jury and explained to the jury.

MR ROLAND OLIVER: That is the whole point. Why are the prosecution to pick and choose unless there is some great reason for thinking a witness is lying, or a person of bad character; why should they pick and choose whom they will call? Half past six suits their case and half past six they call; the evidence of those children which might have thrown grave doubt upon half past six was not called. Why should the boy be heard to say: I looked at the look at 25 minutes past, and then I did a test with

the Police, and I did it in six minutes and then in five. They got it down to five minutes.

Why should that be right when that same boy within 24 hours has been telling his little friends in the street: I saw her at a quarter to seven. He is told if that is true Wallace cannot have done it, you had better tell the Police, and on that he was taken to tell them. With regard to the inconsistency that matter is dealt with in this judgment : "Even though they give inconsistent accounts"; that is your Lordship's own judgment. In my submission, it was not for them at all. 1 There was the very gravest reason to think that the boy, close, was wrong; if he had said within 24 hours a quarter to seven, he had been got back to half past six by the process of reconstruction, and he said he looked at one clock at 25 minutes past six, and then being taken over what he had to do by the Police he does it first of all in six minutes and then in five. I shall have to read the evidence with regard to that test, and I do ask your Lordships to look at it and consider the sort of test it must have been, the Police test to reconstruct the time. If your Lordship would look at Exhibit 15 what the boy 18 said to have done in five minutes is this. Does your Lordship see on the left of Exhibit 15 is Breck Road, a big road with tram lines in. Breck Road is going up and down the plan; he was in the Breck Road he says at half past six. Does your Lordship just opposite where Richmond Road goes into Breck Road there is a thing called a Tram Stop. Just opposite the Tram Stop, or a little lower down, to use an Irishism, there is a big open space, or what looks like an open space, but which is, in fact, a Churohyard, which has a very large clock upon it; that is the clock that he is looking at. He then passing the clock has to come to Sedley Street, he then turns to the left and has to go into his Dairy; he has to get rid of his empty milk cans and bring full ones out. He then has to come out into Sedley Street, turn to the left up Letohworth Street, where he has to ring a bell and leave some cans with milk and take away cans, and then go through Letohworth Street, drop

bis cans of milk and deliver some in Richmond Park, and then go up the little entry coloured red in Wolverton Street, round to the front of Wolverton Street, there ring Mrs Wallace's bell and go beyond that, deliver another can and then come back and hand his can into the hands of Mrs Wallace. That is what he had to do in five minutes. It is 500 yards and if he was occupying himself in going 500 yards he would have to go at the rate of 34 miles an hour to do it in five minutes.

10 10 five minutes. Then solemnly with all the circumstance of the Police of Liverpool it was put before the Jury that that boy only took five minutes walking in the ordinary way, or leisurely walking round with the Police going through the Streets covered that distance of 800 yards and did it in six minutes and then in five minutes, and therefore they say half past six was their time. I have already pointed out that that boy, and I am going to read the evidence, if your Lordships please, had within 24 hours of the time been saying it was a quarter to seven. We called a witness a little girl, who said she saw Close going through the Streets that night. Your Lordship will see the way things happened that night which imprinted themselves upon the memory of these children. She says that when she saw the boy, Close, going up Letchworth Street that night it was 20 minutes to seven, and that she knew it because some church bells she was interested in had ceased tolling some time before. I am pointing this out as showing not that this was not a got-up defence, but that these witnesses were giving their own recollection. The other boy was called, a boy named Wildman who was delivering papers at the next door to Mrs Wallace and he saw Close on the doorstep wearing his Collegiate cap: That boy says the time was either 20 minutes or 23 minutes to seven; it does not agree with quarter to seven, and it does not agree with the little girl's recollection, but it is not concocted, it is the boy's own evidence, and we put that matter before them: And then finally there was a paper man, he was not a boy, but a man of perfectly good character, as is admitted by the Police, who had delivered a

papers at about half past six. He said at the trial he thought it was 25 minutes to seven. It was then pointed out that he had made a statement to the police when he had said it was half past six. The paper was left in the letter box, not handed to Mrs Wallace, but after the murder that paper open and apparently read was on the kitchen table. Was that not evidence worth putting before the jury as to what time Mrs Wallace was last seen alive. Could it possibly be suggested that after committing that murder the person had taken the paper and left it on the kitchen table in that my? Obviously not. In

my submission, all that evidence ought to have been called, as upon the totality of it, upon any fair view of it, it would be obvious that Mrs Wallace not only was not last seen alive at half past six, but was probably last seen alive very much nearer a quarter to seven. As I have said and I have given the reason for it, every minute of that time is vital to the appellant, absolutely vital; if you get to anywhere near quarter to seven it would be fanatical to suggest that he could have been the murderer, but that is how the matter was dealt with the prosecution.

HE LORD CHIEF JUSTICE: May I point out to you, I do not want to interrupt you, but it seems to me there is a difference between the two propositions. It is one thing to say there was no evidence to go to the Jury, and it is another thing, it is not, to say other witnesses ought to have been called ?

MR ROLAND OLIVER: Yes, my Lord, they are two different things. I am, I hope, not making it too apparent, but I do suggest that in this case the Jury were influenced against the appellant by the way this case was pressed, I am not particularly referring to my learned friend, but the police witnesses and everything, was put against us in an oppressive fashion, and that if your Lordships are left in doubt whether there was a miscarriage of justice, that must be a matter which your Lordships would weigh along with other things. I do not base the whole of my case upon this, I am merely pointing out at the moment that the question of time being all-important, that is the way it was dealt with.

May I say this to your Lordships, now I am upon this matter. I do not want your Lordships to think I am here only with grievances for the moment, but the solicitor instructing me wrote during the progress of the hearing to the Solicitor conducting the Prosecution, saying this. First of all, we sent to him a Proof of Allison Wildman, the boy who said he saw close on the doorstep at 22 minutes to seven, and having sent them that we hoped they would call him, but they did not. We then wrote this on the 10th March: "will you kindly arrange to supply us with copies of all statements taken from persons who were called at the Police Court. We make this latter request so as to enable the Defence to investigate the lines of enquiry pursued by the Police which in their judgment did not lead to results or which they did not think it worth while to pursue". We hoped the police had got some statements that we did not know about, and that we should be able to follow them up for the Defence. We got the answer on the 16th March: "I will enquire whether there are any statements, as mentioned in the last paragraph of your letter, which would be of assistance to the Defence.



and will write to you further." Then the next letter is the 31st March: "We beg to draw your attention to your letter of the 16th instant, and shall be glad to hear from you in accordance with your promise". The answer to that is nothing; so that bit of assistance the appellant was seeking received the answer of nothing at all. So that is the way the matter stands, and I only want to summarise it now in this way:

The Police refused to call one witness whose Proof we sent them, though there could not be anything against his credibility or credit. They ignored the fact that there was a witness to whom close had made a contradictory statement within 24 hours, a statement which would have disposed of his evidence if it was true; they declined to call Jones, the paper man, though he had told them he was there at half-past six, although the paper he delivered was found upon the table, and finally they refused to assist us in any way at all by giving us that assistance which one would have thought, and one would have hoped, the police would be glad to give in any criminal case, let alone a case of murder.

I shall have to call attention, I am afraid, to some of the details of the evidence which I have been discussing. May I take the boy close, first of all. In-chief, I need not read the whole of it, but I would call attention to one question on page 34: "(Q) Did you deliver milk there that night ? (A) Yes. (Q) What time ? (A) Half-past 6. (Q) How do you know the time? (A) when I passed Holy Trinity Church it was 25 minutes past 6 and it takes me 5 minutes to get to Mrs. Wallace. (Q) Can you say why you noticed the time 25 past 6 ? (A) I generally glance at the clock when I pass. (Q) When you delivered the milk who took it in ? (A) Mrs. Wallace. (Q) You are sure about that ? (A) Yes." I really think that I ought to read the whole of this boy's evidence, because it is a very vital matter. Then he is cross-examined. "(Q) Just a little more detail about. When you saw the church clock, were you walking ? (A) Yes. (Q) Your bicycle, we are told, was broken ? (A) Yes. (Q) so you had to walk ? (A) Yes. (Q) When you said it usually takes

you five minutes to get to Wolverton Street, was that when you got a bicycle ? (A) No. (Q) You generally have a bicycle, do you not ? (A) Yes. (Q) How often do you have to walk?" – then I can omit some of this; then we get his round: "(Q) when you passed the church clock -- we have been told where it is. It is Just at the corner of Breck Road and Richmond Park -- were you on your way to the Dairy in Sedley Street ? (A) Yes. (Mr. Roland Oliver): Your Lordship sees now why I had this scaled off. (Mr. Justice Wright): Yes, how did you go down the Richmond Road ? (nr. Roland Oliver): Down Breck Road ? (The witness): Go along Sedley Street and through the opening. (Q) Where is your shop ? (A) In Sedley Street. (Q) I want to take you carefully because this is very vital, absolutely vital. (Mr. Justice Wright): Your shop is in Sedley Street, you say? (The witness): Yes, my Lord. (Mr. Roland Oliver): May I take it at 6.25 when you pass the clock you walk down Breck Road, turn into Sedley Street and go into your shop ? (A) Yes. (Q) Do you there get some fresh cans of milk? (A) Yes. (Q) And you would then start on a fresh round ? (A) Yes. (Q) Along Sedley Street up Letchworth Street where you have got customers ? (A) Yes. (Q) Turn to the left at the top of Letchworth Street into Richmond Park ? (A) Yes. (Q) How many customers have you in Letchworth Street ? (A) One. (Q) And how many in Richmond Park ? (A) One. (Q) I suppose you have to ring at the bell ? (A) NO, knock at the door. (Q) And someone comes and opens it and takes the milk in ? (A) Yes." When this police test was done, I do not know whether all these people were poised to open the doors when they got there; it seems a most amazing thing, in my submission. "(Q) Then you walk along into Richmond Park ? (A) Yes. (Q) There you deliver the milk and go through the same process again, I suppose ? (A) No, put two bottles in the garden. (Mr. Justice Wright): You go up Letchworth Street and turn to the left at Richmond Park. (Mr. Roland Oliver) And up the entry to Wolverton Street ? (A) Yes. (Q) There is a narrow entry which turns to the right and goes up 11ke that ? (A) Yes. (Q) Let us see what you have done

since you passed the clock at 6.25. You have covered a distance of 500 yards, and you have been to the shop. Do you put away your empty cans ? (A) Yes. (b) Where do you put them ? (A) Leave them on the counter. (Q) Then pick up the fresh cans, walk down this street and make the delivery in Wolverton Street ? (A) Yes. (Q) Do you really say you did that in five minutes ? (A) Yes, I have been over the ground with two detectives and it took me five minutes. (Q) doing all the same things ? (A) Yes.

(Q) When did you do that ? (A) Just after." I think all this is upon the same matter. Then I come to the next matter at the bottom of page 36. I asked him if he gave the little girl, Elsie Wright in Letchworth Street, and he said he did. That little girl gave evidence that it was then 20 minutes to seven. He admits that he saw her. Then at the top of page 37: "(Q) If Elsie Wright says that the time was then some thing like 20 to ? you would not agree with her; is that right ? (A) No, Sir. (2) Do you know the Belmont Institute ? (A) Yes. (Q) Do you know the bells of it when they ring ? (A) Yes. (Q) did you hear them ring that night ? (A) No. (Q) What time do they ring ? (A) Well, 5 to 6, I think. (Q) was there any half-past six service that evening ? (A) I did not hear any. (Q) Do you know a boy named wildman ? (A) NO." He says he had a collegiate cap on, and that is how wildman identified him. Then a little way down: "(Q) Would you have your collegiate cap on that evening ? (A) Yes. (Q) when Mrs. Wallace spoke to you when you gave her the milk -- I suppose she took the milk in at the door ? (A) Yes. (Q) did she go into the house, leaving you standing there ? (A) No. I knocked at the door and left it and went to Mrs. Johnstone, and when I came back she had taken it in. (Mr. Justice Wright): You never saw her then ? (A) I saw her when she came back. (Q) You say you knocked at the door and left it on the step and went somewhere else, that was next door ? (A) Yes. (Q) And then you say you came back to pick up the can ? (A) Yes. (Mr. Roland Oliver): You leave it in a can ? (A) Yes.

(Q) She takes it in, empties the can and either hands the can back, or puts it down outside ? (A) She gave it to me back. (Q) Into your hands ? (A) Yes. (Q) That is what I thought ? (A) Yes. (Mr. Justice Wright): Then you saw her when she gave it to you back ? (A) Yes, my Lord. (Mr. Roland Oliver): Did she tell you to hurry up home because you had got a cough? (A) Yes. (Q) And did she not say she had one too ? (A) I do not remember. (Q) She might have ? (A) She might have. (Q) I suppose the next day you heard of the murder, did you not ? (A) Yes. (Q) You did not go at once to the police, did you ? (A) No. (Q) We have got now to the 21st. On the evening of the 21st did you have a conversation with the girl, Elsie Wright? (1) Yes. (Q) were there also there another boy named Metcalf ? (A) Yes. (Q) And some one called Caird ? (A) Yes. (Mr. Justice Wright): A boy ? (Mr. Roland Oliver): Yes, my Lord. (Q) That is right, is it not, he is a boy ? (A) Yes. (2). I want you to try and remember, if you will, a conversation that took place then did the boy Metcalf when you went up to the group say: "You ought to go and tell the Police you were at Wallace's!! (A) Yes. (Q) Did he ask you this: What time were you there? (A) I do not remember. (Q) Just try and remember, will you? Perhaps this next thing will bring it back to your mind. Did you say: 'At a quarter to seven' ? (A) no, Sir. (Q) Think. I suggest to you in the presence of Kenneth Caird, Elsie Wright and this boy Metcalf you said that you were there at a quarter to 7 ? (A) No, between half-past six and a quarter to seven. (Q) Did you say that ? (A) I think so. (Q) You were there? between half-past 6 and a quarter to 7. That was true, was it ? (A) Yes. (Q) Why have you sworn to-day you were there at half past 6 ? (A) Well, I was not sure then. (Q) Why are you sure now ? (A) Because I have been over the ground and it has taken 5 minutes to cover that ground and that added to 25 past 6 makes it half-past". Your Lordship sees there, what I call, reconstructed evidence. "(Q) When did you think that ? (A) Later

on. (Q) But when ? (A) The following Sunday". Then a little lower down: "(Mr. Roland Oliver): Did Metcalf come and persuade you to go to the Police ? (A) One of them did (Q) Did Elsie wright or Metcalf go with you to the Police at the house ? (A) Yes. (Mr. Justice Wright): Where was that ? (Mr. Roland Ollver): At the house in Wolverton Street. (Q) I think you had been there before that afternoon with Elsie Wright to see if they wanted any milk there ? (A) Yes. (Q) And when you got to the house, did the policeman say to you: 'What, you again ?' (A) NO, he said he did not want any. (Q) That was the first time, but when you went back with Elsie wright and Metcalf, was the door opened by a policeman ? (A) Yes. (Q) Did he say to you: 'What, you again?! (A). No, I do not think so. (Q) Never mind; It does not matter very much. I must put this to you quite seriously as I may be allowed to call evidence about it: that you, in the presence of those other boys and that girl, that eve ing said that it was a quarter to 7 when you were at Mrs. Wallace's. Now you think hard. Is not that right". There was a pause, during which the witness sat down, I think he was invited to sit down. Mr. Justice Wright said: "Perhaps he is tired. (Mr. Roland Ollver): I do not want to distress him or bully him. (Q) Are you feeling all right ? (A) Yes. (Q) will you just apply your mind to what I put to you. Did you not say to those other boys and girls that night that you took the milk to Mrs. Wallace at a quarter to 7. ? (A) NO, between half-past 6 and a quarter to 7. (Q) It has taken you a long time to answer. You were not feeling 111, were you ? (A) No. No, he was not; he was quite truthful, but he had a difficulty in answering the question apparently, not brought about by any feeling of illness. "(Mr. Justice Wright): He shook his head several times and could not bring himself to speak". I agree. Then: "(Mr. Roland Oliver): Do you remember, still on the question of the quarter to 7, the boy Metcalf saying this to you: 'The Police ought to know because In the papers it is said Mr. Wallace went out at a quarter past 8ix, and 1f you saw her at a quarter to 7 the people could not

think Wallace had done it. (A) No (Q) Do you say you cannot remember, or he did not say it? (A) I am sure he did not say it. (Q) Nothing like it? You see what I am putting to you. He said: 'It is so important you should tell that to the police, because it is said in the papers Mr. Wallace went out at 6.15 and if that is 30 people could not say he had done it' (A) No. (Q) Are you prepared to swear he did not say that? (A) No. (Q) He did not say it? (A) No. (Q) Nothing like it? (A) He persuaded me to go to the police. (Q) Yes, but do not you remember the newspapers had said quite wrongly Mr. Wallace went out at 6.15? (A) No. (Q) You do not remember that? (A) No. (Q) Are you sure then that nothing of that sort was said? (A) I cannot swear to it." Then, if your Lordships would turn over to the re-examination on page 41, the first question: "(Q) Did you know that it was said in the papers that the prisoner had left at 6.15? (A) Yes. (2) You knew that? (A) Yes." The exact opposite of what he had been saying to me.

MR JUSTICE BRANSON: so far as there was any point about clearing the appellant, the point would be equally good whether he had seen Mrs. Wallace at half-past 6 or a quarter to 7?

MR ROLAND OLIVER: Yes.

MR JUSTICE BRANSON: The paper-man says 6.15; it did not matter whether half-past 6 or a quarter to 7 from the point that the children were making? MR ROLAND OLIVER: From the point the children were making, half-past 6 would be just as good. I am much obliged to your Lordship. I am respectfully submitting that no Jury who were approaching the matter from a judicial point of view could have ignored the evidence of those children about what took place that night, and it must have been obvious that young Close had said he saw her at a quarter to 7. The time, putting it against me, is a reconstructed time worked out by the police on a test which, as I suggest, is on the face of it fantastic, 5 minutes; it is too good; they were battling for every minute because they realised the difficulty of their case, they realised what this man would have to do in the time if he was the murderer; they were fighting for every minute and that is what they did; they got that boy back to half-past six and would not call another witness who could only put it a few minutes later, although there were available a number of witnesses who thought it considerably later.

(Adjourned for a short time).

R ROLAND OLIVER: When the court rose, my Lords, I had just concluded reading the evidence of the Witness close. Might I now point out the evidence of Mr Wildman, which is on page 302. I did not point out that in one reply Mr Close in re-examination to my learned friend "(Q) was there anything particular that made you notice the clock that night ? (A) NO, sir". That was question 585.

Now Wildman's evidence is this. On page 301 near the bottom of the page he says "I begin delivering papers at about twenty past six. (Q) Where did you go? (A) I bring the papers from the motor, I take them to the shop" --- that is 156 Lower Breck Road; that is the Road running along the top of the Plan --- "and then go down Suburban Road to II, 19, 21 and 20, 36 Winchester Road, 34 Clarendon Road, 52 and 48 Claude Road. (Q) Then you go back to the shop? (A) Yes. (Q) And get some more newspapers and start a second round? (A) Yes. (Q) The jury can see these places on their map if they look. Do you go to Hanwell Street? (A) Yes. (Q) Taplow Street? (A) Yes" --- These are all on those maps --- "(Q) And by two entrances to Richmond Park? (A) Yes. (Q) Down the entry which is called Campbell's Dancing Rooms into Wolverton Street from Richmond Park? (A) Yes". You will see Taplow Street on the left, and Twyford Street on the left, and Lower Breck Road and then you come to the entry into Richmond Park, and that entry which leads through is by the corner of Campbell's Dancing Rooms --- "(Q) Then you go along Wolverton Street where you deliver papers to Nos. 28, 27, 22, 20 and 18? (A) Yes. (Q) No. 27 is next door to No. 29, Mr Wallace's house? (A) Yes. (Q) The doors almost touch? ((A) That is right. (Q) when you delivered your paper at No. 27 (that evening what was happening, if anything, at No. 28? (A) I

saw a milk boy standing on the top step of No. 29. (Mr Justice Wright): He has got the numbers wrongly, but it does not matter-- next door to Wallace' s; you know the Wallaces? (A) Yes. (Q) It is next door to that, No. 27? (A) Yes. (Mr Roland

Oliver): Did you know the boy by name? (A) Not by name. (Q) Did you notice anything he was wearing? (A) He was wearing a collegiate cap. (Q) Have you seen the boy close since? (A) Yes. (Q) was that the boy? (A) Yes, that was the boy. (Q) Tell us, will you, what time that was? (A) I passed Holy Trinity Church clock at 25 to seven and it takes me two minutes to walk to Wolverton Street, so it would be 23 minutes to seven when I got there. (Q) when you went away where was the boy? (A) Still standing on the step" -- - Then the very question in cross-examination is "Did you tell your mother the next day that you had been in Wolverton Street about 6.35? (A) Yes" --- That shewed that the police had taken this boy's statement, and had ascertained that the day afterwards he had told his mother it was 6.35, thereby shewing that his attention had been drawn at the time to the time. I say that if anything could be required to emphasise what I was venturing to say to your Lordships before,

trust it was the fact that the police actually knew that within 34 hours that boy had told his mother it was 25 minutes to ? --- I will read my friend's cross-examination if my friend wishes it, or if the Court wishes it, but I do not think anything occurred during the cross-examination in any way touch the evidence of that boy, except that he now said 6.37 and then said 6.35, and he accounted for the difference by saying that he had to walk from the clock. So much for him.

Then Elsie Wright, who worked at the same dairy that close worked at, said, on page 304: "(Q) What were you doing that evening?" --- That was the 20th. January --- "(A) I was delivering milk as usual. (Q) Was Alan also delivering milk? (A) Yes. (Q) Did you see him at all that evening? (A) Yes. (Q) Where did you see him? (A) At the bottom of Letchworth street" --- You will see from the Plan that Letchworth Street was part of Alan close's 500 yards round. After leaving the dairy he goes down Letchworth Street into Richmond Park, 60 that she saw him on his round --- "(Q) which way was he going? (A) Down towards Richmond Park. (Q) He was coming from Sedley Street up



Letchworth Street on his way to Richmond Park? (A) Yes. (Q) would that way take him to Wolverton Street ? (A) Yes. (Q) Did you speak to him? (A) Yes. (Q) Stop and speak to him, or what? (A) I just said 'Hallo'. (Q) Do you know what time it was? (A) About 20 to seven. (@) what makes you say that? (A) When I was the bottom of Richmond Park the half-past six bells were ringing of the Belmont Institution. (Q) where is that; it is in Belmont Road, is it? (A) Yes. (Q) You heard the bells. What time do they ring? (A) Half-past six. (Q) Is there a service then? (A) I think so. (2) How long do they go on ringing? (A) Not very long, about a minute or two. (Mr Justice Wright): Where were you then? (A) At the end of Richmond Park by Breck Road" --- So that she was then just by the lit-up church clock --- !(Mr Roland Oliver): That is the other end of Richmond Park? (A) Yes, by the church. (Q) Had you been delivering in Richmond Park? (A) In Twyford Street. I came up breck Road, and the bells were ringing when I got to Richmond Park. (Q) Then what did you do? (A) The bells stopped then and it was half-past six by the church clock. (Q) You saw the clock? (A) Yes. (Q) What did you do after that? (A) I went to the Vicarage of Holy Trinity in Richmond Park. (Q) was that before you got to Twyford Street? (A) NO, I had been there. (Q) Then did you go to Richmond Park? (A) Yes. (Q) Did you deliver milk there? (A) Yes. They kept me about five minutes. (a) Did you have to deliver milk there? (A) Yes. (Q) And they kept you there some time? (A) Yes. (Q) Then where did you go? (A) Came up Richmond Park and delivered some milk. (Q) And then come up Letchworth Street, where you had to deliver? (A) Yes" --- There was that witness's evidence, and without pretending that it establishes the time, she does give, in my submission, what is a very valid reason -----

THE LORD CHIEF JUSTICE: Will you not read the next question?

MR ROLAND OLIVER: Yes, my Lord. "The next day I suppose you all heard of the murder? (A) Yes. (Q) In the evening of the next

day were you with some other children, a boy named Metcalfe and a boy named Kenneth Caird? (A) Yes".

THE LORD CHIEF JUSTICE: Yes.

MR ROLAND OLIVER: I might have read that question, and I wish I had thought of it, but I was pausing there at the moment merely to point out that that little girl's evidence, as really cannot say why it was not just as good, prima facie, as the evidence of the milk boy, except that she had never made any contradictory statement to other people, but the milk boy had; but that little girl, whose evidence pointed strongly in the direction of the milk boy, was not called. I suppose, considering that the Prosecution have refused to assist the Defence by giving statements, the Defence may think themselves very lucky that they have found the little girl, or were able to call her at all. That is that girl.

MR HEMMERDE: We had never heard of any of these witnesses except Jones and Wildman. MR ROLAND OLIVER: On, Mr Hemmerde -----

MR HEMMERDE: Oh, but it is so. It is true. Jones and Wildman were the two that we had heard of. MR ROLAND OLIVER: Jones and Wildman were not called by the Prosecution. Let me deal with Jones. I need not read his evidence, because your Lordships know what he said, but my point about Jones, if I may venture to repeat it, is, not the certainty when he left the paper, but certainty that that woman was alive when the paper was put into the door, because the paper had been taken in and was lying on the kitchen table, apparently having been read, after the murder.

THE LORD CHIEF JUSTICE: Or at any rate opened.

MR ROLAND OLIVER: Or at any rate opened, yes, my Lord, and lying on the kitchen table. Your Lordships will see that by some process, after the paper has got on to the kitchen table, if the Appellant did this, he has got to get his wife into the sitting room, with the gas and the fire lit, and so on, to be in a position to murder her. I am only pointing out that

paper does add very considerably to the testimony a man who delivered it, by its presence on the kitchen and it will be enough if I read one of them. I do not want to read them all, but I do want to shew your Lordships the nature of the evidence about Close's admission the day after --- I call it now an admission, but I mean close's statement that it was a quarter to seven that he had seen this woman alive, in such circumstances that except for the fact that he will not have a quarter to seven, and says between half-past six and a quarter to seven, it is admitted by close that that took place. I think I might take Metcalfe with regard to this, on page 307, or perhaps as I have the evidence of Elsie Wright, she will do as well as the other. It is page 305. "The next day I suppose you all heard of the

were murder? (A) Yes. (a) In the evening of the next day/you with some other children, a boy named Metcalfe and a boy named Kenneth Caird? (A) Yes. (Q) Whereabouts were you? (A) Standing up Breck Road near Richmond Park. (Q) Did close come up and join you? (A) Yes. (Q) Had you seen the papers that day? (A) Yes. (Q) Did you hear Metcalfe speak to close? (A) Yes. (a) What did he say? (A) He asked him first of all did he deliver milk the night before at Mrs Wallace's and Alan said 'Yes', and he then asked him had he told the police and Alan said 'No'. Metcalfe told him it was important to tell the police, and Metcalfe said 'We will all come with you if you go to the house, and we all went. (Q) Was anything said about what time close delivered? (A) Yes. 'We all said what time, and close said 'About a quarter to seven'. (Q) Was it after that that you went with him to the police? (A) Yes. (Q) Have you any doubt that that is what he said to you? (A) No, sir" --- Then there is something about an expression used, which does not matter. That witness said "About a quarter to seven", and the other two witnesses said that he had said "at a quarter to seven".

THE LORD CHIEF JUSTICE: Then you see the first question in cross-examination.

MR ROLAND OLIVER; Yes, my Lord. 10). At that time were the papers reporting that Mr Wallace had left his house at 6.15? (A) Yes. (Q) so that the only question really that was to you children was whether alan had left well after that time or had seen the lady well after that time? (A)Yes" --- There the learned Recorder is making the point that Mr Justice Branson drew my attention to this morning, that there would be absolutely no point in these children putting into his mouth that he was there at a quarter to seven if he was not. There that matter stands, and with regard to the other end of the time, that is the time when he left the house, that is fixed, as I have said, with reasonable certainty. A number of police tests were made. I do not wish to comment on the fact that they were made, presumably --- well, they were made in fact, by young and more or less athletic people, but the times that they took, following the route that Wallace says he took that night, which was to walk to the nearest tram stop and get on to the tram --- their times IOL that varied between --- I think there was one as short as 67 minutes, 18, 19 --  
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MR HEMERDE: 15. MR ROLAND OLIVER: My learned friend interrupt ed me too soon. I said as short as 17, 18, 19, and 20 minutes. That is following the route that Wallace said that he took. There were two or three tests which they had succeeded in doing it in 15 minutes, but by following a different route, and that was walking down the red line on your Lordships' plan until arrival at Belmont Road, and then jumping a tram which was coming down the road. The alternative to that would be walking down the road to a stop, which was out of the way, and waiting. Those times were made by jumping trams, in 15 minutes. I ignore those, because in my submission they do not apply to this case. I do not know whether the Jury were supposed to believe that this elderly man had come rushing straight from the horrible murder of his wife, having hardly had time, one would have thought, to cleanse himself and do all the

things that he and to do, and jumped on to a tram. THE LORD CHIEF JUSTICE: You any elderly. He is only 58.

MR ROLAND OLIVER: Yes, my Lord I said no, because I approaching that time of 111e myself.

MR JUSTICE RANSON: It looks different when you are approaching 10 from what it does when you have passed it.

MR JUSTICE HAWKE: It might be evidence in the other direction.

MR ROLAND OLIVER: With regard to the Police teste, I have only to say this, that one of the Police Officers, Detective Sergeant Bailey, was good enough to admit that their tests would have been fairer tests 11 they had been brought to the conclusion of actually getting on to the tram at Lodge Lane, which none of them were; they were all tests which recorded the time of arrival at Lodge Lane. I therefore submit, that the Lodge Lone time being fixed as near as one can at 7.6, it is reasonable to say that Wallace did leave his house, as he says he did, at a quarter to seven, or thereabouts. It must have been within a minute or two of a quarter to seven, and if that is so, then there is the problem: What time was Mrs Wallace lest alive? Th THE LORD CHIEF JUSTICE: Last seen alive.

MR ROLAND OLIVER: Yes, my Lord, last seen alive. What time would that give him, 11 he was the murderer, to do all the things that had to be done? About those two matters which I have suggested are crucial, who sent the telephone message, I submit that all the evidence was that he did not send it, and it is only if he is assumed to be the murderer that it can be said that he did send it. In other words, instead of being evidence that he sent it, it is a mere drag on the case for the Prosecution. You have to assume that he is the murderer before you can say that there is any evidence that he sent it. With regard to the fixing of the time of death, all that the prosecution can claim to have done is to say "She might possibly have been alive at a time when he was in the house. she might have been alive, and that of course I am admitting, and I am saying that it does not begin

to go in the direction of proof.

Finally, with regard to the time when she was last were seen alive, the fair result to any reasonable Tribuna. trying this case upon evidence is that she was last seen alive ever in the neighborhood of twenty minutes or a quarter to seven pass from that part of the case, and I am anxious to deal with all that can be said against the Appellant. I do not wish to shirk anything. Let me take the next thing that is said against his. It is said "You were on your way to this imaginary address; you were behaving in a way that no ordinary man would have behaved; you were seeking to attract attention to yourself with a view of establishing an alibi".

THE LORD CHIEF JUSTICE: The learned Judge in his Summing up calling it a faked alibi.

MR ROLAND OLIVER: Yes, my Lord, a faxed alibi. If that was so, it does seem a little strange that not before the Appellant arrived at Lodge Lane is he recorded as having spoken to anybody, and that his enquiries do not begin until he has got to a stage in Liverpool where he is a comparative stranger. If he had been making enquiries and calling attention to himself when he first got on to the tram and was going down a street that he knew well, it might have been a very significant thing, but his enquiries do not then begin. I had something else in my mind, but I am afraid it has gone.

THE LORD CHIEF JUSTICE: I hope I did not distract you.

MR ROLAND OLIVER: Not in the least, my Lord. I am afraid it evaporated.

MR JUSTICE HAWKE: You were telling us that he was not trying to establish an alibi earlier than that period.

MR ROLAND OLIVER: Yes, my Lord.

MR JUSTICE HAWKE: Does that remind you of that you were about to say?

MR ROLAND OLIVER: Yes, my Lord, I am obliged. That has reminded me of what it was that I wanted to say to your Lordships. consequently, it is not an alibi if the Prosecution's case is

right; it is not an alibi at all, but it is proof, according to them, that he did it. It is said by them that doing the thing that he would have done, and would been in a position to do, if he had been the murderer.

With regard to the nature of the business, might I draw your Lordships' duration to the evidence of Mr Crewe on pages 68 and 69. A tremendous point was made throughout this prosecution: "why should he go for why should he take the trouble to po after business from a man whose name he did not know? Why did he not find out that the address did not exist?" and all those sort of things. With regard to that, Mr Crewe says this on page 68, about two-thirds down the page: "Would he have any right to have business in such a district as Menlove Gardens ? (A) Every right. (Q) Just tell us why that would be right? (A) Because he is only restricted to his own area for industrial premiums, that is weekly premiums; for any other class of business he can go where he likes. (Q) You mean for such a thing as a proposal for an endowment policy? (A) Yes, he can go where he likes. (Q) Something has been said about a 21st. Birthday. Do people sometimes give endowment policies to their children? (A) Yes. (Mr Justice Wright): Ordinary life policies? (A) He could do that anywhere in the country. (Q) And he could get life policies or endowment policies? (A) Yes": --- Then a little lower down: "(Q) What commission would he get on an endowment or life policy? Would it be something worth having? (A) Yes, 20 per cent of the yearly premium" --- That sort of business would naturally be attractive to him, and if he said time was making enquiries, so he was. I do not propose to read them unless your Lordships with me to do so, but I do want to read the Appellant's own \* explanation of what he did, and I submit to your Lordships that no reasonable tribunay could have rejected it upon what they had to put against it. I submit that it was perfectly reasonable that having gone all this long way, he should not immediately give up the quest: but he should take a considerable amount of

trouble to try and trace the man. He might get him through his name; the street might be wrong. or half a dozen things. With regard to the enquiries on the trams. I am not going to trouble your Lordships with them beyond saying that he did not know where Menlove Gardens was at all, and nobody had told him. Nobody knew Menlove Gardens East obviously, because it did not exist, but Menlove Avenue of course is a well known street, and it was apparently said that everybody must know Menlove Avenue.

It is something like three miles long, and Menlove Gardens might be at any point along it, and I fail to understand how a legitimate comment could be made upon the fact that more than one he asked the tram driver to put him right for Menlove Gardens, not Menlove Avenue. With regard to the things he did when arrived, I should like to read his own account of them on page 239, and this account substantially, as probably your Lordships know, was given to the police long before the Trial in the form of various statements. On page 239 he gives it. I have got him down off the tram, and at the top of page 239 he is asked: "What did you do, first of all?" ---- If your Lordships care to follow this, you can do so on the exhibit which is on the same one as Exhibit 15, because that shews the Menlove Gardens district. He gets down at the second tram stop from the left of the Plan, which is Menlove Gardens West: "(Q) What did you do, first of all? (A) I walked up to the top of Menlove Gardens West on the right hand side. Menlove Gardens West to the best of my recollection, and I see that is correct from the plan, is a triangular piece of ground, the middle of which appears to be occupied by some enclosed ground but no buildings on it. I do not know whether it is a garden or what it is, I could not see. I walked up Menlove Gardens West on the right hand side until I got as far as Menlove Gardens North. I saw the nameplate on the end of the street, and realised that was not quite where I wanted to be. I walked down Menlove Gardens North some distance, possibly about 8 or 10 houses, still on the side of the Gardens or the waste ground. Some lady came out of a house there, about



the eighth house down, and I waited till she got out of the gate and stepped across into the middle of the road and asked her did she know where Menlove Gardens East was. She did not appear to know very much about it but she suggested it might be along this road, meaning a continuation of Menlove Gardens West. (Q) She told you to continue along there? (A) Yes. (Q) Did you go on to Menlove Gardens West? (A) Yes. (Q) What did you do then? (A) Retraced my steps and went along Menlove Gardens west and went along Dudley Gardens. I did not know the name till I saw the nameplate and then I realised there was no Menlove Gardens East in that direction. About that time a gentleman I know now to be the Witness Green was coming along the road and I stopped him and asked him and he said he did not know of such a place as Menlove Gardens East and I said: 'All right, perhaps I had better enquire at No. 25 West), so I went back to 25 West". TO save reading the evidence, may I interpolate that the evidence of a lady living in Menlove Gardens West, Miss Matner, was that the district was rapidly growing, and new houses and streets were springing up continuously, and there were places whose names she did not know, and she said so herself. Mr Crewe, who lives in the district, also said that there were names that he we know did not know. Then the evidence goes on "(Q) Getting there/what happened? (A) A lady answered the door. We had a little conversation and should could not help me. Then I went along Menlove Gardens South" --- your Lordships will see it on the Plan --- "and these were even numbers, therefore my number was not among them. I turned round into Menlove Gardens North, the other end, and I noticed they were even numbers also, and therefore my number could not be amongst those, and I was a bit puzzled to know what to do. I did not know where I was going to find myself. Then at this spot which you see here a man was standing at that corner and I asked him, but he appeared to be a stranger and he could not help me. (Q) Where did you find yourself then? (A) In Menlove Avenue at that tram stop. (Q) Where did

Green you go next? (A) Down Green Lanell --- Then, getting into 42

Lane, he said that he recognised that it was a street where Mr Crewe lived, a vic whose house he had been accustomed, five times only, two years before, to have lessons on the violin. From that moment I need not trouble with his movements, because he spoke to various witnesses, including a policeman, and it was said to be a matter of great suspicion because he caused the policeman to look at his watch and record the time, but the conversation just before then had been this: "Can I see a directory?", "Yes, you can see one at the Post Office".

It was along the road, and it was a sweet shop, and he said "It is not 8 o'clock yet, and it will be still open". That would be a most natural and obvious thing to do. There it is. That was made a great feature in the case against him, that all these enquiries were most suspicious. Having been told more than once that the place did not exist, or that people did not know it, he should have given up enquiring. I should have thought that obvious flimsy material upon which to base a case for the prosecution.

I pass from that, and, seeking, as I am entitled to seek, for some piece of evidence that this man did this thing, not that he might have done it, or that it looks rather suspicious or that it was not easy to see who else did it if he did not; but looking, as I am entitled to look for some piece of evidence that he did it, I can only submit that there is none to be found in the whole of that evidence --- the whole of it --- and it is absolutely consistent with a man who has got in the way of what was probably a good and valuable piece of business staking some little trouble before he left that pursuit. Why he should be seeking to establish his alibi at that end, and why he should not be seeking to establish it when he first got on to the tram, which would get him away as quickly as possible, one cannot see, but these things were all left in the air by the Prosecution, and it was simply treated as a matter of course that it would not be until he got near to the other end of the journey that he would be seeking to establish what was called his faked alibi.

His journey home from that place brings him back to his back door at about 8.45. The police called a woman named Lily Hall, who said that she had seen him in the street at 8.35, talking to a man, apparently on his way home. It is difficult to treat that evidence very seriously, in my submission, for several reasons. In the first place the street was dark; she could have had no possible object in noticing him, but every reason to exercise her imagination after this event had happened, which must have stirred the whole of this neighbourhood. There is a type of mentality which likes to be associated with stirring events. The man who he was said to be talking to has disappeared; he has been advertised for, and he has never come forward. Why he should not it is difficult to see. Next, why should the appellant deny having spoken to such a man should he? What possible object could he have, in pursuance of his story? On the contrary, there is the best possible reason for saying that he would have mentioned him, because if it is suggested, as I gather it is, that he wanted to get someone to go into his house with him, and see him go in, so that he would not be left alone with the murdered body and no witness that he had only just come in, there was the man for him. I can only say, there it is. Again, the most that can be put upon it is this: "You were not telling the truth when you said that you got back at 8.45 or thereabouts." There is just this also: The police have been astute in this case about their times against the appellant. Your Lordships have already seen the lengths to which they have gone to do that. The witness Lily Pinches, in whose shop in the Menlove Gardens district he had been allowed to look at the directory, put him as arriving after 8 o'clock, and leaving about ten minutes after 8. If he did that, he could not possibly have arrived home by 8.35, going by tram. That was the home journey, which did not interest the police, and they did not make any experiments with regard to it, but from the evidence given of their other experiments one is able to say that it would take him at least 35 minutes to get

back from that shop to his home, or at any rate nearly 35 minutes, 32 or 33 minutes. Then is time to be used against him in the mouth of one witness, and not in his favour in the mouth of another? If Lily Pin is anything like accurate, he could not have been back at 8.35.

Now I pass from that, and I come to the entrance into his house. Great play was made with this: "You pretended that you could not get in. You said that you went first to the front door and could not undo it, and then to the back door and could not undo it, and then you went round to the front door again and found it bolted, or you could not undo it, and finally you were going back to the second time to the back door when the two Johnstones came and found you." Before that point is to be used against an appellant in a case of this sort, one would like to understand to what it is directed. I cannot understand, and I can only say that it was never made plain to me what he was supposed to be doing when he was, as it was stated, pretending that he could not get into his house. Was the idea that he would not go in alone? If that was so, he would have gone to his neighbours the Johnstones, and called them, and said: "Look here, I cannot get into the house; do you mind helping me?" But not a word of it. Not a word of it. They came up absolutely unexpectedly upon their own business. If it is said that this was a pretended affair, he would not have been really knocking at the door; but he did knock at the door, because the witness Mrs. Johns tone heard him, some minutes before they came out. She had heard him knocking at the door, as he said he did, on the back door. He said the handle was stuck and he could not get in. As I was saying, what was he supposed to be doing? If it was to rouse the neighbourhood, it would not have been just his ordinary knocking that she heard on the door, but it would have been some uproar intended to bring people out in order that they might go in. Whatever the truth be about the locks, they are both defective; that much was admitted by the locksmith, that

The back door might have stuck; that it was rusty, and might have stuck in what is called the strike, the thing that the bolt goes into. With regard to the front door, as to which Superintendent Moore made a great point that he never told him it was bolted, he says that it was bolted. He told Police Constable Williams it was bolted in the very first statement that he ever made about it. There the matter stands.

With regard to that, I say that if that matter is going to be used as more than mere suspicion, what is it said to prove What is it said to prove ? Why ? For what object, on the evidence was he pretending that he could not get into his house? In my submission what one looks for in this case, and in my submission what one completely fails to find, is any piece of evidence which is not consistent with innocence; and if that he the result of an investigation of the evidence, then in my submission this verdict, if I may quote the language of the Section, is unreasonable and cannot be supported having regard to the evidence, and that there is grave danger that there may have been a miscarriage of justice.

THE LORD CHIEF JUSTICE: You are reading from the Criminal Appeal Act?

MR ROLAND OLIVER: I was, my Lord; Section 4. That is of course what I base myself upon. It does not need me to remind you that this Court has on a good many occasions, not perhaps very many, because the matter does not often arise, but this court has upset the verdicts of juries upon that very ground.

THE LORD CHIEF JUSTICE: We did it a week ago.

MR ROLAND OLIVER: Your Lordship does not need me to remind you, but what was in my mind was this: Can you say that this case was inconsistent with the reasonable possibility of innocence ? If it is not, then in my submission one of the main purposes of this Court is to see that such a verdict as that, which would shock public opinion, and shock our sense of justice, should not stand, because the case has not been proved.

Now may I go into the house, and deal with another aspect of this case. It is a very horrible aspect of the case,

but it has got to be discussed, and it concerns the outpouring of the blood of this poor woman in the sitting room. There are photographs. I do not desire that your Lordships should to at more than are absolutely necessary, but there are photographs in Exhibits 6 and 7.

THE LORD CHIEF JUSTICE: We have seen them.

MR ROLAND OLIVER: Yes, my Lord. They shew, they along with the rest of the evidence, that this woman was struck down and killed practically instantaneously at a time when her head was now all her full height, but in either a sitting or a stooping position on the left hand side of the mantelpiece, because it was pointed out that the spurt marks of blood had impinged directly upon that place on the wall about 4 feet up, but that in all the other directions -- and it spurted in practically all directions a it had gone sideways. so as to strike the wall or the particular object diagonally, as can be shewn from the directional nature of the stains, as it is called. With regard to the certainty of blood being upon the assailant, I am going to rely, for once, on the evidence of Professor McFall, and that is to be found on page 142. This of course is a critical part of the case, and I propose, unless your Lordships desire otherwise, to trouble your Lordships with some of this evidence. It is right at the top of the page, and I am cross-examining. "The theory has been put forward here by the Recorder when he opened this case that this might have been done by a naked man wearing a mackintosh ? (A) I heard that theory, yes. (Q) Whether clothed or whether naked it would be necessary, would it not, in all common sense that many splashes of blood would fall upon the assailant ? (A) Yes, I should expect to find them." --- Upon this topic there are exhibits consisting of pictures, and they were produced in Court. They need not of course be shewn here, but your Lordships will take it from me that there were thirty or forty blood spots on one picture; that is the kind of thing; masses of it; you cannot see it all in the photograph, or any thing

like it. "(Q) When the blood vessels are broken out, do not they ? (A) Yes. (Q) Would you agree that nothing in this life is certain, but it is almost certain that the assailant would have blood on his face and his clothes ?" and his answer to that is: "On his left hand I think he would." Then: "(Q) What about his right ? (A) No, I do not think so. (Q) Think of it running down. (A) No. You do not find the blood so much on the hand that holds the weapon. (Q) Not when blow after blow is delivered ? (A) No. If it is done by the person's getting hold of the victim by the hair there would be a great deal of blood upon the left hand and not upon the right. (Q) The last blows being probably struck with the head on the ground" -- that is the last ten -- "there would be blood upon his feet and lower part of his legs for certain, would not (A) I should expect that. (Q) And the blood would continue to" --- The Shorthand writer has got this word wrong throughout "apurt" was the word. --- "the blood would continue to spurt while these blows were being struck, would it not ? (A) Yes, and I looked for it. (Q) So that the mackintosh would never come down below the knees of this man, who would leave his leg from the knees downwards exposed to the blood?" --- The length of the mackintosh was 50 inches, and this man is well over six feet high. --- "(Q) Whether he was wearing trousers or whether he was wearing nothing ? (A) Yes. (Mr Justice Wright): So there would be some on his face ? (A) There would be some on his legs. (Mr Roland Oliver): And his face ? (A) Yes. (Q) And his hair ? (A) Yes, but more likely upon the face. (Q) You agree it would be most likely on the face ? (A) Yes, I agree. (Q) Although not so certain to be on the leg? (A) Yes, that de right. (Q) With regard to the finger nails you would agree, would you not, if blood gets below the finger nails it is difficult to get away? (A) It is difficult. (Q) It really is difficult ? (A) Yes. (Q) Would you agree it would be almost certain that the assailant would have blood under the finger nails ? (A) Not

necessarily." --- I am breaking off there for another purpose. I shall have to read what follows afterwards. There is that passage. Mr. Roberts, who I understand is a Chemist of some distinction, is the City Analyst, of Liver pool, and whenever the case for prosecution got into a difficulty upon some medical question Mr Roberts was asked about it, and did not hesitate to express his opinion, as I shall be able to shew your Lordships very shortly. He is the analyst, and the analyst was asked on page 161 by my learned friend in examination-in-chief, he apparently not relishing very much these answers of Professor McFall, and seeing the difficulty they got the prosecution into: "(Q) Supposing a person was wearing just a raincoat like that and nothing else, would you expect a great deal of blood to be on that person if he was the assailant striking the blows ? (A) I should not. (Q) It has been suggested there would be a great deal of blood over the legs and hands ? (A) I do not think there would be very much blood after the first blow. There would be a spurt then and afterwards the blood would mainly come from the spurt itself." - --I am afraid I did not think it either necessary or expedient to cross-examine this witness on that evidence, but I have pointed it out in case it should be thought to be evidence at all.

The last witness about it is Professor Dible, who is a pathologist, on page 292. We called him for the Defence. Your Lordships will understand that all the evidence for the Defence had to be called in the course of about half a day, and had to be taken, necessarily, very very shortly. At question 3736 Professor Dible was asked: \*We must agree there would be a certain amount of spurting of blood. What do you say as to the likelihood of an assailant being covered with blood from that operation? (A) I should say he could hardly escape being spattered and covered with blood all over."

Now, my Lords, the naked-in-a-mackintosh theory first made its appearance at the trial, but that involved, if one came to think it out, the necessity that those typical spurtings of



blood which were upon the picture and upon the walls and upon the furniture, if the assailant were wearing the assailant were wearing that mackintosh should be upon the mackintosh. No such suggestion was made at the Police Court; no such suggestion was made in my learned friend opening; but when Professor McFall came into the witness box, for the first time that vital fact was put before the Jury, if it were a fact, that there were some typical spurtings on the mackintosh. I am going to deal with that now, and shew what it came to. I need hardly tell your Lordships, after what I have said, that no notice of any kind was given to the defence about this. Your Lordships see the vitality of it. You cannot examine a thing like a horrible blood-stained mackintosh in a Court with any sort of thoroughness.

If we had had notice of this we could have had it properly examined, but as it was we had to deal with it on the view. Now this is how it was dealt with in Professor M Fall's examination by my learned friend, on page 130, at question 1814: "(Q) Just hold it up" -- he is asked to hold up the mackintosh -- "and let us see where it is burned, and also the blood-stains? (A) And the blood-stains? (@) Yes; this side here, on the right side, and blood-stains" --- This must be the witness --- "one particularly is very characteristic." -- That is the very first mention of this at all. --- "(Mr Justice Wright): Where on the right side? (A) The burning is upon the right side. The blood-stains are all over it. (Q) There were blood stains also on the right side? (A) Yes, my Lord. (Mr Hemmerde): You said that one of the blood marks was very characteristic? (A) Yes; that is on the left sleeve. (Q) It is inside out now, is it not? (A) Yes, there are several of them by appearances, but this one is very definite. (Q) You have got to the left now? (A) It is the left I am looking for. By the handling a good deal of the blood has been detached -- no, it is not; it is quite definitely here. That is the one I refer to, quite definitely here upon the left sleeve, shewing a projection mark of blood. (Q) Would you put that into simple language? (Mr Justice Wright): What

Is a 'projection mark' ? (A) The blood is thrown on to something; it may be small particles of blood projected on to some surface the usual thing is from a spurting artery. The same thing comes from ink, or anything." --- Then a little lower down: "This is direct projection. There it is, to speak for itself. (Q) How are there of those? (A) Only two definite; the others are indefinite."

To shew your Lordships the tremendous effect that this had upon the Jury, when I was addressing the Jury in my opening speech and commenting upon this evidence, the lateness of its introduction and other facts about it which will be before your Lordships in a moment, I said: "Mr McFall was only able to point to two things which he said were definite", and I said. "You may be quite sure that he shewed you the best he had got", and one of the jury interrupted me with a considerable show of hostility and said: "Yes, the best", meaning that there were crowds of others.

That incident actually took place during my opening, shewing the effect that this had upon the jury.

Now if I may go on reading the evidence, it continues : "(Q) Have you looked at both sleeves? (A) Yes. I cannot find anything on the other one quite so characteristic. There is definite blood here, but not the characteristic mark of projected blood. There are a good many that are doubtful, nothing that I can speak to definitely." --- There he is pinned to two things he has said definitely are marks of projected blood.

MR HEMMERDE: Could my learned friend say when the interruption from the Jury took place ?. It is quite new to any of us.

MR ROLAND OLIVER: It took place during the opening. .. I cannot say the precise spot, because I have not got a transcript of the speech, but if you question my accuracy about it, there are sitting in Court at least three or four people who I know heard what was said.

MR HEMMERDE: None of us heard it.

MR ROLAND OLIVER: I am sorry there should arise that difference between us.

THE LORD CHIEF JUSTICE: The Court will not question your statement, Mr Oliver:

MR ROLAND OLIVER : I know your Lordships would not, and of course my learned friend did not hear it.

MR HEMMER DE: I do not question it, but we none of us heard it.

MR ROLAND OLIVER: My learned friend did not hear it. I could indicate which juror it was; it was the gentleman sitting in the back row on the left.

Now I was going on with this part of the case on page 144, where I am cross-examining the Professor upon this topic.

I am going to ask your Lordships to particularly observe two of the Professor's answers which are totally at variance with a other, and completely mutually destructive. Starting near the bottom of page 144, at question 1974, I asked him this used us go to the mackintosh for a moment. You have pointed out to the jury two things which you say are definitely blood projections | (A) Yes. (Q) Will you take it up again. (Same hand ed) You told the Jury (do not take it I am differing from you for a moment) that what you would call" --- I think this must be wrong --- "what you would call a trickle would come around sideways, an elongation, something like that ? (A) Yes. (Q) It could be splashed, spirted or dropped?" --- That is the point, "dropped". --- "(A) Yes. (Q) Are those two marks there anything more than a drop from the head on to that mackintosh? (A) Not necessarily. It all depends upon the condition. - I can fall in with your suggestion putting the mackintosh in that position (illustrating) and the blood dropping down there would produce that effect. (Q) First of all, I got it from you that those marks on the sleeve might be the marks of a drip? (A) They might. (Q) What I am suggesting to you is that they are perfectly consistent with marks of a drip if that sleeve happened to be in a position which would watch the drip in that way? (A) They are. (Q) Now beyond those two there is nothing on that mackintosh that you can show which points definitely to anything being a spurt" -- it ought to be -- For a drip? (A) No."

MB JUSTICE HAWKE: I have got "stain".

MR ROL AND OLIVER: It ought to be "spurt". Your Lordship sees that the whole point was this: "Can you say it was spurted on to the mackintosh? You cannot deny it may have just dripped upon it?"

--- And that he admits. Now at question 1982 it goes on: "(Q) Yes, supposing he was wearing it and there was this frightful spurting that you have told us about, do not you think there would be more than those two things upon it? (A) NO.. (Q) Why do you say that? (A) Because the blood all goes towards the floor."

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That is the reason that the witness at that point was saying to me "I should not expect to find more than two, because the blood, when the head was on the floor, would all go towards the floor." Now would your Lordships mind looking at question 1990 ?

MR HEMMERDE: Will you read question 1983 ?

MR ROLAND OLIVER: I will go back to where I was and read right on, because I think it is better. "(Q) You have been pointing out to the jury that it has been spurting all round the room? (A) That was the first blow. (Q) You told me while she was lying on the floor the blood would spurt?" --- again, it is written "spill" --- "(A) Yes, it would as it pumped out. (Q) And you said you would not... expect any more than those two marks? (A) Yes, there would be a good deal. (Q) Typical splashes is my question? (A) They do not always fall as typical splashes. There is plenty of blood j e r e which might have been projected and which bears the typical appearance; they do not all bear that typical appearance." --- He is continually trying to suggest that they cannot be pinned to what they are, but there are other typical marks, --- "(Q) Photograph No. 6 shews that 4 ft. from the ground level with the fireplace a whole series of splashes. There has been a regular spurt there ? (A) Yes. (Q) Which shews where the head probably was when it was hit ? (A) Yes. (Q) That is rather at a height above the ground which would bring them away from the assailant? A. Level with the head of the assailant. (Q) And all around ? (A) No, I tried to prove it. They all went into the corner. (Q) You find blood splashes well above the floor all

round the room over the piano? (A) In that direction.

(Q) That is the opposite direction to the corner where we are now. (A) NO, I think those blood splashes by the door did not come from the first blow (Q) They went upwards, did they not ? (A) Yes, from the floor. (Q) Then while the head was on the floor the blood would go upwards? (A) Yes, and away from the assailant."

Do your Lordships see what manner of witness this Professor is ? On the page before he has been saying: "You would not get blood on the mackintosh because when the head was on the floor the blood would go downwards", and then when he is tackled upon that, within a single page he is saying: "My answer to your question is that when the head is on the floor the blood will go upwards." Then I finish with him by saying: "Q) 10 are speculating ? (A) I am. (Q) You are simply guessing? (A) No, not guessing (Q) It depends entirely where he stood' (A) Yes, it does. (Q) Very well." --- There is that. Then I need not read the evidence of Professor Dible the pathologist upon that, because he agreed with what Professor

McFall said, that the two typical projection marks were absolutely consistent with simply being two drops of blood which had dripped on the mackintosh from the head. There was the case about the mackintosh. Upon what except pure guess-work was the Prosecution theory of naked-in-a-mackintosh based ? It was absolutely essential to their case, because he could not have got rid of clothing, nor washed it. It is out of the question. So that gradually they are driven ba ok upon naked-in-a-mackintosh.

Now what you know about the mackintosh 1s this, that the mackintosh is found, as I am going to shew your Lordships, in spite of the strugglings of the police, found underneath the shoulders of the body, just where it would be had she cast it over her shoulders to go to the door to let in this man who had lured her husband away. Of course, he would come in with some excuse, and say: "Have I missed your husband? I wanted to get him before I went away. Could I come in and leave some account of my business?" So he would get in, and she, with that thing

still round her shoulders, would have taken him into the room and lit the gas, which must have been lit because otherwise there could not have been the murder, and lit the fire, which must have been lit because otherwise her dress could not have been burnt, and as she was rising she was felled to the ground. It is absolutely consistent. The prosecution had to admit through the mouths of their witnesses, that this story was perfectly possible. If it was possible, how is it disproved What I am upon at the moment is the mackintosh.

If it was upon the woman's shoulders when she was struck down, falling as 350 fell and as you can see she fell in the photograph, it would naturally have swung into the gas fire. Her skirt was burnt, and the mackintosh was burnt, and it was burnt in the place where it would be burnt if it had been round her shoulders.

Then the evidence was -- I need not read it to your Lordships -- that the murderer had dragged her by the hair from the burning fire, and had certainly or almost certainly stamped out the mackintosh, which was burning, because there were the ashes of it just in front of the fireplace, and that is how the thing had happened.

What happened is speculation. The Prosecution's speculation is that the murderer was naked and wearing a mackintosh. The evidence in support of that appears to be no more than the complete and insuperable difficulty of the Prosecution in proving their case in any other way. So far from there being evidence that that is what happened, the evidence is the other way. The evidence is entirely in favour of the garment being upon the woman whose skirt was burnt, and it is almost, I should have thought, fantastic to try and assume two different accidents to two different people, involving the burning of two different pieces of clothing at different times, which is what the Prosecution's theory means.

Now I pass from that to the evidence that I said I would shew your Lordships that the mackintosh really was underneath the body. Your Lordships see that if it really was

underneath the shoulders of the body, if the murderer who had been wearing the mackintosh put it there he must have lifted up that broken head and got covered with blood. I have been approached without becoming absolutely covered with blood. He would have had to do that. The Police, when they became alive to the difficulty of the mackintosh being underneath the body, were concerned to say that it was not underneath the body, but it just looked as if it had been, I think Superintendent Moore said, just tucked in as if you were tucking up someone in bed. That is not the evidence. The evidence as to where it was is to be found first of all from the people who were first there; long before Superintendent Moore or Professor McFall, the Johns tones were there and Police Constable Williams was there.

Here is their evidence. Mr Johnstone is at page 81. He had been into the room, as your Lordships know, just after the first discovery, and at question 1155 he is asked this: He is shewn the photograph, and he says: "No, she was not like that when I went in; there was no mackintosh when I was there." On page 82 he repeats it at question 1166: "When you looked at photograph No. 7 you said there was no mackintosh ? (A) That dos correct. (Q) When you went in you did not see one? (A) No. (Q) Did you see any thing that'was like one? (A) Nothing whatever. (Mr Jus tice Wright): Nowhere? (A) No, my Lord. (Q) Nowhere in the room? (A) No." --- So that the mackintosh, which undoubtedly had been there, was in such a position that that witness had not observed it. Then Mrs. Johnstone gives evidence about this on page 89, at question 1274: "Did you see a mackintosh anywhere? (A) I did not notice a mackintosh until Mr Wallace drew my attention to it. (Q) Tell us about that in order of time. At that stage you did not notice the mackintosh; is that right ? (A) That is right." Then on page 93 she again gives an answer about it, at question 1322: "That I follow" -- It is an argument about the mackintosh, and she says: "But it was almost hidden under the body, you see." -- that is referring to the mackintosh.

Then on page 97 at the bottom of the page she deals with it. This is in cross-examination and the o  
CT089-examination, and the other was in examination in chief. "(Q) You say when you first saw the  
mackintosh the body was on top of it: is that right ? (A) Yes, it appeared so to me.

There was very little of it to be seen.(Q) Under the shoulders? (A) Yes, under the shoulders.

(Q) What colour was it? (A) I think it was a grey. (Q) A slate grey colour ?

(A) Yes." Then the next witness 18 Police Constable Williams.

I am giving these witnesses in the order of the their appearance on the scene.

Police Cons table Williams on page 108 says this: Question 1560: "(Q) We have been told

by Mrs Johns tone, who was with the accused all the time, that no-one moved the mackintosh or  
touched it except to finger it until you came in. When you came in and saw them was the mackintosh  
partly under the body? (A) It was.

(Q) And partly under the shoulder ?

(A) Yes. (Q) And only sort of rumped bits of it sticking out ?

(A) Yes, near the back of the head."



Now those being the first three people to see the mackintosh, apart from the appellant, Professor McFall on page 143 -- I am taking up the passage I abandoned a short time before -- at Question 1954: Was asked this: "Would you agree it would be almost certain that the assailant would have blood under the finger nails? (A) Not necessarily. (Q) Through handling the thing as suggested? (A) Touching things unless you scrape the things you would not get blood under the nail. (Q) They had to lift the mackintosh up? (A) No. the mackintosh was not underneath the body. There was a little underneath the right shoulder when I saw it. (Q) Somebody who saw it before you has told us quite clearly it was under the body with bits of it sticking out. But putting it where you saw it it must have been thrust under the body? (A) But I understood nobody had taken it out before I saw it. I do not think anybody removed it before I saw it". This gentleman is always ready to escape upon some matter of hearsay and say he has made enquiries and so forth. "(Q) You see you do not know what happened before you saw it? (A) True. (Q) Assume it was under the body that would mean that the assailant if he wore the mackintosh lifted the shoulders up and put the mackintosh underneath. That would involve getting heavily dabbled with blood? (A) NO, when I saw it there was a little pushed under the shoulders by a band. (Q) Supposing the mackintosh were put under the body the assailant would have had to lift that shoulder and the head up to do it? (A) He would. (Q) That would have involved getting heavily dabbled in blood, would it not? (A) Dabbled in blood but not heavily. Supposing he did? (Q) I ask you to assume it. You can assume a thing without admitting it? (A) Yes. (Q) When you went to the bathroom it was suggested that the defendant went and had a bath. Did you see any signs of a wet bath towel? (A) NO, I did not". That is how the matter stood. Now Superintendent Moore carried the thing even one better at page 175.

MR JUSTICE HAWKE: The next question is: "(Q) Or a wet towel of any sort? (A) NO". There was a towel there.

MR ROLAND OLIVER: Yes. It was evident there was a towel that had been used, not in the sense of being wet but it was not cloud. The towel might have been wet. They went to the length of saying that they suggested the using of the nail brush, it look as if it had been recently used because the hair was damp, but no-one ventured to suggest that the towel was even damp, it was perfectly dry. I was going to read what superintendent wore said about it. Your Lordships see the case for the Police with their difficulties increasing namely, this theory, which has rather been burst upon them that the lady might have the mackintosh over her shoulder and that was how it got burnt. Professor McFall said that only a little bit was underneath the body. Superintendent Moore goes one better at page 175: "(MR Hemmerde) can you tell my Lord and the jury was there any part of the body resting on it? (A) No part of the body was resting on it. (Q) Had any one disturbed it so far as you knew before you took it? (A) So far I knew, no. (a) You saw it there? (A) It was like this as though it had been put in this position round the shoulder and tucked in by the side as though the body was a living person and you were trying to make it comfortable. No portion was resting under the body". I can only say that upon that evidence any reasonable tribunal having regard to the fact that Superintendent Moore was not upon the scene examining the mackintosh for some four and three quarters after the Johnstones arrived, must have concluded that at the time of the discovery of this body the mackintosh was practically underneath the shoulders and unless it had been put there by the murderer after he had committed the murder which would involve his getting covered with blood, hands and nails and everything, that it must have been upon her when she fell. The theory that it was upon her shoulders came from one of the witnesses for the prosecution, Mrs Johnstone, who said that/she, saw it it occurred to her it was just as it would have been had she thrown it upon her shoulders, not putting her arms through it, and gone to the door to let some-one in. I said that the prosecution had taken

alarm at our theory on that matter. Let me make that good, because I put it I think to Professor McFall at page 141, Question 1929: "(Q) If she had that coat round her and the gas fire was alight and she fell when she was struck so as to burn her skirt in the lit fire, do you not think it quite possible that the mackintosh swung round on to the fire place and caught fire? (A) No, because there is no evidence of it having been on her right or left arm" -- a deliberate evasion of the question --- (o) Suppose it was round her shoulders and she collapsed, do you not see the possibility of the bottom of the mackintosh falling into the fire and getting burnt too? (A) There is the possibility. (Q) Her hair was pulled away from her head, was it not, all up? (A) Yes. (Q) And the pad which had been under her hair was away from her body? (A). Yes, some inches. (Q) Do you not see the possibility of someone having grasped her by her hair to pull her from the fire? (A) Yes. (Q) Where her clothes were burning? (A) I do not know about the burning". I have already made the point and only wish to emphasise it that the burning of that garment coupled with its position, coupled with the fact that the skirt was burnt, spoke loudly against the theory which as I have suggested rests upon nothing but speculation that his mackintosh was upon his naked body at the time when he committed the murder. In my submission there is nothing but the sheerest guesswork to support anything of the kind and as far as it has any existence at all the evidence about it , is all to the contrary. I cannot leave the mackintosh without pointing out that that is a sample of the sort of point that it was thought right to make against this appellant on this prosecution for murder. Your Lordships may have noticed on the Shorthand Note this, I will read it, and I know there can be no dispute about it, that he was the first person who drew attention to the fact that the mackintosh under the body was his, and he pointed it out, first of all to Mrs Johnstone and said: Whatever was she Toing with a mackintosh, and my mackintosh, and stooped down and touched it. He next pointed it out to Police constable

Williams, the first police officer to arrive, and later before Superintendent Moore had come at all, police constable Williams and Police Sergeant Breslin, who was not called, were together with the appellant in the room and police constable Williams said "Pits were sticking out" -- that looks like a mackintosh and the appellant said: "It is mine, it usually hangs there", indicating a rack just by the front door past which the woman would have come on her way to the door, "that is where it generally hangs". In the kitchen after that, while Mrs Johnstone was sitting with the appellant, a big burly policeman whose name we never found out came into the room and said: "Why, Mr Wallace there is a mackintosh on her; what about it" --- "Yes it is mine". Those are the facts which cannot be denied. This is the point that was made that after that Superintendent Moore and Inspector Gold and Sergeant Bailey standing a somewhat formidable group in the doorway of the room called him up, not knowing he had already claimed it and said to him: "Whose mackintosh is that", so that he hesitated and did not at once acknowledge it. Then he picked it up and said: "Yes, it is a gents" and he said "If it has got two patches inside this arm it is mine". That point was made a tremendous deal of and reiterated against him, that he should have hesitated to have acknowledged it. I can only describe it as oppressive that a point of that sort in a murder case should come from the crown. He hesitated to acknowledge to a group of three officers what he had already acknowledged to four other people three of whom were policemen. Is it wonderful that having told already four people three of whom were policemen that it was his, when they come and say: "Whose is that, he should start doubting whether it was his and say: "Well, if it has those things inside it is mine"; that point was made. Where there is an atmosphere and a jury atmosphere that is not particularly friendly to a person on his trial, these sorts of points do carry weight when they are put forward by responsible Counsel, and a jury who are not well disposed towards a defendant for any reason do take notice of them, however ridiculous they may be. Those sorts of

points were made and persisted in against this man till the end of the case. I pass now to another topic. I do not like detaining our Lordships so long, and I do not like being long.

THE LORD CHIEF JUSTICE: Not at all.

MR ROLAND OLIVER: I have nothing but gratitude for the patience with which I am listened to in this Court, It seems to me when my case is, as it is here, that you cannot have the man convicted on this sort of thing, I have to go through it all and deal with it all. The next point that was made was this, it was a great feature in the opening, that this murderer went upstairs and he dripped blood in the bathroom and he put a blood smear upon four notes on his bedroom mantelpiece. I want to deal with that. It was said: No outside robber would have done that, and the man who did it must have knowledge of the internal economy of the house, known his way about, and so on. It is true there was a clot of blood on the pan in the bathroom, and it is true there was a blood smear on the notes. How they got there, in my submission, was perfectly beyond cavil at the trial, and, although the prosecution did not actually, if I may use the expression, lie down on it, my friend, Mr Hemmerde, in his last address was inviting the jury to regard those as matters of small importance which I took to mean that they had been to a great extent disposed of, and that apparently was also the view of Mr Justice Wright. The clot on the pan was  $\frac{3}{16}$ ths of an inch across and  $\frac{1}{8}$ th of an inch high, and it was, as it were, a segment, as it would be, as your Lordship sees was shaped a little like a hemisphere. It occurred to those advising the Defence a very remarkable thing that such a clot of such a shape could possibly have fallen from the appellant, or any recent murderer, because if it did, it would not have retained that shape as a clot of blood, but would have spread itself out like a drop of water or anything else on the flat, and that blood sufficiently coagulated to be able to retain its shape after dropping on to a hard substance like that would require to have

been shed for a very considerable time, and accordingly we got Cadence from Professor Dible the Pathologist and from Dr. Coope, who purposely conducted some 115 experiments for the purpose of proving this very thing, and the result of their testimony was that it is impossible that a piece of blood should retain that shape seter it had been dropped from any sort of height at all on to that hard thing unless it had been shed for at least, and they said at least an hour and probably more. Now with that information I cross-examined the Professor and this cross-examination appears on page 150. May I just mention this, my learned junior has been good enough to remind me of it, that that clot of blood was never discovered till a quarter to eleven, some time after the discovery of the murder, and what we submitted, and I should have submitted with every show of reason, was, with the utmost certainty about it was, that it had been carried up accidentally upon the clothing of some one or more -- or some one of the twelve officers of the Police who were at one time or other up and down the house, or indeed by the Professor himself who had been in very close contact with this body, as he said, the whole time, and might easily have picked it up upon his own clothing and never noticed it.

The position on the pan was that the shadow of the wash basin came over it and it would not be noticed.

Now may I read this evidence at the bottom of page 150: How long does blood take to become clotted ? (A) It varies very much. It varies a little bit but not much in 5 to 6 or even 10 routes. (Q) And its first condition when clotted is very mobile ? (A) Yes. (Q) It will just retain a clotted shape, but if interfered with will break up ? (A) Yes. (Q) May I call a 10 minutes old clot very new ? (A) Yes. (Q) If you interfered with that, it would break up, would it not ? (A) Yes. (Q) Or splash, would it not, and may I suggest to you it would take at least an hour for a clot of blood to be solid enough to become what I call interfered with and manipulated. Do you agree with that ? (A) NO. (Q) How long do you say ? (A) It would take a lot of blood solid enough to be interfered with ? I do not quite understand what you mean by 'interfered with. -- lifted about, moved ? (Q) not moved, let us say dropped on to a hard substance. (A) I see, to be carried by being touched and adhering to some thing. (Q) I suggest it would be at least an hour before you could take a clot and drop it down on to a table without smashing it up ? (A) A clot would smash up even then. (Q) It would break up unless it was quite solid ? (A) Yes, there would be some evidence of it being thrown in one direction. (Q) You see, what we describe as a fresh clot, if you dropped it on to some thing it would become liquid or break up and splash ? (A) Yes, it might. (Q) what I want to put to you is, it would be at least an hour before a clot of blood could be dropped without losing its shape after it has struck a foreign substance. Do you agree ? (A) I do not quite catch your meaning. Would take at least an hour before it would lose its shape. (Q) Let me take a clot of blood three-sixteenths wide and one-eighth of an inch high. While that is fresh and newly clotted if you were to drop that on to a lavatory pan it would spread out, would it not". He has now begun to take alarm and he says: "It would show some signs of spreading out." (Q) Experiments have been made about this? (A) I have made a good many myself". He has not treated us to

Them "(Q) What of dropping a clot ? (A) Yes. (Q) What I am putting to you is that it would take at least an hour before a clot of blood would be sufficiently solid not to flatten when it was dropped on to that lavatory pan ? (A) NO, I do not agree. In you do not ? (A) No. (Q) How long do you say it would take? w an hour. If you took the surface of a clot upon your finger and knock it down, it would fall off complete almost. (Q) Considering the blood you have described on the edge of that pan, what I am putting to you is that that must have dropped upon the pan at least an hour after that woman met her death ? (A) NO, I do not think so. (Q) Why do not you think so ? (A) Because \*t is quite fresh blood". That is really no answer at all; he is merely arguing.

MR JUSTICE HAWKE: I cannot follow this, at 2085 and 2086: "(Q) What I am putting to you is that it would take at least an hour before a clot of blood would be sufficiently solid not to flatten when it was dropped on to that lavatory pan ? (A) NO, I do not agree. (Q) You do not ? (A) No. (Q) How long do you say it would take ? (A) An hour! MR ROLAND OLIVER: It is typical of the witness. I am endeavouring to use these admissions for what they are worth from such a witness, to show that the evidence that I called was true, that it would take at least an hour. Your Lordships see that this witness answers completely recklessly. I say: "(Q) Why do not you think so ? (A) Because it is quite fresh blood. (Q) It has not lost its shape; it has not flattened out or become fluid. (A) I do not think it had been dropped from a great height. It does not show a splash to the side and the photograph shows it too". I do not like to use language of extravagance, but that Was a most extraordinary suggestion. His whole evidence about the splash mark being that when blood impinges like any other liquid, it forms an elongated splash; he was quoting that splash mark as being just the usual mark caused by the water on the top of the pan melting a little of the blood clot and running down. He was trying to describe that as splash mark. He says:



"I do not think it had been dropped from a great height. It does show splash to the side and the photograph shows it too. (Q) Would the top of that pan be moist? (A) Yes, almost certain to be, they always are. (Q) With little film of moisture? Yes. (Q) Would not that cause the blood to run little bit? (A) No. This is not running blood. It shows quite definitely it is splash, as you say. (Q) I never called it a splash, a slight smear you said ? (A) A slight smear, I said. (Q) It has not affected the shape of the clot; it remains conical. what I am putting to you is that that smear of blood would be caused by the blood being moistened by the moisture on the top of the pan? (A) No, it is too far: it is twice the length of the piece itself. (Q) If it was flung. It might go to anything. It is only in one direction ? (A) Yes. (Q) Is that towards the centre of the pan? (A) Yes. (Q) That I suppose is the way the thing had tilted? (A) Yes. (Q) Showing it had run downhill. Did you get blood on your hands while you were examining this body? (1) Very little. (Q) Did you wash them ? (A) No, not till I got home. (Q) When you for instance tested the head for rigidity of the neck, could you avoid getting blood on your hands? (A) I had very little. I had a little, but very little. (Q) When you were manipulating the limbs of the poor thing, you were in contact with it practically ? (A) Yes. (Q) You never 304 that clot of blood until you had been in the bathroom some time, did you ? (A) Not for five minutes. (Q) You told us you missed it at first ? (A) I did not see it at first. (Q) Does It occur to you that someone who came in after 9 had dropped that clot of blood on the pan ? (A) That possibility did occur to me very much indeed. (Q) Does It occur to you now? (A) It does. (Q) Having regard to the fact that there is no other blood upstairs at all, none, 17 a man went up all bloody to wash himself. it would be an amazing thing, would it not, that there was no blood upstairs ? (A) Only the one clot. (Q) Having regard to the state of that clot and your agreement with me that it was Probably an hour after that it fell ? I think you agree that ?

It is quite clear I am putting it: that / he did agree." (A) But I do rely much for the time on the clot". He has gone back to the time of the death. "Will you accept it from me, indeed you said the chance was that the Police had carried it up there ? (Yes). I thought the police might have dropped it there". In re-examination your Lordships see how that was dealt with:

"(Q) That occurred to you, Professor, because it was the only mark of blood upstairs ? (A) The only mark and it is so striking. (Mr. Justice Wright): And you now think it may have been carried there by the Police ? (A) No, my Lord. (Q) I thought you said so ? (A) I was asked, did I recognise the possibility ? and I said I did recognise the possibility and made enquiries about it". He is not only a Professor, but a professional witness and he knows perfectly well, he must have given evidence in scores of cases, and he must have known he had no right to do this. t "(Mr.Hemmerde): It was only a possibility present to your mind ? (A) Yes, I recognised the possibility. (Mr.Justice Wright): It is a possibility ? (A) Yes, certainly, but I took care to find out that the Police had not been up. (Mr. Roland Oliver): I meant the witness to understand that it was he who might have done it". I am sure I said he also who might have done it. "(The witness): I myself ? (Mr. Roland Oliver): Yes. (The witness): I am glad you have said that. NO I did not. (Mr.Hemmerde ) so far as you are concerned, have you any doubt about it ? (A) Not the slightest doubt about it". Then a little lower down Mr. Justice Wright puts my suggestion to him, and his answer is: "My idea was it was fresh blood carried almost immediately upstairs. How it came to be there, I do not know". He goes on to say he thinks it was possible it was carried up by the murderer. 'I can only submit to this court that no reasonable Tribunal of fact could have, first of all, failed to see that that Witness was not one upon whom intrinsic reliance was to be placed with regard to a matter of this sort, and, secondly, that he had In terms admitted at the time that the clot could not have retained that shape unless it was at least an hour old. Well, there he

was ending up, endeavouring to assert that in his opinion from its appearance it was absolutely fresh when it got upon the pan.

After the Professor, the Public Analyst, Mr. Roberts, was examined and gave his evidence in detail, all on the same day. That was the second day of the Trial. The third day of the trial had evidently brought fresh consultation in and fresh ideas to the minds of the prosecution, because at the very end the case for the Prosecution, again, without any notice to the Defence, Mr. Roberts, the city Analyst was put again into the witness-box for the purpose of saying that within a day or two of the murder he himself had made experiments, of which no notes existed, for the purpose of seeing how long it took for blood to become sufficiently solid to retain its shape in that conical fashion after it had dropped, and he had ascertained that it had happened within two minutes. All I have to say about that is a comment I have made before about this prosecution, if those experiments were fair and proper experiments, why had they not been proved at the Police Court ? could anything be imagined more vital or relevant in a prosecution of this man for the crown than to show that the shape of that clot of blood was perfectly possible, to show it by experiments; within two minutes of the murder; and therefore, short as his time was, he would have had plenty of time to leave it there. I can only make such comments as one ought to make about it. It seems to me a shocking thing, with respect, if on an issue of this sort, there was a chemist or indeed a pathologist or a doctor who could come and say he had made these experiments, and this was the result after his chief, or, I must not say, his bief, but the professor, has admitted in terms it would take an hour. I have already said I most anxious not to seem to criticise what the learned Judge did, but he did leave that evidence to the Jury without any comment perfectly serious evidence for them to consider. I replied to it by calling Professor Dible, at page 293, Question 3746: "With regard to the clot of blood, have you any view to express about whether blood only shed two minutes dropping from a height of 15

inches on to a hard substance like a porcelain pan would retain the shape that has been described to be the shape, one-third as high as it is wide ? (A) No, not in my experience. It would flatten". Then, a little lower down: "(Q) Have you any view to express as to how old the blood would have to be before it is sufficiently solid to be able to drop and to retain its form ? (A) I should put it as a matter of hours". That was the pathologist, and Dr. Coope, a very experienced Surgeon, I think a Fellow of the Royal College of Surgeons, gave evidence at page 297 and he was asked at Question 3796: "(Q) Have you made a very large series of tests with regard to the clotting of human blood ? (A) 115 experiments in all. (@) with regard to the time it takes to clot and the condition of it from time to time ? (A) Yes, and the drying of it". I do not want to read what is only technical, but it is only to give his enquiries. On page 298, Mr. Justice Wright said: "Had the drop of blood which formed that little thing been coagulated or was it fresh<sup>2</sup> when it fell on that pan ? (A) I should say, my Lord, it was at least an hour coagulated or I think considerably longer; and the reason I give for thinking it considerably longer is in the drying of it". "If I may comment, it would be more consistent with having been dropped by the Police.

MR JUSTICE HAWKE: It is the serum that dries out of it.

MR ROLAND OLIVER: The serum is liquid. The process is this, that the freshly spilled blood contains serum and that yellowish liquid would become expelled, and after the serum is expelled from the blood the blood is free to clot and become coagulated." What is left becomes coagulated. "Before you come to that, will you just answer this. In your view that clot must have been an hour at least away from the head that shed it before it fell from that hand ? (A) Yes, an hour. (Q) And you think very likely longer ? (A) Yes, I do. \*(Q) Is that the result of the many experiments which you have made ? (A) It is.

Again with regard to that matter I have submitted that no reasonable tribunal could have failed to come to a conclusion that that clot on the pan was not dropped, at any The rate by the appellant, if he was the murderer, because if it took an hour to form and had been dropped by the murderer, the murderer was not the appellant. To the end, my learned friend, Mr. Hemmerde for the Prosecution, was talking to the Jury about criticisms I had passed upon the veracity and reliability of the City Analyst; he was telling the Jury of the City of Liverpool that suggestions had been made against the Police of their city, and against the Analyst of their city, and I have no doubt the Jury were not unaware of the fact that I came from a different City; but that is how the matter was put. I am only suggesting that upon a fair view of that evidence I should have thought the Prosecution would have been glad to concede that that clot of blood had not been carried up by the appellant.

MR. JUSTICE BRANSON: Before you pass from the clot, I understood you to say that Mr. Justice Wright left it as serious evidence to be considered by the Jury?.

MR. ROLAND OLIVER: He did indeed, I will point it out.

MR. JUSTICE BRANSON: Look at page 323. I have turned it up, because my recollection was not quite the same.

MR. ROLAND OLIVER: I do not mean he did not show the Jury what his view about it was, I did not mean to particularly criticise that part of the Summing-up.

MR. JUSTICE BRANSON: He begins by saying: "With regard to the little blob on the pan, I think that may be disregarded. No one knows how it got there, and it is difficult to see how it has any connection with the murder, unless the murderer stayed in the house for about an hour after the deed was committed." Then he goes on referring to the two very distinguished scientists called by the Defence: "and they said that coagulation could scarcely come in less than an hour after the blood was shed; and if I rightly appreciate

professor McFall's evidence, he took the same view".

MR. HEMMERDE: May I say I told the Jury to ignore it; the learned Judge was morely following what I said.

MR. ROLAND OLIVER: If my learned friend says that, I can show, what he did say, it is all here in the shorthand note.

MR. JUSTICE BRANSON: It is not like leaving the matter to the Jury as serious evidence which they had to consider.

MR. ROLAND OLIVER: May I read on: "Anyhow you will probably think that that clot of blood when it fell must have been of something like an hour's standing. It is a matter for you, and you have the evidence both ways, including Professor Roberts. If you take that view, then it can only be connected with the crime 1f the murderer was in the bathroom an hour after the murder was committed; otherwise it is immaterial, So I pass that by." I am only saying that he left the evidence of Mr. Roberts to the Jury as a matter for them to consider, and no comment of any kind was made upon the method of introduction, or the time of introduction, or the absence of notice of the fact that that witness who had been already called and given all his evidence was again to be re-called to give this at the end of the case for the Prosecution and the fact that he is, as I say, a chemist, no doubt very skilled, who is purporting there to give evidence of a pathological nature. The introduction of the matter in that manner, I should have thought, was a matter that might have been pointed out to the Jury as very discreditable. With regard to what my learned friend said, I will not now stop to look for it at the moment. I can pass from that to deal very shortly with the smear of blood on the note.

MR. JUSTICE HAWKE: As to that also, the learned Judge said he could see no evidence?

MR. ROLAND OLIVER: Yes, I am content to leave it there.

THE LORD CHIEF JUSTICE: In the very next passage he says: "I frankly confess that I cannot understand what inference is to be drawn from that".

MR. ROLAND OLIVER: What it purports to prove; but where you are building up a case of suspicion against a man and from serious Counsel there comes forward the suggestions, one after the other, that these are things of great significance, without saying what the significance is -- what could be the significance of the blood mark on one of the notes upstairs; what part of this man's scheme could it have been to have put the notes, when he is faking a robbery, into the jar upstairs, 'when he is trying to suggest that a robber has been to the house; he has little enough time to do all he has to do; why should he put notes with blood-stained hands into a jar for the purpose of afterwards showing them to the Police, which is what he did; it is absolutely past my comprehension. Why he is supposed to have done such a thing I do not understand. The case against him is he faked an alibi, and faked robbery, and tried to show that someone came in from outside and murdered his wife. He says: What about the blood on the notes: I can only say what about the blood on the notes?. It is said he put the notes into the jar. These things have been mentioned over and over again. I do not know if your Lordships have found but I have always found if one lives with a story long enough it begins to look much more probable than it did at first. I suppose these things grow. I will not trouble your Lordships with any more about the notes, except that it must be perfectly obvious, in my submission, that the smear got on the note immediately after the discovery, because the man went to the bedroom at once because Mr. Johnson said: "Before I go for the Police, will you go upstairs and see if everything is all right?", and he went upstairs where there was this little Jar where he said they kept the sort of family purse when they went out together, as they apparently always did, and he just picked out the notes, counted them, just flipped them through and as he had a little blood on his thumb it caused the smear of a slight blood-stain. The whole thing

is explained absolutely, and it is the only explanation I can suggest; it is possible. I cannot see what other explanation there is; but there it was. Then another suggestion was made. My Lords, I have very nearly finished; I have really developed my case at sufficient length to show your Lordship the nature of it.

MR. JUS TICE HAWKE: Do you remember in what part of your speech it was you dealt with this, Mr. Hemmerde?

MR. HEMMERDE: It was on page 75; I have it; I think I can find the passage: "You may think that is rather drawing upon your credulity to imagine that a man like Mr. Roberts has the slightest interest here in saying anything which is untrue. But in the difficulties in which you are put by the conflict of scientific evidence, you ask yourselves what is there in this scientific evidence; what does it matter?. It is a very small point as to how that got there. Let us put it out of our minds and wipe out all the scientific evidence and when you have done that you are faced with the real issues in this case: Has the Prosecution established to your satisfaction that the man who rung up there on that note must have been the prisoner".

JUSTICE HAWKE: Where do you deal with the smear of blood on the note?.

MR HEMMERDE: I think, just before that. I have not seen this before. On page 73, I think it is. I also told them to reject the question of the raincoat which had been originally suggested.

MR. ROLAND OLIVER: My learned friend is perfectly right; he did tell the Jury at the end that they could reject that the raincoat was deliberately burnt. He did not put before the Jury an explanation as to how that raincoat happened to be burnt at the same time as the dress, which apparently were on two different people. I do not want to commit myself, but I have read my friend's speech and apparently he has not done so.

MR. HEMMERDE: I have a very good recollection of it and I have been right, up to now. I tried to clear the ground entirely from anything that was controversial; in fact I told the Jury, your Lordships will find it in the speech, we should ignore it as there was obviously evidence both ways and they must resolve that in favour of the prisoner.



MR. ROLAND OLIVER: One of the passages I had in mind about the clot was this on page 68:

"Now remember this. The point is really vital as to what happened upstairs at all. A great deal has been said, and a great deal of evidence has been called, as to the time which that blood clot got on to the rim of the pan upstairs", and something has been made too as to the time as to what touched with blood".

Then my learned friend goes off to something else. There is that passage. Then on the next page, 69, he is dealing with the story. "Then again upstairs my learned friend said at one time there was no evidence

of anyone having gone upstairs" -- I had said that having regard to the obvious explanation of the clot and the mark on the notes -- "I do not think he could have meant that. It is clear somebody went upstairs because the bed in the front room had obviously been upset" -- a sort of suggestion that the appellant had done that, which I did not understand -- "The prisoner did not suggest his wife had left it like that, and apparently the view he formed at the time was that someone had disturbed that room".

The evidence was he had not been in it for a fortnight; it was a room they did not use. They had been up there and whether that someone had dropped a clot of blood is a matter which you may or may not think is a matter of importance. Whether the person who went up there had put those notes there is a matter you may or may not think a matter of importance. £4 was missing, so we are told, from the cash box and £4 are found upstairs". That suggestion was then made for the first time. The money that should have been downstairs would have been in silver. "Why should anyone having taken money have put it back? Well, one does not know, of course, if a man had noticed, having taken money from a cash box, that there was a little blood on a note, there is ample reason why it should be put back and put back perhaps somewhere else". I do not know, but I assumed these statements to be equivalent to an abandonment of the case that my learned friend had been seeking to establish, namely, that the appellant the murderer, had taken that blood

upstairs. There was no abandonment in terms that he held out: If you do not think much of the evidence you can treat it as not important.

Then as to the weapon said to have been used, that was based upon the evidence of a charwoman who said that having the last been at the house on the 7th January there had been then by the gas fire in the Sitting room a piece of iron. My learned friend put in a similar piece of iron marked as an Exhibit which she said was used for raking out the cigarette ends under the gas fire. The appellant said with regard to that, that he did not know it was there, or never noticed it. That was said to very be significant. I should have thought that no-one could have appreciated the significance of such a thing as that. Why should not be say it was there if he knew it? He told the Police the truth in every other way. He was interrogated for days. At the end of it the learned Judge said it was marvelous how consistent his statements were. He was interrogated long after the time had come when the Police must have made up their minds to arrest him. The first piece of evidence they got was on the 24th January, and they were still cross-examining on the 29th, right up to the day of his arrest. That iron bar, in my submission, does not assist the case against the appellant lone fraction. There were two irons supposed to be missing from the house. One of the points, I gather, made is that he was being watched and you would have to have two weapons. I do not know why there should not be two persons engaged in such a transaction as this; there generally are. It was said that two irons were missing, one a poker from the side of the gas stove. Why the appellant should have used two irons it is difficult to say. That he may have done this is possible. It was said that the fact that it had disappeared pointed to the appellant; but why? If it was done by some-one outside it was done by a professional criminal, and they know perfectly well what the effect of leaving bloody finger prints upon such a thing as an iron bar means, it means that they may get a perfectly clear break

away and be pulled up and with certainty be caught. There was more reason why this man should make away with the iron bar afterwards than any outside criminal. should. The only other evidence about it was this. The drains of the house had been searched and the house had been combed by the Police and no bar found. The route presumably by which this man on the way to the tram went had been searched; the only piece of waste ground he would have to pass had been combed with thoroughness and nowhere near his house could be found the slightest trace of the iron bar. So far from that being evidence against him, in any humble submission, that should be evidence in his favour. His journey on his route that night could be traced by a dozen witnesses; if it was some outside person who did this he had the whole of Liverpool, in which I include the Mersey, in which to get rid of anything that he wanted to get rid of. So much for the iron bar.

Then as to the cash box; this was a matter I think which was rather a serious matter. The cash box if the thief had come and taken the £4 out of it would not have been put back again into its place on top of the shelf. It certainly would seem a strange thing for a thief to have done. As a matter of fact, it was sought to be used as evidence that this man committed the crime. Underneath the shelf on which the cash box stood was a ledge eleven inches wide. The Police endeavoured to make out at the trial that no one could have stood upon it, there was not room to put his feet, but the photographs they put in themselves show there is plenty of room for the man to have put his foot and stood there, and possibly for some-one to have put it back. If it is said that the fact that the cash box is found up there is safe evidence that this man committed the murder, it is a complete misuse of the circumstance. I have dealt with the incidents of the front bedroom. The point was made that the appellant arranged the bedroom on that floor and that some of Mrs Wallace's old bats were upon the bed. My learned friend, Mr Hemmerde assumed that no-one by the appellant could have done that Why the woman could not have done it herself it is difficult to understand. Finally, and this is the last point made against the appellant, it was said on the 22nd January you went to Mr Beattie and you asked him if he could not possibly remember accurately at what time he got the message on the telephone, and he said quite candidly: I cannot remember any nearer than it was somewhere about seven.

The appellant says: Cannot you get nearer than that, and Mr. Beattie says No, I am afraid I cannot, and then the police come upon him and say: What do you mean by asking Mr. Beattie what time he got the message; what was in your mind ? The appellant said: Well, all of us have ideas, and I had an idea; it was indiscreet of me to have done it. It was said that was a verbal admission; it is said by my learned friend, why should he think he was suspected ? The children in the street were talking about his being suspected within 24 hours. Why should he be nervous ? Why should he think he was suspected, says my learned friend. The answer is this, that Mr. Beattie had that conversation with him. Mr. Beattie said: If I were you, I should not talk to people about this, because what you say might be misconstrued, and that warning coupled with the fact that the police came to him soon afterwards, notifying to his mind that he was being watched and had been shadowed and had been followed, and the conversation overheard, he said what happened in my mind was, this: The Police have so far believed everything I said, and if I could prove that that message was sent at a time when I was' at home, I could not have sent it. Faced with the Police interrogation, he has got to say: Well, I thought you were suspecting me, and I thought if I could establish the time of that message, I could prove that I was innocent of it. A very difficult thing for him to say. What he says he did was to say: Well, it was indiscreet of me, and I am sorry I did it; having in mind and knowing that I am suspected now, I ought not to have asked any witness about it. It is difficult to see, in my submission, how any legitimate comment could be made upon those facts.

Now, my Lords, I have finished. I am afraid I have occupied the whole of your Lordships' time to-day, but I have finished, and I finish as I began, by submitting that this appellant is quite possibly an absolutely innocent man.

THE LORD CHIEF JUSTICE: Forgive me, Mr. Roland Oliver, I hear you say that you have finished, but I ought to remind you that you

said this morning there were some passages in the summing-up to which you wished to direct attention.

MR ROLAND OLIVER: I am afraid I have been talking so long that I have rather forgotten. As to the passages in the summing-up which I did wish to direct attention to, I think I have mainly done it. The most important of them by far are those passages dealing with motive, which I dealt with this morning. I am submitting that one sees how it got into the learned Judge's mind, owing to the insistence of the Prosecution, that the theory and motive was fantastic, and that he should have told the Jury all these episodes again and again, and that there was no conceivable motive for anybody else, that coming on the top of my learned friend's denial of possibility of motive, was most unfortunate for the appellant, because the evidence as it stood was that there might well have been quite a strong motive for the crime, and quite a good opportunity for the criminal to have the knowledge to do what has been done in this case. My Lords, I do not propose to go through the summing-up.

THE LORD CHIEF JUSTICE: We have all read it.

MR ROLAND OLIVER: I should say that your Lordships have understood from me with regard to its general direction, so far from any complaint, I have acknowledged what I believe to be a complete and correct exposition of the law and, indeed, I began my argument to-day by quoting the summing-up. What I might venture to suggest is this, that if at the end of the case for the Crown your Lordships cannot say that there is any fact that has been proved, which fairly and necessarily involves the guilt of the appellant, you have not proved the guilt of the appellant. You cannot build up a case, Mr. Justice Wright says it himself in one passage in the summing-up, by a number of pieces of suspicion, or a number of pieces even of probability; you have got to bring guilt home with certainty, and if your Lordships think, after this hearing, that guilt in this case has not been brought home with certainty, then your Lordships, in my submission, have not only power under the Act, but your Lordships would interfere with the verdict of the Jury.

(Adjourned until to-morrow morning at 10.30).

IN THE COURT OF CRIMINAL APPEAL

Royal Court of Justice

Tuesday, 19<sup>th</sup> May, 1981.

Before:

THE LORD CHIEF JUSTICES OF ENGLAND

(Lord Hewart of Bury)

MR JUSTICE BRANSON and

MR JUSTICE HAWKE.

REX

V.

WILLIAM HERBERT WALLACE

(Transcript from the Shorthand Notes of Cheror & Co. 2. New Court, Carey Street, London, W. C. 2).

Counsel for the appellant:- MR ROLAND OLIVER, K. O. and

09 MR S. SCHOLEFIELD ALLEN.

Counsel for the Crown :- MR E. G. HELERDE, K. c. and MR LESLIE WALSH.

NOTES OF PROCEEDINGS.

MR HEMERDE: If it please your Lordships, I should like just at the opening of my remarks briefly to deal with just a few points made by my learned friend, Mr Roland Oliver, dealing with the trial. Now he alluded at one time, and I think the Lord Chief Justice slightly misunderstood an interruption of mine, to an interruption that had fallen from one of the jury when he was speaking. Apparently he was making, as he was perfectly entitled to make, an attack upon Professor Mo Fall, and one of the Jurymen said something he heard and which neither I nor my learned Junior heard, but he will not mind my saying that he made an extremely strong attack upon the Professor, and it is not surprising that some-one perhaps who during the course of that week had heard him giving evidence in other cases might perhaps have slightly resented it. Apart from that, I do not quite know where my learned friend got his idea of the Jury not being particularly friendly to or prejudiced -- both expressions he used, and as a matter of fact, I think it is only right when he talks about my speech to a jury of the City of Liverpool, and I think I ought to point out to your Lordships, that it was deliberately arranged that there should not be a jury of the City of Liverpool at all: the jury were all chosen, and it was deliberately done at the request of my learned friend, I think, I think with propriety, from the surrounding country some way from Liverpool, Widness and Southport and Warrington contained the jury, and the Jury was empanelled from those districts. As to any question then of my alluding to the very obviously well known Mr Roberts, the City Analyst and so on, I was not talking to a Jury of the City of Liverpool, but a jury of the County of Lancaster. Just one other small point, perhaps not so small, my learned friend said that we, or the Police, had refused to assist them. There is in the Notice of Appeal some complaint with regard to the boy, Wildman and to the newspaper vendor, Jones. Although the correspondence is incomplete in that there were a number of interviews, my instructions are that from the first all the statements

that could be considered serious at all -- your Lordships will appreciate in a case like this most extraordinary wild statements are made by people of rather questionable sanity, but all statements that were of any relevance to this case at all, or could be. were shown to the Defence. As regards Wildman when we were first told of it, we know that they had taken & statement from him; as regards Jones we also know they had got a statement from him, and I will tell your Lordships that at a very early point in the case my learned friend made it perfectly clear he was going to call evidence, and by the time the names of Wildman and Jones meant any thing to me, it was quite clear that the Defence were going to call them, and it really did not matter whether we called them or they did. As regards Jones, I thought, and still think, that his evidence was quite worthless, and it was definitely abandoned by the PO1100; he was not a person upon whose character we could rely in any way. and I can remember that he did say in his statement, not as my learned friend said, that he delivered the paper at 6.30 but about 6.30, and we could not get from him anything which showed whether it was five minutes or ten minutes before, or five minutes or ten minutes after. The photograph showed the paper had actually been delivered and we could get no help from him at all. As regards Widman, as I say, under no circumstances could the Defence have been prejudiced because they called him; they knew perfectly well from an early date that we knew about him; they had a statement from him. I hope your Lordships will take it from me that I made the fullest attempt to find out if there were any other statements of any sort, and I found there were none of any sort that could throw any light upon this case. I want to say here and now that some very grave attacks have been made upon the Police in this one with which, as your Lordships remember, Mr Justice Wright dissociated himself in his Summing-up. We had the expression that the Police were goading this milk boy to put his time back: we had the expression that the Police had coached



witnesses, we had the expression that they had been brought into line; we had the expression that they had been suppressing witnesses, all in one speech I refused in my speech to the jury -- I did not know till last night that your Lordships have got copies of my speech -- to be taken oft what was real conduct of the case by these attacks, and I want to say here and now so far as the Police are concerned, I took charge of this case at least a week before. If this case was pressed, I pressed it. Your Lordships have got my opening speech and have got my closing speech, and you have got my cross-examination, and your Lordships have no doubt had the advantage of any communication that the learned Judge at the trial has had to make. I take full responsibility for everything that was done in this case. The Police had nothing whatever to do with the conduct of this case, and if at any moment in the case I thought it necessary to recall Mr Roberts, I did it on my own responsibility. I did it without any sort of consultation with the Police, and if anyone is going to be blamed in this case for the conduct of it, I take the full responsibility.

MR JUSTICE HAWKE: Speaking for myself, I am concerned with the evidence in this case, and not with any suggestion made by other side. Would you kindly tell me, we have to deal with this on evidence, I have been looking at Widman's evidence, and there is no suggestion about him, or any evidence, that he was not a person of perfectly good character.

MR HEMMERDE: I do not say so, my Lord.

MR JUSTICE HAWKE: I thought you did.

MR HEMMERDE: NO, I said Jones. I never said that Widman was not, because as a fact I knew he was. Jones, I said, was not a person that we could rely upon. I am in my Lord's hearing on that matter.

MR ROLAND OLIVER: I do not want to interrupt, but I asked at page 205 in the evidence of Sergeant Bailey: "Do you know anything against the boy Jones? (A) NO, I do not. (Q) As far as you

You know he is a boy of perfectly good character? (A) Yes".

MR HEMMERDE: I have now stated it was the evidence of Jones. There is no suggestion against his character.

THE LORD CHIEF JUSTICE: I think, if I may intervene for a moment, I have no doubt that Mr Hemmerde said Jones, and not Widman.

MR HEMMERDE: I can only say what I am told; I did not personally think Jones was a man to be called. I was consulted about him. As regards Widman I know nothing about it till the question came up in the course of the trial, and then I found he was obviously going to be called by the other side. I say nothing against Widman. I was then coming to the question of the demeanour of the witnesses. Yesterday & remark fell from Mr Justice Branson as to the question of the demeanour of the witnesses, if there was evidence as to that, that might be very important. I may say to my Lord that the case at the Police Court was in charge of Mr Bishop a well known Solicitor in the Office of the City of Liverpool Director of Prosecutions. He had not asked any questions upon that. When the case came to me. I at once said: "What about the demeanour of the witnesses! I thought it was to be a vital point, and I may say that the Johnstones were called and asked those questions without, so far as I know, any previous interviewing with them to find out what they would say. Your Lordships will remember that Mr Johnstone said one thing and Mrs Johnstone and another, but that on the whole there very little in it. Mrs Johnstone said he was quiet and collected at first, but afterwards when Mr Johnstone had gone he showed some emotion. Those witnesses were called and dealt with that without having been warned they were going to be called. I thought that the evidence of all those witnesses as to his demeanour was important. With respect, I still think so. Then there was a question: Should we have given notice to the other side that we were going to bring these additional witnesses to the witnesses of which they knew. It was clear that no notice would have had the slightest influence or effect, because there

were only some half a dozen or eight witnesses who were present in the house, all of whom we were calling. It was not a question where they would have the opportunity of calling someone else to rebut our evidence, it was merely a question of going into certain matters with which those witnesses were dealing. Now if it had been a question of giving them an opportunity of calling witnesses to contradict it, I should have thought it my duty to give notice, so that they would have the opportunity. Clearly they could not call any. and I thought it quite unnecessary. and in the same way as to Mr Roberts, we called him because the point had arisen in the cross-examination of Professor Fall, whereupon Mr Roberts, as a matter of fact, volunteered the fact that he had made experiments before there was any question of the arrest of Mr Wallace, he had made them two days afterwards with his own blood. I thought that ought to be told to the Court. As a matter of fact, as the case has now shaped, little turns upon the question of that clot of blood upstairs, but at that time I thought it might, and I thought that that should be brought to the notice of the Court.

Then there are one or two other matters I would like to deal with. There is the fact that I repeatedly said, this was quoted, that there was no motive in this case. That is not what I said, that there was no motive, nor did I say that there was no money in the house.

Upon pages 78 and 79 of my speech there is what I did say. At the bottom of page 78 I say: "Can you believe that anyone would then have committed such a crime merely for gain, the small gains in a Prudential Agent's office", so I made it perfectly clear that so far as that could be a motive it was put clearly to the Jury: as regards my opening speech I did not say there was no money in the house, what I said was: "You start here with a case where there is no suggestion that anyone

could have thought there would have been much money in the house where it is not suggested that much money was taken". that, of course is absolutely accurate, and what I said. Then we have the rather curious point of the man Rothwell who gave evidence which I must say I thought was very unimportant which I must say I thought was very unimportant. Your Lordships remember Rothwell was the man who saw him in the course of the afternoon apparently weeping.

Now your Lordships may have noted this was how I introduced that matter: "On January 20th, the Tuesday. the next day. at 3.30 a police officer called Rothwell cycling in Maida Lane goes the prisoner hurrying apparently distressed and apparently wiping his eye. I will not go further into that for the moment, you will hear the police officer.

We heard the Police officer, and then subsequently, on page 301 of the transcript, you will find that when my learned friend was proposing to deal with that question, I said at once I shall make no point of the Rothwell part of the case. If he had not been called at the Police Court, I should not have mentioned it. I had got to call the witnesses called at the Police Court. I could not see really what he had to do with the case, and I abandoned calling him at the first possible moment. I leave it there, I Just leave it where it is; I hardly opened his evidence at all and there it is. Then upon the question of the boy close, if I may say so a very intelligent boy of 15 or 16, he was described as the little milk boy.

MR HOLAND OLIVER: 14.

MR HEMMERDE: 15, I am told; certainly, a boy who stood up, except for one moment when he got a bit upset by the cross-examination. It is interesting to see how the evidence was handled here in cross-examination, the evidence of the Police which stated exactly what happened. Your Lordships will find it on page 201, Question 2658. This is my learned Junior examining: "(Q) On the route he has described away from near the Library, will you say how you walked and what the boy close did ? (A). We left directly opposite the clock at 7.5. and the boy made his own pace. Inspector cold was at one side of him and I walked behind him. He made his own pace according to his own actions and he went through the actions he did on the night in question when he delivered the milk, calling at the house and going through the actions of delivering milk and so on, eventually arriving at Wolverton Street at 7.10. (Q) How long did he take ? (A) Five minutes". Then at Question 2749, the matter is resumed: (Q) What the boy close had to do was to walk a distance that has been measured by the Surveyor, 500 yards, go into his shop -- I mean altogether; it is not 500 yards to the shop -- cover a distance of 500 yards and including in that going into his shop, putting down his empty can and picking up a fresh one, walking

along the route described, calling at two houses, calling at a house and handing in his can, going on further making another delivery, coming back and taking his can to Mrs. Wallace for delivery, which he did in 5 minutes ? (A) That is all he took". Now it is perfectly clear that that evidence, that he took five minutes, was given at the Police Court. The Defence could have made any experiment they liked as to how long that would take, and as a matter of fact something was said about his walking at 36 miles an hour. The addition of one minute to the time would largely reduce that pace, and the addition of two minutes would very largely reduce it. Your Lordships may remember that in his cross-examination, to which I would like to allude, he says there exactly how this happened; it is in my re-examination; he describes how he was timed; it is on page 42, Question 578: "(Q) And as far as you can gather from those two tests, one was 5 minutes and the other was 6 minutes ? (A) Yes. (Q) which was the 6 minutes ? (A) The first one. (Q) And the second time you did it a bit quicker ? (A) Yes. (Q) Until you had timed it in this way had you any idea how long it took you ? (A) About 7 or 8 minutes. (Q) You thought so" -- and so on. What happened in the case of that boy was this. Originally he says that he said: I Saw Mrs. Wallace between 6.30 and 6.45. Then the next day he was interviewed by the police, not a month later, or nearly a month later, as in the case of Wildman, I think he was interviewed first about February 13th: He said this, in answer to questions : "What did you do last night ?", when it would be fresh in his memory, and he said: he passed the church clock at 6.25; he remembered it; he was late, and he then went on his round which he thought took longer than it did, and he says that he reached the house, or saw Mrs. Wallace, when he is talking of the difference between 6.30 and 6.45, and apparently that is what he originally told the police. Then tests were made and it was found that he could do it considerably quicker than he thought. Your Lordships will remember, when he originally said 6.30 to 6.45 to the children, the only real question then was, as Mr. Justice

Branson pointed out, that the papers had erroneously reported that Mr. Wallace had left the house at 6.15, and therefore it was vital anyone had seen Mrs. Wallace after that, and a boy tight therefore well say: I was there and saw her between 6.30 and a quarter to 7; and when the test was made, it works out at 6.30, or possibly a minute or two later. Now I am not going through all the evidence of those boys. That was evidence before the Jury: those children were cross-examined by me) almost all of them had not had their statements taken till a considerable time afterwards; the boy close had his evidence taken at once. The police chose to rely upon the evidence of the boy close, and there was called by the Defence the evidence of the boy wildman who had originally told his mother, as your lordships will remember, that he saw Mrs Wallace about 6.85; after he had seen the Solicitor for the Defence, Mr. Munro, he afterwards had worked it out and come to the conclusion it was very much later than that. Your Lordships will remember that Elsie Wright thought that she had been him at 6.40, before he got there. They cannot all be right. I not complaining about young Wildman having uttered his statement by two minutes, but your Lordships have evidence, and the Jury had it, and they had before them these boys examined and cross-examined; the whole thing was perfectly clear before them, and of course, as a matter of fact, when the Police tests were made on one Occasion, as it came out, it was to ensure absolute fairness, the instructing Solicitor was with them, as he was indeed on one or two of the tramway tests. Unless your Lord ships want me to I shall not deal further with the boys' evidence there, because it seems to me the boy close being put before the Jury and being cross-examined like that, the Jury were perfectly entitled to say this boy is roughly accurate, and if we take a mean time between him and Wildman, somewhere between 6.30 and 6.15, we should not probably be doing injustice to anybody, so let us in our minds take that figure. As my learned friend very rightly reminds me, he had a particular reason for looking at

the clock, because he was late that night, and a boy quite naturally the day after would remember that, but it is a little difficult to imagine the children would remember the bells ringing at a certain period and one thing and another, thing and another. your Lordships take the learned Judge's summing-up, I should suggest that obviously these other children did not make a very pronounced impression upon him, and I should submit that the Jury quite rightly were inclined to eliminate their evidence, and probably struck some sort of way between Wildman, apparently quite a nice boy, and young close. There I leave that point.

NOW I had just to deal with one or two points in opening, because your Lordships will appreciate that remarks about the great pressure the Police exercised, although they may not be reported very extensively in London, there is a great deal of feeling in Liverpool about them, and I think I ought, first of all, to show where the responsibility lies, if there is any, and there I leave it.

NOW as regards the real issues in this case: Here there is a Jury warned, if ever Jury was warned, of the seriousness of their responsibility, not only by the learned Judge, but I think I may claim by myself, considering the matter after four days Trial and when everything was most fully gone into and coming to a conclusion hostile to the prisoner.

Now it is my duty to try and put it before your Lordships and I will do it as far as possible without too many allusions to the shorthand note, which is very clearly in your Lordships minds. I would like to put before your Lordships, in my own language and in my own way, what I think were the determining factors that led the Jury to that decision. Now we start from this fact that someone in the telephone box at 7.15 on Monday, the 19th January, sent a certain message. It is common ground, it could not be otherw<sup>180</sup> than common ground, that the person who murdered this unfortunate woman was either the person who sent that message, or the person who has been



convicted of this offence, because if I may say so, common sense eliminates other possibilities.

Supposing, for instance, the man Qualtrough had rang up there and it was an honest message, and it is a more coincidence that the next night some robber or maniac came into his house and killed this woman, you would have expected Qualtrough to at once say, but I rang up, it was about such and such a business, and so on. It was always accepted by my learned friend that it must be either this man, or his client. Now let me take if I may, first of all, what the Jury had to deal with on the possibilities of it being the man Qualtrough. Here is a man and it is true that in a little cafe where about 100 persons are daily served, quite a small cafe, there is put upon the wall near the telephone the notice which your Lordships have had in the photograph, and upon that notice it would appear that on that day Mr. Wallace was to play a game of chess. It would also appear that he was to play in on the 5th January. Well, we know from Mr. Beattie he has not been there since Christmas, and we do know this from Mr. Beattie, that although those notices were put up, it was very usual indeed for people to not come and, indeed, on this night Mr. Wallace played chess with someone other than the person who was down to play with. We have first got to assume that a man unknown to Mr. Wallace goes into that little city cafe, reads the chess notices and finds out that Mr. Wallace, a man who apparently he does not know and is merely one of 10,000 Prudential agents with an average weekly collection of £30, except on their monthly collections, he goes in there and he sees the name of Wallace; apart from that, no-one could possibly know that Wallace was likely to be there that night; no-one, except a member of the club and the casual observer; and Mr. Wallace himself said when he was giving evidence, he made it perfectly clear that no one could have known, and Detective-Sergeant Gold said: I asked him if he knew anyone who knew he was going to the Club, or had he told anyone he was going, and Wallace said; No, I had not told anyone and I cannot think of anyone who knew

that I was going. At Question 2764 your Lordships will find how he dealt with it, in the middle of that question. It is Detective Gold's evidence. "I asked him if he know of anyone who would be likely to have sent the message to the Chess Club, and he said 'No, I cannot think of anyone!'. Then, over the page, "I asked him if he knew anyone who knew he was going to the Chess Club or had he told anybody he was going, and he said 'No, I have told no-one I was going, and I cannot think of anyone who knew I was going'". Now that remark not only, as was thought by my learned friend, 18 not a remark attributable to me, but to his own client; that made it perfectly clear, because he did not know that he was going and no one could possibly be supposed to have known. It is possible that a person might have seen that notice, and having seen that notice he rang up. Now assuming that somebody sees that notice, and says: Now I am going to ring up Mr. Wallace at 7.15 to-night, and he does it and makes an appointment for tomorrow night, he rings up, Mr. Wallace is not there; no doubt if he was plotting he would choose a time probably when Mr. Wallace would not be there, though it would be a little difficult, because as the captain of the club who was there says, he was a member and at 7.15 he might have been there. I only say that, because obviously he would not have wanted, as my learned friend says, to talk to Mr. Wallace himself. He thereupon gives a message to Mr. Beattie, asking for Wallace to meet him the next night. What are we now to assume ? First of all, there is nothing to show that Mr. Wallace is going there that night. This man will not know he got the message, and when asked whether he will ring up again, he gives an excuse and does not ring up; so the next night. Then the next assumption one must make is, one assumes that Wallace will go; 11 Wallace had an engagement the next night, or Mrs. Wallace had an engagement next night, if Wallace had looked through the directory and found there was no Menlove Gardens East, or if Wallace had asked h18 Superintendent or any of the Agents for the district whether there was Menlove Gardens

East, or where it was, he would have found that there was no such place. All these things are risked by Mr. Qualtrough, all of them. The next night we must assume that he watched, possibly with a conspirator, because he would have to watch both the front and back to see if this man went, and if he saw him go, one would have to assume that he was going on this business, which he might perfectly well be not going upon; he tells one of the witnesses, Mr. Caird, that he is not at all sure that he will go, and then having got him out of the way, when at any moment he might return, apparently he comes into the house; we will assume he will knock; we know there is no sign or breaking in anywhere; he must come in and come in on some excuse. Now what is his object ? My Lords, surely It could be nothing but money. Apparently this woman had no enemies and was not likely to have enemies of any sort, kind or description.

Her husband said she had no enemies, he could conceive of no-one. At one time in a statement made on I think the 12th January he had suggested a number of agents and so on who might possibly have called. When I put it to him at the trial he did not make the slightest suggestion against any of them, and all those cages had been fully investigated. Some-one must have come there. Not one suggestion was there of any body of those on 111 ng upon him as being people who had been in money difficulties. Then what happened next? This is all upon the assumption that Qualtrough is a genuine person and is there on mischief bent on that night. He comes into the house. It is then assumed that he is invited to sit down and make himself comfortable, and the fire in the parlour is slighted, and he thereupon proceeds under circumstances of infinite brutality to murder this woman. Why? Is it for money? What efforts were made to find money in the house? The murder is done. The murderer when he comes there for gain having committed the murder, it is part of the Defence's case, must have been dripping. or very very much covered with blood. Mr Roberts admitted that, but that is their case. Can there be any doubt that that man went upstairs? Your Lordships will remember the condition of the room in the front to which the Police have spoken. I attach some importance to it, and I will just draw your Lordships' attention as regards the condition of the room to one or two statements made by the Police and by the prisoner upon the condition of that room. This is when the Police were giving evidence at Question 2342 to 2345: "(O) I think you left it there? (A) I left it there and did not touch it, and proceeded to the front room"; that is rather important on another point. This is at page 172. Some question arose afterwards as regards whether the blood came on the notes by his touching them the first time he went up. Your Lordships will Question note there at 2341 "The bed was arranged as it would be with the wife and man going to bed, but on the mantel piece I saw a little pot which I looked in and could see there were some treasury Notes there", this is the Police giving evidence; "I think you left it

there? (A) I left it there and did not touch it, and proceeded to the front room. There was no light in the front room, and the blinds were not drawn. The bedding was disturbed on the left inside the door ; it appeared to me as though a person had just come in and taken the two pillows and flung them across the bed to the window side of the fireplace: one was practically on top of the other, and the bed clothing was pushed over the fireplace. (Q) The whole of it pushed over? (A) The whole of it, exposing a portion of the mattress. On that mattress there were two lady's handbag and two lady's hats, old hats, and on the bed clothing close to those hats there was another hat, three lady's hats and two handbags. I asked the accused if the bedroom was like that in the day time that day, and he said: 'I cannot say. I cannot say I have been in this room for a fortnight'. (Q) Had either the wardrobe or the drawers in the dressing table been disturbed? (A) There were some articles on the dressing table in the position in which they should be. Nothing was disturbed on the dressing table; the wardrobe door was closed, but every - thing appeared to be intact. (Q) Looking at the bed and the condition of the room, what impression did it make? (A) It did not give the impression of a thief looking for valuables". Then some argument arose whether the officer's impression was of value as evidence. Now the prisoner in his statement, Exhibit 42. says this: "I then entered the front room, struck a match and found the bed upset the clothes being off: I do not think my wife left it like that, I then came down and looked into the front room", and so on. Now quite apart and eliminating absolutely as a controversial matter the question of the blood clot upstairs, I suggest it is pretty clear that the man who was in the house and who committed this murder, went upstairs then and made some show of disturbing that room. Now if that is so, one gets the man upstairs, and I submit that is a very important question. If you get the man upstairs, and there is, of course the evidence of the notes which is some evidence that the man went upstairs, as I will point out in a moment when I come to it

if you get him upstairs you have this remarkable feature. Here is a man whom it is suggested must have been very heavily covered with blood. Everything was done with the strongest light that could be possibly found to see whether there was one spook of blood anywhere, but in the total room. Nothing was found. How Mr Queltrough, the man who is supposed to have done this, assuming he went upstairs, he could have absolutely no reason for fearing the leaving of blood traces upon the stairs, or the leaving of blood traces in the clothes; whoever it was if he was a stranger had nothing whatever to fear from leaving blood about. There is no trace of any sort. And yet there is undoubted evidence which was before the jury that that front room had been seriously, and if I may say so, dramatically disturbed. But was it disturbed by a thief? It is clear that neither in the front room nor in the bedroom had anything been done whatever to disturb the drawers, or the wardrobes, or the hanging cupboards. Supposing when he came in there and he found only 24 in the cash box having expected to find more, what would one have expected him to do? Would not one have expected him in a case like that to make a complete search in this little house? The photographs, as your Lordships realize, are extremely deceiving, the room in which the woman was murdered being only eleven feet square; he would have searched the whole place. Is there any evidence whatever that he searched the place at all. That there was something done in the front bedroom to suggest there had been a search, a very hurried thing, yes. but as regards any real search for money in that house, can there be said to have been any? All that the prisoner said was, there was £4 taken from the cash box, and we know there were £4 and another note found upstairs. That is the case as the jury had got to consider it. A man must have rung up that night with a bent for senseless murder, or with a bent to get this man out, so that he could rob. Eliminating for the moment the idea of senseless murder, what conceivable reason could this man have found to behave in the way that the person did who came into that house? Apparently no genuine search for money.

Apart from the condition of the upper room. if we eliminate the clot of blood and the notes there is no evidence that he went upstairs. Then I ask your Lordships to say that the jury could perfectly well infer that he did go upstairs, and that is a very important matter; but apart from that, there is no evidence that he went upstairs. There is the evidence of the breaking of a door, here a catch was broken off suggesting there was a person there, as I at once pointed out, but nothing that could not have been done in a few minutes, almost seconds. Now that is the evidence that assuming the person's innocence, the jury had got to --I do not say they had got to accept. They had got to accept it, because the mere fact that they do not think that the also is clear about this man Qualtrough would not entitle them without more direct evidence to convict the prisoner, but on the whole, taking the two alternative stories, that is the position they are in, that he rings up a man whom he has never met. whom he has no reason to know will ever get his message: he goes upon the assumption that he has got the message, and he then goes into the house apparently with the intention of robbing, and having got there, apart from the fact that there are no notes, as he says, left in the cash box, and that there are four notes upstairs four Treasury Notes and one other, there is no suggestion of anything being done with money at all in the house. no suggestion at all. My learned friend again very properly reminds me of page 213 at Question 2785: ) What did the accused do? (A) He made a search of the house, and in the middle bedroom in a drawer in the chest of drawers he found some Jewellery and in the front bedroom he found a Post Office Savings Bank book". All those things had not been interfered with. Now a very curious fact in that connection which I shall have to deal with later is the question of the cash box. I do not know whether your Lordships have seen the cash box: the cash box is an odd box for a man who wants any protection, because the lid comes off without its being unlocked. This is the cash box, and your Lordships will realise it was on a shelf seven feet 2 inches from the ground. Now apparently the man took this cash box

down and extracted from it certain notes leaving a dollar bill in the centre compartment, and he dropped four shillings and sixpence on the floor. either dropped them or put them down. Then having done that a thief replaces the cash box where it was. Well, now my Lords, the first Police Officer who came on the scene, Superintendent Moore, said it was an odd thing for a thief to do, to place it back up there: he said that to the prisoner. Now the Defence say: But what might happen is the man did not do that, take it down, he got up on a shelf and took the money from there without ever getting down, without over taking that cash box down. Why should he have done that? One of the Police tried it and gave evidence and said it would want a bit of an acrobat, and he would probably pull down the shelves. Why should he do it? There were chairs to stand on. The thing could have been taken down without the shelves being disturbed. From that are taken £4. The prisoner says they were in a certain form, there was a certain amount of silver and so on. Possibly. I think equally possibly the £4 which were taken, & he at once said, were the 14 which were found upstairs. Your Lordships will remember that Mr Roberts in his evidence in dealing with that question made a very important remark. While I am upon it I had better take Question 2285 at the top of page 166. In this matter Mr Roberts was dealing with a question on which he was really an expert. In dealing with the notes he was asked: "Do you not see the possibility of two fingers being put in to draw them out and slightly smearing the inside of the middle? (A) 10, I do not. (Q) Obviously it is possible, is it not? (A) A very tiny smear. 1) That is all that is? (A) No. if you look at one of those notes the smear extends in one nearly up to the top. You will see it better on the actual note itself. (Q) Might I see the actual note? I think you have said already they are now, as far as blood smears are concerned, in the same condition as when you first saw them? (A) NO. I said I have taken most of it off; there are only a few specks left. (Q) Was it a distinct smear? (A) Yes (Q) Continuous like that obviously, as if a finger had been drawn



across them? (A) Either that or else the pressure of a bloodstained thumb impressed on them. (2) Was it consistent with a bloodstained finger? (A) If you will give me the notes. (Same handed). 1) I asked you the question. You can say no. if you like. Was it consistent with the finger being pulled across it like that? (A) NO. I do not think it was. Sir. It is more like a thumb touching here and slipping there. It was down here. (Pointing). The Jury may see the extent it was from here to here and then it got gradually narrower as it went up. (9) From where the digit comes first into contact with it becoming slighter 8.3 the digit is drawn along it? (A) Yes. (Q) Whether that was a thumb going like that or a finger going like that, how can you say? (A) the width of the smear was much too wide for a finger. (Q) It depends on the size of the finger and all sorts of things? (A) Yes". Then a little later there is a question I particularly wish to draw attention to at question 8302, and the question is this: "So the position is this, is it? If it was done in light by a man with a bloody finger he would have seen it, would he not? (A) Yes, he ought to have seen it. (0) He ought to have seen it if it was right under his nose in the light? (1) Yes". Now what more likely than that a man who had taken the notes from the cash box should have seen that he had smeared one of them with blood and if he saw he had smeared one of them with blood what more likely than that he would put them into the flat receptacle there was. Anything more fatal than to have taken a bloodstained note that night can hardly be imagined. A story was told about that jam pot, it is nothing else, it is not an ornament, and Mr Justice Wright when it was produced said: "Do you call that an ornament". There was a story told that that jam pot was used as a sort of savings bank where they put things to be used sometimes when they went for a holiday, and they always took the contents out whenever both of them left the house. The

The jury might have accepted that evidence, or they might have thought it was not true, or they might again have thought it was rather ridiculous, but those notes I submit do have some possible bearing. although at the end of my speech I told the Jury to leave out all fine points about the notes and concentrate upon the big issues in the one. In Justice Hawke's judgment yesterday where I said that: it was quite at the end of my speech.

MR JUSTICE HAWKE: You, I found it.

MR HEMMERDE: One or two matters I abandoned definitely that I had brushed aside, and as I thought again that I did not want to make any apparently unfair point. I emphasise it now, to your Lordships as a point the jury were perfectly entitled to consider that when they first came in there was £4 missing from there, and then subsequently £4 18 found upstairs with the blood upon them. It was suggested at one time that when he went up there with police officer Williams that he began to take them out. The police officer, if I may say so is an extremely intelligent police officer, although on sick leave at the time, described how far they were taken out, and he at once very properly said: You must drop those, put them back, and he said I certainly gave the impression there was no chance of having put blood upon them then. Then Mr Roberts and the same, that the blood was too far down. Now that being so, you have got the fact of notes taken, or money taken from the box, and a similar amount of money found upstairs under circumstances that may be perfectly innocent, but which may point to the fact that the obvious fact that blood was on one of the centre notes in considerable quantity may have caused whoever was carrying them to drop them as being the most dangerous things. Now the value of those notes really comes to this, it is merely another factor, another piece of evidence. supporting the suggestion I am making that the man whoever it was. did go upstairs, and assuming that the man went upstairs, is there anything there from which any Jury could reasonably come to the conclusion that the man who went upstairs was a thief. Just an ordinary thief, who had arranged to plunder this house on that occasion?

If I may say no upon this side of the case, is the condition of that body, I will not say consistent, but in it reasonably consistent with the idea of the man suddenly coming in there to rob the woman, not a strong woman, described at one time as a frail woman but certainly not a strong woman. You would have thought that man would have come in there apparently not well known, man who could have at any rate robbed this house without murder of this extraordinary vehemence and brutality. I have simply tried to put together the story as the Jury had the story, and apparently it must be the one for the Defence, at least, it seems to me it must, that in the end that story is of such consistency and has in it such elements or probability that no Jury are entitled to reject it as being worthless. I submit to your Lordships that a Jury is entitled to reject the whole or that evidence as worthless, and I should suggest to your Lordships that as a matter of fact the story, which is the only possible alternative to the story that I am now going to outline, is a story that the Jury were not only entitled to reject but, in my submission, they were bound to reject. I am going to suggest to your Lordships that this is not a case where the evidence is slight; I am going to suggest to your Lordships that this is a case where the evidence is strong, and I am now going - I hope without undue length, just to put the counter story as it was laid before the Jury.

THE LORD CHIEF JUSTICE: When you say "bound to reject", do you mean "bound to reject"? or the one phone when the MR HEMMERDE: NO, "bound to reject" is putting it too high; no Jury is bound to reject anything, but I perhaps should put it, certainly would be reasonable in rejecting and, I should submit upon the evidence, would be right in rejecting. Perhaps I may put it that way better than saying they were bound to reject it.

Now, my Lords, let me take the other side of the story. It is common ground that at a very early stage the Defendant said that he left his house on the Monday night, round about 7.15. He actually gives that time, I think, in the second

statement he makes, but there has never been any dispute about it; he gave it before he had any idea what time the telephone call was supposed to be. According to him, at one time apparently he thought the telephone call was supposed to be about 7, but a man walking at a reasonable pace, leaving the house in Wolverton Street, would reach this box in about three minutes. Therefore, it is perfectly reasonable to suppose that leaving, a ho thought, about 7.15 ho la actually at a place three minutes away at 7.15. We know, whoever it was who went into that telephone box, got the call first at 7.15, and they got it through at 7.20. NOW/ thereupon, assume for the moment that he goes there, he puts the call through to the club. A point has been made that there WB considerable conversation, and he would have to have spoken to a certain extent in a disguised voice. Those are all matters that there may be his opinion upon and the Jury may have their opinion upon, but I submit to your Lordships, and indeed I find, on roading my speech again, I submitted to the Jury, that nothing is easier than to change one's voice on the telephone and it must be within all our experiences how very difficult it is sometimes to real13e who is speaking, and at another how very easy it is to find out who is speaking, and if a man is clever enough to think out a matter of this sort, I should suggest that the voice would be a very minor difficulty, and the very fact of the rather heavy gruff confident voice is perhaps about the easiest form of voice to simulate and to keep up the simulation, and this at the other end of the telephone when the last thing one would imagine would be that this man enquiring for Wallace is Wallace himself; and so it is not a very difficult thing ! under such circumstances to keep up a conversation. That is a matter which clearly was before the Jury, and they found not difficulty upon the question of the voice. Now assuming, as I say, that it was Wallace in the telephone box, he rings up there and from that moment of course it would not be denied by anybody that if he sent that message, everything will point to the probability that having done such a thing, he is the man who

committed this murder. My learned friend says the two great points in the case are, who was in that telephone box, and the time that elapsed between the time that Wallace left the house and the time that Mrs. Wallace was last seen alive. Now, my Lords, your Lordships -will realise that at the moment that yr. Qualtrough was said to be in that box, Mr. Wallace was 100 yards down the road, on his own statement, probably posting a letter on his way to the club; a singular coincidence but it may be no more. He is down there. As regards the time it takes to the club, very little turns upon that because we know a fact he did leave his house, according to his statement, about 7.15, and we know he was playing chess in the club somewhere about 7.45; so it is clear that he got to the club which takes, as one of the officers said, nearer 20 minutes than half an hour, because of course all these times are rough, and the only thing is that in one case he did speak in the telephone box for five minutes, and in the other case he did not. Assume that he was in the box that night, that would make a difference of five minutes in the time he would get to the club. So much for the beginning of that night. Now what would a man like that, who was going to create an alibi, do? May I say in passing this: To give the appearance of an a11b1 the next night, it would be necessary for his to so act that the difference between the time when Mrs. Wallace would be last seen and the time he left the house would be as short as possible; that would be vital. If Mrs. Wallace had been last seen at six and he left the house at a quarter to seven, then, of course, any attempt to make an a11b1 would be useless, but if he could so arrange matters that Mrs. Wallace should be seen at 6.30, or thereabouts, and he could get out of the house at 6.45, or thereabouts, then people might say how could he have done it in the time Now that is vital. It must be a short time, otherwise the whole attempt to create an alibi falls. May I Just point out that the milk was apparently always delivered roughly at the same time, and the paper would be delivered roughly at the same time, and

therefore, one has a perfectly simple method, one knows that Mrs. Wallace goes to the door under those circumstances and takes in the milk and empties it into a jug, not Mr. Wallace. It is therefore true that Mrs. Wallace is bound to be seen by at least one person round about that time.

Now, we know according to him that he leaves the house at 6.45 or thereabouts. Exhaustive tests have been made as to when he might leave the house and yet be the other side of the Lodge Lane Junction at 7.6. May I say now that those exhaustive tests were given in evidence at the Police Court, and if the Defence had wanted to question their possibility in any way, nothing would have been easier than to have had tests made themselves. They have shown no counter-tests. Those tests made by the Police show this: Assuming that he went the way he said he went, it would give him the longest distance to walk, they run between 17 minutes and 20 minutes; but assuming that he goes the way that a man being in a hurry would have gone, they run from 15 to 18 minutes. One can hardly assume, taking for the moment that the man is guilty, that he would go the longest way any more than one can assume that he will walk at the same pace as a police officer will walk. I think one can perfectly fairly say that under those circumstances, the police found by leaving at 6.49 they did the journey in 15 minutes; that would be 7.4; and then one may safely assume that it is perfectly possible that he left the house as late as 6.50 and roughly reached there at 7.6. You have got therefore that time, giving a broad margin to young Wildman and close, and you have got a time that varies between 20 minutes and about 12 or 13 minutes. I should submit to your Lordships that 10 minutes would be ample to carry out everything that he had to do in the house.

MR JUSTICE HAWKE: To get at your 20 minutes you assume that he was seen at 6.30 ?

MR HEMMERDE: You, my Lord. Assuming that, then I take W down that even very late was 10 minutes, sometime between

10 and 20, and I submit that to any man who had really thought out a crime of this sort, ten minutes would be ample to do what was done. Well, what was done? As I have already pointed out, was there really a great deal of blood upon the murderer, whoever it was, or any, and how could we account for the fact that there is none found anywhere out of this room? Supposing man is wearing a mackintosh, or a raincoat, there is only a small part of his body that is likely to be touched, possibly his face, and that he would know at once; possibly his hair, which if he has any intelligence he would probably know at once, but not by any means certain. Whoever did it, I submit he did not take any considerable time, the taking the money from the cash-box, the putting it again upstairs, the ruffling of the bed. Your Lordships will remember that so far as the bedroom is concerned, nothing has been done to the cupboards. Whoever did it was acting in a hurry, if the bed was so disturbed, and there is very little to be done in the house indeed. Nothing has been touched in the kitchen except just the cash box and a door wrenched off and broken; that really is all there is. I should submit that if a man was there lightly dressed, or not dressed at all, that the time is perfectly consistent with doing all that was necessary quite easily within 10 minutes.

THE LORD CHIEF JUSTICE: Forgive me a moment: You say "or not dressed at all" ?

MR HEMMERDE: I am just coming to that, my Lord.

THE LORD CHIEF JUSTICE: If he was not dressed at all, that involves two things, taking his clothes off and putting them on again.

MR HEMMERDE: Oh, no, my Lord. Your Lordship will see I do not think it involves that at all, not as I see the case.

MR JUSTICE HAWKE: It involves putting them on ?

MR HEMMERDE: No doubt.

MR JUSTICE HAWKE: He was not naked in the tram ?

MR HEMMERDE: NO. I shall not shirk any of these issues. I opened the case originally as an extremely difficult case. It is not my position to press in this matter but merely to try and put the

Case.

MR JUSTICE BRANSON: As you have been interrupted, would you allow me to go a little further back and ask you a question which occurred to me while you were discussing the question of the telephone call: Assuming that the murder had been committed, what evidence is there that the telephone call was put through by the appellant ?

MR HEMMERDE: The evidence that it was put through by the appellant would be just the same.

MR JUSTICE BRANSON: What would it be?

MR HEMMERDE: It would be we should have known that he would be there in the first place. MR

JUSTICE BRANSON: Suppose the answer might be : Anybody who happened to look at this list of dates.

MR HEMMERDE: Anybody might know; they would know he might be there.

MR JUSTICE BRANSON: They would know he might be there.

HEMERDE: Now they know he might be there. It is very difficult or course, to force the question, as your lordship will see, from the whole story. Of course, there is no direct evidence and there could not be. If a man chooses to make a bogus call upon someone himself, there never could be any direct evidence except someone who say him do it.

MR JUSTICE BRANSON: I rather felt as you were putting your case that you were assuming that it was he who made the call because of what happened afterwards, and then saying that he must be guilty because he put through the call. way one can only

MR HEMMERDE: I do not think so, my Lord.

THE LORD CHIEF JUSTICE: In other words, you use as a step in your argument that which is only consolidated when your argument is complete.

MR HEMMERDE: I think I accept that, my Lord.

MR JUSTICE HAWKE: Treating it in an entirely different way: supposing we were trying an action for defamation or slander uttered over the telephone, where is the evidence that the Defendant,



assuming it was an action against Wallace, was the one who uttered the slander ?

MR HEMMERDE: The evidence would only be deduced from surrounding circumstances.

MR JUSTICE HAWKE: Surely the evidence, such as there is, is the other way, that he did not ?

MR HEMMERDE: NO, my Lord. The only way you could find out who uttered the slander would be from surrounding circumstances in a case like that. One would very likely have to go into, not only what happened before, but what happened afterwards to lead you to the conclusion as to who uttered the slander. I will take that very case. Supposing it was found that the man who was suspected of having uttered the slander was in fact Just by the telephone box at the time, and was seen there. In this case he is admitted to have been 100 yards down the road, by himself. Surely one is entitled then to take the whole of the surrounding circumstances and say this brings us irresistibly to the conclusion that this is the man who uttered the slander.

THE LORD CHIEF JUSTICE: Are not you really saying, if it be assumed that this appellant committed the murder, other circumstances fit in with that theory ?

MR HEMMERDE: No, my Lord, I do not think I am saying so at all. I think what I am saying is, or what I have tried to say is, that there are two possibilities for the telephone box. What I am trying to point out is that a mass of detail points to the fact that the person who was in that telephone box was the prisoner Wallace; that is all I say, and I say one can only get that by working through the details showing how the man thereafter behaved. I put this case like this. It is a case, if I may say so, of extraordinary difficulty and subtlety, but I shall submit to your Lordships that when you trace it through and see exactly what the man does afterwards, one is brought almost irresistibly to the conclusion that the pieces fit together just like a jig-saw puzzle. of the native top

MR JUSTICE HAWKE: You mean because he tried to keep the alleged

appointment ?

MR HEMMERDE: I put that amongst at least 20 other points; that is one. I was just coming to deal with all those points that seem to me to build up a case, not only upon which the Jury might find, but as I shall submit to your Lordships an extremely strong case.

MR JUSTICE HAWKE: One point is obvious, is it not, that he believed the telephone message was a genuine one and wanted to get the business?

MR HEMMERDE: Yes; but supposing he behaves in a way that leads one to suspect the reason and supposing then, having come back, he behaves in a way that leads one to suppose that he is not acting in a genuine manner, then you begin to find the materials for leading you back to the conclusion that he was the man who made the call. Surely one is always entitled to work back in that way, in fact one is often bound to do so, otherwise it would really mean this, that if a man is clever enough to telephone from a dark spot when no-one is about, and to do a thing like this, he is absolutely safe, because whatever he does afterwards is merely working back to the fact that he was in the telephone box. I say you can only find out who was in the telephone box by working it out and then drawing your conclusions. I shall point out to your Lordships at least a dozen things that I shall submit are inconsistent with innocence and the cumulative effect of which I submit is extremely strong question of fact. but the

MR JUSTICE BRANSON: There is still the difficulty, is not there, in your argument, you say in order to prove who was in the telephone box you have to piece together the evidence as to what the appellant did on the following day ?

MR HEMMERDE: Yes.

MR JUSTICE BRANSON: And then you have got to say that his acts on the following day were consistent with his having been in the telephone box. The fact that the telephone message was sent is, on your argument, an essential part of the motive for his actions on the day of the murder. You regard the whole of his actions on

the day of the murder, after half-past six, let us say, 23 based upon the fact that he had sent the telephone message ?

MR HEMMERDE: Yes, my Lord, I do, and I examine them in the light of that suspicion, and having examined them in the light of that suspicion, I am going to argue that the fact that transpire after he leaves the house that night point irresistibly to the conclusion that he sent that we telephone message. That is how I put it. I appreciate the point your Lordship is making, if I may say so with the greatest respect, without quite appreciating its weight. It seems to me that one can only come back in this way by looking at what happens afterwards. Surely if we start with the suspicion that a man sends a bogus telephone message, how can we find out it is bogus except by what he does ? We can never prove that he was there.

MR JUSTICE BRANSON: If what he does is consistent only with his having been the author of the telephone message, then I follow your argument, but if what he does is consistent not only with that but with somebody else having sent the telephone message, then the subsequent actions do not help you.

MR HEMMERDE: If what he does is consistent with his complete innocence of having been there, then, of course, he must have been acquitted, but if the evidence is such that Jury having heard the whole case comes to the conclusion that he must have been the man, then surely that is a question of fact for them.

MR JUSTICE BRANSON: No doubt it is a question of fact, but the question is what is the evidence from which that fact is to be inferred ?

MR HEMMERDE: I submit the only evidence from which it can be inferred is the evidence of his suspicious actions.

MR JUSTICE BRANSON: I should agree with you at once if the subsequent actions were consistent only with his having been the author of the message, or more consistent with his being the author of the message than with anybody else having been the author of the message.

MR HEMMERDE: Unless I was able to establish that I thought that he

was, I should not be even here putting my argument. I think the part of the story that I am now about to deal with is not only for more consistent with his guilt than with his innocence, but I should submit overwhelmingly

MR JUSTICE BRANSON : Very well, I see your point.

MR HEMERDE: That is what I hope to establish. Now if I may take up my argument where I was when this digression occurred, I was then discussing with your Lordship the question as to what costume he was wearing.

MR JUSTICE HAWKE: Lightly dressed, or not dressed at all.

MR HEMMERDE: Yes. It is true I did make some almost humorous play, as my learned friend did, with regard to a person playing a violin in his mackintosh. The argument was a perfectly straightforward one which I put forward. I warned the Jury in my opening speech that in a very famous murder case which had greatly puzzled the authorities it was subsequently found that the man who had committed the crime was one who was naked, and in this Case I said you must not simply because there were no blood stains found on the clothes put out of your mind the possibility which has been known not only in this country but in others undoubtedly, although I did not quote the fact, that similar crimes had been known in India, with naked people. I said you must not put that out of your mind. Undoubtedly he was there changing his clothes. Let us assume for a moment again that he was the man who had sent the message on which night he was bent on murdering his wife. Your Lordships will have gathered from the evidence, and I do not think I need refer to it, that the contention or the Defence is that the fire was at some time alight in the parlour, the music was upon the piano, as he pointed out himself there were two pieces of music upon the piano though we do not know what they were; your Lordships can see in the photograph it is obviously too long for one piece. That he accepted. The room, I suggest, was at that time set for a musical evening; the fire was lighted; I accept that, and the music was upon the piano. The paper was delivered round about that time and, as your Lordships said, giving the appearance to anyone of having

been just looked at and placed on the kitchen table. The deceased woman was sitting in that room. If this murder had been thought out, what was easier than for the man to come down clad merely with his mackintosh, which is subsequently found covered with blood, and with a weapon which, as your Lordships will realise from this Exhibit, is something like this and perfectly suited, as was not denied, for breaking this woman's skull in the way it was broken; came down, killed her with one blow and then made sure she was dead with all the other blows. A man who did that would then get rid of the mackintosh. That is left in the room. He would have to get out and clean himself. He would have to take very good care there was no blood on his feet, no blood in fact anywhere except in that room. Whoever did it was very careful that no blood traces should be left. Who would be careful that no blood traces should be left? What conceivable casual murderer coming in would care what blood traces he left from his boots, or anything of that sort? Mr. Roberts spoke of a place on the carpet which might have been the wiping of feet. A man who could have sent the telephone message the night before would have left very little to chance; he would have prepared for the possibility of blood on his feet. He may have wiped himself somehow. Your Lordships will remember, even if he did not clean himself very satisfactorily that night, no-one would have known; he was not arrested until February.

MR ROLAND OLIVER: That ought not to be said. He was most carefully searched that night for any trace of blood, and they failed to find a peak of blood.

MR HEMMERDE: I do not think I am saying anything that is wrong. But as a matter of fact, he was not undressed that night, was he?

MR ROLAND OLIVER: He was carefully searched.

MR HEMMERDE: I am not saying that, that is a very different matter. I do not think it was so at all; I think I am saying what is absolutely correct. One of the officers said, I think it was the Superintendent who said that he kept an eye on him the whole time to see if there were any blood marks. So far as Inspector Gold was concerned he said: I know nothing of any search that was made that night.

MR ROLAND OLIVER: I will find the passage in a moment.

MR HEMMERDE: I understand that no undressing of any sort took place that night. If my recollection is in any way overtrained then if my learned friend can find anything I shall be glad: I do not think he will; I am practically certain what I say is right. At that time he was not even under suspicion.

MR ROLAND OLIVER: May I read this at page 812, Question 2765, this 18 Inspector Gold after a very long cross-examination of the appellant at the police station : (Q) Did you examine him? (A) I did, I examined his clothing, his hands, his boots, but I could find no trace of any blood upon him anywhere".

MR JUSNICE HAWKS: That is the passage I have noted.

MR HEMMERDE: I take it that was so, and I still take it that it was an examination of his clothes outwardly including his hands and boots. I should say that is right, but I do say I do not think it was over suggested that he was stripped, in fact, how could he have been stripped; he was not even under suspicion. All that happened at that time was that Inspector Gold made the most direct examination he was able to make outwardly. If that is/the proper construction to put upon it, I certainly have never heard of a man under such circumstances being undressed and searched. What not

possible difficulty would there be in a man in five minutes washing himself completely of anything -- a raincoat would be right round him until certainly about half way down his legs from the knee -- and then washing his feet and anything else.

THE LORD CHIEF JUSTICE: Where?

MR HEMMERDE: In the bathroom.

THE LORD CHIEF JUSTICE: Then he must have been there?

MR HEMMERDE: That is my case, that he must have gone upstairs. There was ample opportunity of a man washing in the kitchen; there was hot and cold water: there was evidence upon that. That was one of the points made that whoever did it may have apparently gone upstairs to wash, although there was no sign of a person having had a bath when they examined about three hours later. There was nothing to show that a person had either washed or bathed in the bathroom three hours before: there could not be. there would be no trace whatever of a person having had a bath. So far as a towel is concerned that would not take very much. First assume that the thing was done by a man who planned the thing carefully the towel itself would probably be a very small matter, if one considers how many times one has found that one has had to put on one's clothes when not quite dry when one has been bathing: I do not suppose that would cause very great trouble to anybody. It is on the lower part of his feet and legs and possibly his face, quite possibly his hair, where any sort of trace would be found at all. I submit that anything there that would be necessary could be done in a very few minutes, quite easily. Those matters I have already pointed out to your Lordships I suggest do point to the fact of his having done it upstairs. Of course at one time we had the theory that that was possible because of the clot of blood, but that became so controversial that I dropped it entirely. Now as far as the possibilities are concerned there, I submit that the suggestions that I make that the stage was set, if I may say so, for a musical evening, and that he came down and surprised his wife in that way are far more probable than the story that somebody got into the

house by some pretence that night, and having got into the house. killed this unfortunate woman.

Having and what our case is there may I then page for 6 moment to what happens when he leaves the house? I have already pointed out to your Lordships how he could clearly have got there certainly if he had hurried at all and taken the short way leaving the house at about 6.50. Nothing I think turns eventually upon the material story on the question of rigor mortis, because it is clear. if really nothing else is clear upon that question, that the woman must have been murdered between six and seven she might have been murdered later. I never put it higher than that, and that is as far as that takes us.

Now here is a matter upon which the jury have had the advantage of seeing him and they can come to the conclusion themselves, whether he is a man likely to be extremely communicative upon the way. He gets into a tram at Lodge Lane, or where they change for Lodge Lane, and we then find him talking to the conductor. He begins: "I am a complete stranger in the district and I have important business".

MR JUSTICE HAWKE: What page is that; I can find it myself if you cannot tell me.

MR HEMMERDE: I shall have to find it, my Lord. It is the evidence of Phillips on page 43 and the other witnesses which followed, which I must/call attention to. if your Lordships look at Question 616: "Q) Before you started what did he say to you? (A) He asked me if the car went to Menlove Gardens East, and I said: 'No, you can get on No. 5, 5A, 5W or a No. 7 car'. (Q) Did you then tell him what he had better do? (A) After I told him about the cars he could take I suddenly changed my mind and told him to keep on my car and told him I could give him a penny ticket for a transfer. (Mr Justice Wright) That means it would take him up to Penny Lane? (A) Yes, my Lord. (Mr Hemmerde) Then he gets a transfer and walks across to the other tram? (A) Yes. (Q) Brom there he gets the tram up Menlove Avenue toward a Calderatone. IS that right? (A) Yos. (Q7 When you told him that did he get on



the car? (A) Yes. (Q) What did he say to you? (A) He says that he was a stranger in the district and that he had some important business or calls -- I am not sure whether it was business or call, it was important business or calls -- and he wanted Menlove Gardens East. (Q) Did he then take a seat in the car? (A) Yes. (Q) A little later did you go to collect your fares? (A) Yes. (Q) And did he again say anything to you? (A) Yes, he asked me again about Menlove Gardens East. (Q) Do you remember the exact word he said then? (A) I think he said: 'You won't forget. Hator, I want Menlove Gardens East'. (Q) I think you punched him a penny ticket and went on to collect fares? (A) Yes. (Q) When you came down again did he speak to you again? (A) Yes. He said something to me again about Menlove Gardens East and I told him to change at Penny Lane. (Q) That was the third time he had spoken to you? (A) Yes". Now why lay this emphasis there? By itself, I should say a small matter, but when you take it in consideration with a number of other matters I submit it becomes a more important matter. You then take the evidence of Thompson who comes next. He was a conductor and he is the one who takes on the tram from Penny Lane up Menlove Avenue and again he was asked at Question 677: "Q) What did he ask you? (A) Whether I would put him off at Menlove Gardens East. (Q) When the tram arrived at Menlove Gardens East what did you do? (A) I beckoned to the prisoner West and he came to the platform and I pointed out Menlove Gardens to him and said: "That is Menlove Gardens West: you will probably find the street you want, Menlove Gardens East is in that direction and I described it so well as I could and as well as I knew the vicinity. (Q) when you described it what did he say? (A) Thank you, I am a complete stranger round here!! He may have been to some extent a stranger, but he had been actually having violin lessons in the neighbouring street from Mr Crowe who was called and it was difficult to imagine as he had paid social visits to Calder stone's and some of the other places by which you get there that he was a total stranger. Then you come to the question of Sergeant the police officer who follows, on page 53. To him he

he says: "Do you know, or can you tell me of Menlove Gardens East": I said: 'There is no Menlove Gardens East; there is a Menlove Gardens North, South and West': then in the second part he said: "Thank you" and turned so it to go away and said: "Do you know where I can see a directory"? I said: 'Yes, you can see one down Allerton Road, if it you do not see one down there you can see one down at the Police Station which I pointed out to him. (2) Or at the Post office? (1) or at the Post Office. (Q) Had he said anything to you about who he was? (A) He said: 'I am an insurance agent looking for a Mr. Qualtrough who rang up the club and left a message for me to my colleagues to ring Mr. Qualtrough up at 25 Menlove Gardens East". Am I exaggerating when I say that is surely the most extraordinary thing to say to a casual police officer. then: "Q) was anything said about the time? (A) Yes. He then said: 'It is not 8 o'clock yet' and pulled out his watch. I also did the same. He said: 'It is just a quarter to'. I glanced at my watch and said it was a quarter to. He then left and walked across down Allerton Road". Now that, as we know, is a quarter to eight. He then passes from there, and incidentally I may point out it is common ground mentioned by my learned friend yesterday he spoke to a young man called Greene just before that. and he also said there is no such place. According to his own statement he enquired for 25 Menlove Gardens East, he enquired of Greene, he enquired of a man and woman for Menlove Gardens, a young man, a tall man, a man at the Tram Stop, the constable I have just mentioned, the Post Office, the Cinema and the newsagent. I will come to the newsagent, but there are those others. 98 Lily Pinches gives this evidence at Question 790: "Lily Pinches you are the manageress of the newsagent shop. 130 Allerton Road, Liverpool? (A) Yes. (Q) You live at 56, 1 Cawber Street, Liverpool? (A) Yes. (Q) on the 20th January were you in your shop! (A) Yes. (Q) Did the accused come into the shop? (A) Yes. (Q) that time was it when he came in? (A) It was after 8. I cannot say the exact time. (Q) Did you hear him ask for anything? (A) Yes, he asked for a directory. (Q) When he got it did he say anything? (A) NO.

not till after he had looked through it. (Q) that did he any then? (A) He asked me did I know what he was looking for and I said "No". He said: 'No. 25, Menlove Gardens East. I should say it was very curious remark for him to make: "Do you know what I am looking for"; she says: "No", and he says: "23, Menlove Gardens East". Apparently my learned friend also thought it was peculiar because your Lordship will see question 833: (Q) Do you really say that after studying the book he anta to you: "Do you know what I am looking for ? (A) Yes. (3) Did you think he was a long time? (A) No. 1) How would you know what he was looking for? (A) I would know no more than anybody else would know". When Wallace came to give evidence he admitted that is what he might have said to her; she was asked the following morning.

MR JUSTICE BRANSON: I am not quite sure that I follow what it is you are alleging by your phrase; he is in the shop of a man who sells papers in the neighbourhood and he says: "Do you know what I am looking for", meaning: Do you know the house I am looking for: "Do you know what I am looking for, 25 Menlove Gardens East".

MR HEMMERDE: He had already been told by three people including a police officer there was no such place.

MR JUSTICE HAWICE: It shows great persistence, but does it show anymore?

MR HEMMERDE: Well, my Lord ---

MR JUSTICE HAWKE: He would get 50 per cent on the first year's premium.

MR HEMMERDE: But what would be the income of an endowment policy of £100? Your Lordship will remember that was merely his guesswork as to what the business might be. Your Lordship will appreciate my point here is, that assuming for a moment that I am now dealing with the possibilities of guilt, he has left the house, he has talked with an extraordinary persistence to the tram conductor, he gets off at once, and if I may say so, he is bound to take some time because no man who had committed such a crime would want to get back at once.

THE LORD CHIEF JUSTICE: As I understand your argument Mr Hemmerde. forgive me for interrupting it. your suggestion is that this emphasis on Menlove Gardens East was not only for the purpose of proving an alibi, but also for conveying the impression that he regarded as genuine the message which had been sent?

MR HEMMERDE: Yes, my Lord, but more for the first than the second reason, and for a third reason. It was necessary to spend some time up there; perhaps that would be partly the second one: it was necessary to come up there and necessary to spend time up there, because to get back at once -- well, it would at any rate get rid of some of the argument that at one time was attempted that this murder took place considerably later. Obviously if a man did a thing like that he would want to be away some time, and this persistent looking for an address, which young Green had told him did not exist, and which he must have gathered from the police constable whom he says he found very communicative and friendly did not exist, then going into Miss Pinches shop and saying: "Do you know what I am looking for..25, Menlove Gardens East", and he said: "I am looking for my client Qualtrough, do you know any body round here" -- yes, but that is not what he says: what he says is: Do you know what I am looking for".

THE LORD CHIEF JUSTICE: The emphasis may have been on "you": do you know?

MR HEMMERDE: My Lord, that is so; is it not again a fair construction to put upon it that he was doing it for one of the two reasons that your Lordship puts to me on This, of course, is all, I say, the fringe of the matter.

Now what happens next. Having got to that point he is asked in and nation-in-Chief what was his view then. I think your Lordship will find some evidence of value at Questions 3169 to 3171 at page 244: "(Q) When you had discovered this name and address was non-existent that you had been searching for what passed through your mind about that? (A) I think I came to the conclusion that a mistake had been made in the telephone message, either that Mr Beattie had got it down wrong or in some way the

wrong message had been conveyed to me. I could not account for it in any other way. (O) Then you found you could not get into your house did you feel anxious at all" -- that comes later, and I will deal with that in a moment -- I think I came to the conclusion that mistake had been made in the telephone message, either that Mr Beattie had got it down wrong or in some way the wrong message had been conveyed to me". Now we all remember what he said when he made his statement to police constable Willimas, whose evidence begins at page 101, but this statement comes a little later at page 102, question 1477: "(Q) What did you do then? (A) I spoke to the accused and said: "How did this happen'. The accused said: 'I do not know'. (Q) He replied 'I do not know'? (A) Yes. At 6.45 I left the house in order to go to Menlove Gardens, and my wife accompanied me to the back yard door. She walked a little way down the entry with me and she returned and bolted the back yard door. She would then be alone in the house. I went to Menlove Gardens to find the address which had been given me was wrong. Becoming suspicious, I returned home and went to the front door. I inserted my key in the front door, to find I could not open it. I went round to the back./to the back entry door". Now for what conceivable reason should ho have become suspicious if he had come to the conclusion, as he says at Question 3169 "that a mistake had been made in the telephone message either that Mr Beattie had got it down wrong or in some way the wrong massage had been conveyed to me". Here is a man who the night before then had been at the club leaving his wife alone, who apparently often went two nights a week, leaving his wife, to go and play chess at this very club. Why should he have become suspicious? The first statement he makes in this case is to police constable Williams, and I submit to your Lordships that what he says to police constable Williams at that moment is extremely important, not only in this particular, but in several others, because at that moment everything must have been perfectly clear in his mind! he had seen his wife, he had parted from her, she had walked down from the back door with him, according to him.

Your Lordships will notice there how he says: "She walked a little way down the entry with me and she returned and bolted the back yard door". How could a man have made a mistake about that, that the last time he had been his wife alive she walked down the entry with him, and had then returned and bolted the back yard door. Could he make a mistake about that?

MR JUST CRAWSON: I do not know why matters of that sort should impress themselves upon a man who did not know it was to be the last time he saw his wife alive.

MR HEMMERDE: I should have thought when two hours later he finds it is the last time he has seen his wife alive every detail of it would have been impressed upon him. She walks down the entry with him. When police constable Williams was cross-examined about it, it was suggested to him that in what he said about two hours later he must have been wrong. Your Lordships may remember what he said in answer to that, I think it is very important, it Question 1592. Although he made his statement or he took it down two hours later it is accepted as correct except one thing: "(Q) I am prepared to accept everything except one thing. Let me read what is not disputed. "My wife accompanied me to the back door' -- that is not disputed -- and walked a little way down the entry with me and she returned and bolted the back yard door'. Are you sure he said she walked down the entry with him and not down the back yard? (A) I am emphatic that he said she walked down the entry. (Q) It is a funny thing to do. I am going to suggest that he said she walked down the back yard and let him out. You are confident you are right? (A) I am confident, absolutely. (Q) Have you never made a mistake? (A) I dare say I have, but I am confident I never made a mistake, because I thought of the probability at the time of somebody having sneaked into the house while the accused, and his wife were a few yards down the entry. That is how I remember it".

MR JUSTICE HAWKE: I do not follow what you are doing at this moment. If he says she walked down the entry and then denies what indication is that?

MR HEMMERDE: I should have thought if a man on an occasion like this who comes back and finds his wife murdered. gives a variety of statements. gives a statement like that describing exactly what happened, and then, if I may say so. seeing the danger of it corrects it, because a good deal turns on the question of the back door being bolted. I should have thought it was a matter of very great importance.

MR JUSTICE HAWKE: I see your point.

MR HEMMERDE: Apparently my learned friend thought it too, because they cross-examined him upon it.

MR JUSTICE BRANSON: I am not sure if I follow the importance of this variation. Would you mind explaining it to me?

MR HEMMERDE: My point is this, that he had left her lying murdered in the room, and if immediately he came back he gave different statements to different people as to describing the scene when he left the house, would not that be of importance? No man could describe in two different ways what was true immediately after that had happened. MR JUSTICE HAWKE: Are you seeking to prove that he left her lying dead in the house by his statements? Your sequence seems to be wrong.

MR JUSTICE BRANSON: Suppose he had not left her dead in the house? What is there in his departure from the house on that night which should so mark in his mind exactly what had happened that he should be perfectly certain of it when he came home? Assume for the moment that he was innocent, that he left his wife as he says he left her, and went off on this wild goose chase after Menlove Gardens East, and then came back and has the shock of finding text that his wife has been murdered in his absence; is it to be wondered at that he should not be particularly clear as to whether she had come down to the back door, or whether she had come only to the back on try?

MR HEMMERDE: I should have thought, with respect, that it was so, especially when one remembers that in the statement he makes on

the 19th January he describes what their practice was. It is Exhibit 46: "When I returned home at 8.40 on Tuesday the 20th instant I went to the front door because it was my usual practice if I was out late at night. It was my usual practice to use the back door in daylight and if I went out by the back way after dark my wife usually came down the yard and bolted the yard door after me when I went out". Therefore on this occasion she was departing from her usual practice: she went out with him down the entry. although apparently in both his earlier statements he emphasised the fact and was perfectly clear, although she was supposed to have a bad cold. I do submit that if a man immediately after an event like this gives a statement with detail like that, and that is wrong, that one is entitled to suspect that he is not telling the truth.

MR JUSTICE HAWKE: May I interrupt you to ask for an explanation: It was because you said when he sees the danger of it he altera his story: It was because I did not see the danger of it that I asked you to explain what the danger was, and what difference it made to him. That is the point of my question.



MR HEMMERDE: Well, my Lord, there we evidently a good deal of suspicion and examination in the police about the looks on doors; and what I suggest --- It will be clearer as I go through the evidence about looking, and so on --- is that it might very well be that he would say that the story of walking down the entry was not quite consistent. A little later on he said that he did not hear her bolt the door at all. A number of little inconsistencies like that occur; and if I may, before I actually deal with this, I should like just to remind your Lordships that I have left out just one thing there with regard to what happened on the way to the house. Your Lordships will remember that he said that he was suspicious, and somewhere he said that he hurried home. A point arose as to whether he was seen on his way home. I notice that my learned friend described him yesterday as being a man of tall and very striking appearance. There was a girl called Lily Hall, who confidently identifies him as speaking to someone else just outside. Now, my Lords, he has always denied that. It was put to him definitely by the Police. Lily Hall gave her evidence, and it is clear that she had got the time right, or roughly right, because she was hurrying to get to the cinema, where she ultimately went. This is on the Tuesday. On the next morning, when this story comes out, she tells her sister that she has seen Mr Wallace the night before talking to someone. Then apparently the sister tells the father, and on the Saturday the father goes to the Police. That is the story as it was elicited. She gave evidence, and she spoke with the greatest confidence, and I should certainly submit that she was a young woman whom the Jury was entitled to believe. She said: "I saw him perfectly clearly that night". Again, it is only important upon the question of his veracity. Why should he say that he had not seen anyone or talked to anyone like that? I say that in all these little matters, when you come to look at them, it is important to find any things which are clearly at variance with the truth. Now, once you get him back there ----

MR JUSTICE BRANSON: I am not sure that I follow that. Why should he deny that he had been talking to somebody, if in fact he had been? You have been making a great point of the fact that he has been going from person to person and impressing upon them the fact that he was there and not anywhere else, in order to establish an alibi. Why should he cease that kind of operation, and immediately, when it comes to this case, deny that he was where he was?

MR HEMMERDE: Because he had said that, becoming suspicious, he hurried back, and then he was seen talking quietly to somebody outside.

MR JUSTICE BRANSON: Has he said that?

MR HEMMERDE: Yes, my Lord.

MR JUSTICE BRANSON: Not in the statement which you have just read.

MR JUSTICE HAWKE: No, it is not that.

MR JUSTICE BRANSON: NO. He said becoming suspicious I returned home". He did not say "I hurried back".

MR HEMMERDE: I will find it, my Lord; at some place he said that.

THE LORD CHIEF JUSTICE: The words that you read are at question 1478, but there is nothing about hurrying.

MR HEMMERDE: No, my Lord. I think if your Lordship will forgive me a moment I can find the place where I got it from.

MR ROLAND OLIVER: It is Question 2337 on page 171. "I hurried home".

MR HEMMERDE: It is so difficult to place all these things. Question 2335 10 "(Q) Then on going into the kitchen did you see the accused? (A) I did". Then I ask him certain questions, and said: "(Q) Go in your own words. (A) "I was called by telephone to a business appointment at 25 Menlove Gardens East at 7.30 p.m. to-night, but I could not find the address. I hurried home, tried my key in the front door, but the key would not act" --- All that I seek to say there is that having said to one police officer that he had become suspicious and to the other just afterwards that he had hurried home, the fact that he had been seen talking,

apparently unconcernedly, outside, to somebody else, was a circumstance that he would be very ready to deny.

Now it suggested by my learned friend: "Well, why has not that person to whom he was talking come forward?" --- Of course, one cannot tell; people to whom one talks in the streets are very often one's friends, and one's friends very often think that one is an entirely misjudged person. There is no reason why people will come forward just to say that a man is not telling the truth upon some small point, which probably appears to them to be very unimportant. At any rate, this young woman gives her evidence before the Jury, and I should say that she was a witness who was certainly entitled to be believed, and she state that. That is only one small matter.

Now, my Lords, if there is one point more than any other in the case to which I think that emphasis should be drawn in this chain, it is what happened next, the whole question of the getting into the house, and also certain things that he said to Police Constable Williams. For the moment, he is outside the house. I asked him whether it made him more suspicious when he found no light in the kitchen, because if your Lordship will look at question 3478, you will see that he was asked: "Did it make you suspicious?". I suggest to your Lordships that all this next is of very considerable importance. My learned friend was apparently of the opinion that this witness was entirely unshaken in cross-examination; but he will not expect me to quite share that opinion. Question 3478 is this: "(Q) Did it make you suspicious when you found that there was no light? (A) Yes, I was still uneasy; I could not understand why there should be no light in the kitchen - I mean in the living kitchen, of course. (Q) How were you able to see that there was no light in the kitchen? (A) Through the window in the back kitchen. (Q) Were you? (A) Yes. (Q) Do you remember a conversation you had with Police Constable Williams up on that subject? (A) Yes. (Q) That he said to you when you first came up the yard "Did you notice

any light shining through the curtains!? (A) That is so. (Q) and you said the curtains would prevent the light from escaping? (A) Quite correct. (e) Now let us look at the plan of the house" -- and perhaps it would be as well that we should not just remind ourselves of the plan. Your Lordships will see, as one comes in from the back, that there is the door of the back kitchen, and the window you come to first, and then the door, and then there is the door of the inner kitchen. Now I think I may pursue what I was asking him there: "(Q) Now let us look at the plan of the house. There is the door to the kitchen, is there not? (A) which kitchen do you refer to? (Q) I refer to the kitchen; that is not the back kitchen. (A) Yes. (Q) There is a door there separating it from the back Kitchen? (A) Yes. (Q) If that door was shut how would there be any light from the front kitchen to the back Kitchen? (A) There would not be any, but I did not say the door was closed. (A) I do not say that, but if it had been closed there would have been nothing to make you uneasy? (A) You could see. (Q) what I am pointing out to you is that when you come into the yard you had no reason to know there was no light in the kitchen? (A) No. (Q) It was quite impossible to see whether there was or was not ? (A) Until I tried the door I did not look through the window in the kitchen. (Q) when you tried the door or looked through the window in the back Kitchen, if the front kitchen door was shut you could not see whether there was a light in the front kitchen or not? (A) No. (Q) Therefore when you told Constable Williams that the curtains would prevent the light from escaping, it was a fact, and with the door of the inner kitchen shut there was no possible way by which you could see there was no light in the kitchen? (A) Quite right. (Q) so there was nothing to make you uneasy so far as seeing there was no light in the kitchen was concerned? (A) Not up to that moment. (Q) But until you got in? (A) Yes, there was. (Q) What was there before you got in with reference to the light made in the kitchen which made you uneasy? (A) When I tried the back door

on my first attempt in walking away from it I looked through the back kitchen window and I could see across at the angle that there was no light shining in the kitchen. (Q) If the door were shut there would not have been? (A) I had no reason to know it was closed, and finding no light naturally made me uneasy why it should make him uneasy when he had only got to say to himself "She has shut the door", it is not easy to understand --- "Surely if she was in the kitchen sitting there making herself comfortable for the evening would you not expect the door to be shut? (A) NO, not necessarily. (Q) But she had a cold? (A) Not necessarily. A woman with a cold being left in the kitchen, would you expect her to have the door closed? (A) Yes. (Q) I put it to you that when you say you were made uneasy seeing no light in the kitchen you were not in a position to see whether there was or was not? (A) I was. (Q) When were you looking through the window in the back garden? (A) After my first attempt to open the back kitchen door. (Q) Before the Jomtones had seen you? (A) Yes, before I went round to the front door the second time. (e) Then is this the fact, that when you could not get in the first time you looked through the window and that made you uneasy? (A) I think that was the order of it. (Q) Is that so; do you know? When Mr Roland Oliver was examining you just now you said when I could not get in I thought nothing. When I knocked at the back I thought she might have gone to the post? (A) That is quite possible. (Q) Then you were not uneasy? (A) I was both uneasy and not uneasy, 11 you can follow me. It was a very difficult position, and I did not quite know exactly what I did think. (Q) You made your usual knock on the door? (A) Yes".

Now, my Lord, just the same as I say: Why should he have been in any way suspicious and hurried home? so I say: Why should he have said when he came there that he found no light in the kitchen when it is clear that if the kitchen door had been shut it would be quite impossible for him to have seen? The

curtains being draw in the kitchen 30 he told Police Constable Williams would prevent any light from escaping. He then tried to get in. He says that he tried at the front and he tried at the back. Now I do suggest that this business of the looks, and his saying that he wis unable to get in and that the house 16 locked against him, is an extremely important circumstance, because we know now that the front door lock we in a condition that it had apparently been in for months. In fact, having regard to the statement he made to the Police, he could hardly deny that. He says he could not get in at the front door and he could not get in at the back door. May I just take your Lordships to certain statements that were made as regards that. He told Police Constable Williams: I tried the front door and found it bolted". There is an examination of the lock by Superintendent Moore.

MR JUSTICE HAWKE: In the locking of the front door of importance?

MR HEMMERDE: Yes, my Lord, I think so.

MR JUSTICE HAWKE: Very well.

MR HEMMERDE: At Question 2549 on page 174 he is asked what did you look at the front door? (A) I made an examination as to marks either on the lock or close to the lock. The accused was present. (Q) who else was with you then? (A) Inspector Gold. I asked the accused if he would let me have his latch key. He gave it to me and I put it in the lock. I worked it for a couple of seconds and I found out what was the matter. I went outside and pulled the door to me and locked it, and I opened it at the first attempt. I went in and said 'I could open the door all right but the lock is defective.' (Mr Justice Wright): That is the front door? (A) Yes, the front door lock. (Mr Hemmerde): When you said 'I could open the door all right but the lock do defective', what did he say? (A) 'It was not like that this morning! (O) Did he make any suggestion to you that it had been bolted? (A) Never" ---Now the locksmith is called, and your Lordships will probably remember the evidence of the lock

smith, that this lock must have been in this condition for quite a long time. The effect of the lock that when you tried to unlock it, you turned it half-way round and then you could open the door, but if you turned it fully round, it slipped back. It was quite easy to demonstrate, and anyone who knew it like one would know one's own front door could probably handle it just as if there was nothing the matter with it. Superintendent Moore at once did it. The answer was not "Oh, that is all very well, but the door was bolted". He simply said "It was not like that this morning". But, my Lords it was like that this morning. Why should he be making remarks like that? There was Police Constable Williams, who was outside while there was some fumbling with the door. Your Lordships will remember that Mrs Johnstone went to open the door, and it was one of those doors where you press two things together and that pulls the catch. She did not realise that, and tried to turn it, and that was the fumbling that was heard. He came up and opened the door. Police Constable Williams heard no noise of a bolt being pulled back. Why should a man who had gone casually into this house that night and was making his escape, bolt the front door when he left? For what reason? He could not bolt the back door as well. For what purpose should he have done it? But the importance of it in my submission to your Lordships is that here, faced with these police officers who intend to examine this thing fully, he does not say "Well, it was bolted and I could not get in because it was bolted". What does he say in his statement? The curious thing is that in his statement that night to the Police he adopts what he had had pointed out to him by the police. It is Exhibit No. 42, page 3, and about one-third down the page he says "I arrived at Wolverton Street about 8.45 p.m. and I pulled out my key and went to open the front door and found it secure and could not open it with my key I knocked gentle but got no answer. I could not see any light in the house. I then went around the back, the door

lending from the entry to the back yard was closed, but not bolted. I went into the back door of the house and I was unable to get in, I do not know if the door was bolted or not, it sticks sometimes, but I think the door was bolted but I am not sure. There was a small light in the back Kitchen, but no light in the kitchen. I then went back to the front, I was suspicious, because I expected my wife to be in, and the light on in the kitchen. I tried my key in the front door again and found the lock did not look properly. The key would turn in it, but seem to unturn without unlocking the door" - That is adopting exactly what the police had pointed out to him was the condition of that lock, and the answer to them then was "It was not like that this morning".

Your Lordships will perhaps remember the evidence of the locksmith. There can be no dispute about it, and I can refer your Lordships to it if necessary. He made it perfectly clear that this was a condition which had existed for quite a long time. I think I can quite shortly refer your Lordships to that evidence, because I attach some importance to it. It is Question 1898 on page 117. "In my opinion there is no evidence of recent damage at 11", and in Question 1895: "When you put the key in and turn it it goes right round: That is due to the wear of the lock. (Q) And not to any recent damage, or anything like that? (A) In my opinion there is no evidence of recent damage at all. (Q) It has been like that for some time? (1) Yes. (Q) For anyone who knew that that lock was like that it would be perfectly okay to open the front door? (A) Yes. (um Justice Wright): Because he would stop at the proper time and hold it? (A) Yes. Anybody familiar with it would hold it like that, but a stranger who did not know it would turn the key right round". --- In the same way with the lock at the back, on page 118, at Question 1704 Mr Welsh asked the witness: "(Q) You say the locking bolt was rusty? (A) Yes, but it was in good working order, and then the spring bolt, the crank which actuates the spring



bolt, grinding on the base of the lock, so that when you turned the lock the spring bolt remained in. It required pressure to open it. (Q) Apart from being rusty there was nothing wrong with it? (A) Nothing else wrong. I also found a spring inserted in the lock, and that had evidently been put in at some time to assist the original spring, to force back the spring. (Mr Justice Wright): Was the condition in which you saw it or long standing or only recent? (A) It was long standing, my Lord" --- Then at question 1717, in the cross-examination of my learned friend Mr Oliver he was asked: "(Q) The fact that a latch would sometimes open easily and sometimes stick is a possibility with regard to a lock? (A) In this lock, no, because the crank which operates the spring bolt is grinding against the case of the lock. To make that work freely it would have to be ended off by a file. (Q) I thought you said it depended upon whether it was rusty or not whether it worked freely or stuck? (A) Not with this particular lock. I only examined this lock.

MR ROLAND OLIVER: Will you go on, please, because I attach some importance to the point.

MR HEMMERDE: Do you want me to read the next one?

MR. ROLAND OLIVER: Yes, I want it read right on, please.

MR HEMMERDE: Certainly: "(Q) Does it sometimes depend upon what the thing is which it fits into? (A) Into the strike of the lock, the part that fits on to the door? (Q) Yes; that is the strike? (A) Yes. (Q) Does it depend sometimes on the condition there? (A) Yes. I had one on my own shop door like that and I had to lift the door to turn the key. (Q) Do you know what the position of this door was? (A) No. (Q) with regard to the possible grinding effect of rust or anything else on the strike, that might have the effect of making it sometimes difficult and sometimes okay? (A) I do not think so in this case. (Q) Why? (A) Because the stiffness is due to the internal workings of this lock. ( ) Leave them out and say to that extent it is always

stiff? (A) Yes. (Q) How will you add to that the possibility that there may be something wrong with the fit on the strike? (A) I cannot say that, because I have not seen it. (Q) That is a thing which will produce difficulty sometimes. I think you have said it. I am trying to find out, as you know, about those things. I thought you told me that sometimes the fitting of the latch into the strike is a thing which may produce stiffness by the latch grinding upon the strike? (A) That is possible. (is not that a thing which is erratic sometimes and its operation stiffer than at others? (A) Yes, that may be, but as regards this lock I cannot say anything about it. I have not been on the premises. (Mr Justice Wright): All that is suggested to you is that there might be sometimes some extra stiffness because of the adjustment of the strike? (A) Yes. (Q) You say it must always be stiff, and you cannot say whether sometimes there was a little extra stiffness? (A) I could not say because I have not seen it --- Then in re-examination I asked him: "(Q) So far as that particular lock is concerned, would there or would not there be difficulty with a person who is used to it? (A) NO, because they would know it required a little extra pressure and they would use that extra pressure. DOO

Then in the examination of Mr Wallace at Question 3539 on page 273 he was asked: "(Q) Is it your view that the door there was locked or bolted? (A). No, it is not, not now. I probably thought so at the time, but on considering it I think I was wrong in that view, because I think that the thing had stuck, as it did on many occasions. It was usual with the back door." --- So, my Lords, that being the case, (and I draw particular attention to that answer) there was nothing whatever in the condition of that back door to make him think anything else except that it was stiff as it had been on many occasions. In the case of the front door, assuming that the door was bolted, you have the fact that he never said a word about that to the two police officers when they were asking him, and he did say

what I submit in an extremely important thing with regard to that condition which the locksmith speaks about as being of long standing, namely "It was not like that this morning". While I am upon that, there is one other thing that I had noted on the some page, page 273, where he was asked at question 3535: "Did you know that your lock was out of order and wanted coaxing? (A) We had had trouble with it from time to time for quite a long period; it had occasionally got stuck, and we had had to oil it on purpose, but we never had had any difficulty in setting in".

Now, my Lords, supposing that one is right in one's contention that these looks were really, both of them, in the condition that they had been in for a very considerable time, you find his telling Mrs Johnstone that the doors are both locked against him. Then, immediately Mr Johnstone offers to fetch his key if necessary, and they are on the scene, that door opens. "It opens now, he says, and he goes in. I submit that it is a point of very considerable import, this question of the locks. Amon, again assuming guilt, know the horror that there is in that house, and he might well be hesitating to go into that house unless there is someone about, because it is vital to him that no one shall suspect that he has been into that house since he left it round about 6.45. He may well say "I want someone to be there when I get in, and I want someone to realise that I could not have been in before because I am locked out"; and then you find that he is not locked out, and you find him, when someone has turned up to stand by, as it were, being able to get in at that door; and you find the front door, although he says to one officer that it was bolted, and fails to tell two others that it was bolted, is really in its usual condition; and you find him making a statement to the police officers that that was not its usual condition, saying "It was not like that this morning", not realising what an investigation by a skilled locksmith will show. Is not that a matter of very vital

import? And when you find a man saying, apparently without reason, up at Menlove Avenue, "I became auspicious", or saying that when he was up there he became auspicious and hurried home, and you find him first of all, if Mice Hall is right, talking to one man, possibly saying "Come in and spend the evening" or "Come in and see the wife", or something like that, and that man passes away, and then he meets the Johnstones and they go there, if your Lordships come to the conclusion, so surely the Jury was entitled to come to the conclusion, that all the difficulty about getting into that house was a presence, and a pretence that arises from his natural desire not to be suspected of having been in that house since 6.45, from his natural desire that the first person who sees him enter that house shall know that he has been excluded from it and could not have been in it; if you find that man saying my suspicions were increased because I could not see the light in the kitchen", and the same man admitting to the police officer that no one could have seen if there was a light there or not, and then trying to excuse that by saying in the presence of the Jury "I never said the kitchen door was closed", and having to admit that if it was closed he could not possibly have seen if there was a light in there or not -- he thought his wife would be in the kitchen. Does he tap at the window? He does not. There is the knocking! at the door. What makes him suspicious? Was he suspicious? When he said the doors were locked against him were they locked against him? Did he think they were locked against him? Both doors, front and back, were in this condition apparently of long standing, apparently a condition that he would know perfectly well, and until someone comes on the scene, he cannot get into either. Then you find him, having told Police Constable Williams that the door was bolted, and having not told Superintendent Moore and Inspector Gold that the door was bolted, having given them an explanation that the door was not in that condition in the morning, making a statement that night to the police,

incorporating in that statement the very condition that the police have pointed out to him, although he says it was not there in the morning, and dealing with it as a part of the ordinary economy of the lock. I hope I do not unduly stress the point, but I do not that this business of the locks and the failure to get in, and the being suspicious, and becoming more suspicious on not seeing the light in the kitchen which he could not possibly have seen if the door was closed in the kitchen, is a matter of vital import. That is a matter which I submit might make any Jury not only suspicious but abundantly suspicious, that here is a man faced with the most appalling situation --- suspicious, yes; but not suspicious as he meant; not suspicious, but fearful on his way back. He comes there, and I submit that the Jury were absolutely entitled upon the evidence to come to the conclusion that there was no real effort to get into that house before there were people there who could mark the course of events.

Then he gets into the house, and the two Johnstones stand outside, and they hear two cries which he says were "Julia, Julia". He goes into the house. There was a dim light in the middle bedroom, which your Lordships will remember from the Plan faces out into the yard. In the furthest extremity, which is called "Laboratory", that is a little room where apparently he worked, there were a number of bottles and things in there, and that is a very very small room. Then there is the middle bedroom, which was their bedroom, where apparently he had left a light, and then there was the front room. Now is there no significance, again, in the course that he follows? The watchers outside see him going through the house. He had left his wife perfectly well except for a slight cold. He goes through the kitchen and turns up the light. The police, late in the case, at my suggestion made a full examination as to what light there would be in the parlour when the light was full on in the kitchen. To anyone standing in the doorway of the parlour

where the body was lying, so much light is thrown from the kitchen, partly because there is a mirror in the hall which reflects the light, that standing in the doorway one can see the groups, the people in the pictures, and that is the evidence given by the police in this case. He goes to the doorway of a room about 10 or 11 feet across, and he stands there. But before I get him there, let me just follow the argument that I was putting forward. That is the room that he goes to first. First of all, calling "Julia, Julia", he goes up stairs; he gets into his bedroom, he gets into the front bedroom, and he goes into the little laboratory, which is very little more than a cupboard, and he is seen to strike a light in there, as though there was any conceivable possibility that his wife would be in that little laboratory. If there is any question about that, I will call attention to it in the evidence.

MR ROLAND OLIVER: It is only that you called it a cupboard. It is in fact a room.

MR HEMMERDE: It is a very very small room. It certainly is not six feet across, I think. It is all shelves and tables. I think we have all been in it, and it is a tiny little room, and really one is not exaggerating when one calls it little more than a cupboard. But he is looking for his wife there. He strikes a match there, and he is seen to do so from outside. MR JUSTICE HAWKE: Your argument is on the assumption that he knew perfectly well where his wife was?

MR HEMMERDE: Yes, that is the argument.

MR JUSTICE HAWKE: And knew that she was dead. Why should he not go straight into the room where she was?

MR HEMMERDE: Of course I quite see that this may not appeal to your Lordships in the way that it appeals to me.

MR JUSTICE HAWKE: But I want to understand you. That is why I am asking the question.

MR. HEMMERDE: It is no difficult to know how things strike anybody. Supposing a man had murdered his wife, and he knew that her body

was lying in the parlour, doon your Lordship really think when he would go straight in there with two people outside?

MR JUSTICE HAWKE: I m not saying what I am thinking at am asking you what your argument is.

MR HEMMERDE: My argument is this, my Lord, that it was an unnatural course of search. One can scale quite easily from the plan the size of that room with its tables and a few bottles and things, and the picture of this man going upstairs from the kitchen looking in all the rooms, turning up the middle gas in his bedroom, and then striking a match in the laboratory, is an unnatural picture, and it is not a picture which would represent a was really searching for his wife.

THE LORD CHIEF JUSTICE: Is there not a much simpler answer? If the theory is right that he had murdered his wife, it would be an obvious pretence to look for her in some place where he knew she was not?

MR HEMERDE: Yes, my Lord. Your Lordships puts in a very much better way the argument that I was laboriously following out.

MR JUSTICE HAWKE: I can see that now.

MR HERMERDE: Your Lordships will find, if your Lordships read my speech to the Jury, that I made a very strong point of that, and I think it is a strong point. How can one believe that this man, looking for his wife --- how can one really think that ho believed anything very terrible had happened then? Why should he have thought it? He said at one time that he thought she might have gone to the post. Why should he look for her in the laboratory?

THE LORD CHIEF JUSTICE: Of course, one has to keep clearly apart he theory of innocence and the theory of guilt.

MR HEMMERDE: I try to do it, my Lord, but it is so difficult at the moment, because of course for the moment I am developing the argument upon the line of guilt, as I must do.

THE LORD CHIEF JUSTICE: SO I understood.

MR HEMMERDE: Yes, my Lord. Your Lordships will see that I must do that. I first of all put the other side, as fairly as I

could, and I will try to put it even more fairly before I finish; but meanwhile I must develop it upon the line that this was a vision. There is the Jury listening to all this, and they see this man, so far as they can see, with no reason to suppose that anything untoward has happened to his wife, going into every room except the room where she is. Then one finds him on the threshold of the room, and there opposite him --- I think it is shewn on photograph No. 6 very well, but I must warn your Lordships how extremely deceptive the photographs are as regards the size of the room.



THE LORD CHIEF JUSTICE: Nearly all photographs are.

MR HEMMERDE: You would hardly believe that that room is only 11 feet square. As one look across there he stands in the doorway, where according to our investigations there is ample light to see everything on the walls, and not quite as much to see anything on the floor, but enough. What does he do? He strikes a match, in his own little parlour, with the gas lamp perfectly visible across the room. He strikes a match, and he then proceeds to walk round the body, round the side of the body, (Indicating on the plan) and he lights the right-hand lamp. He could not have lighted the left-hand one without stepping right into the blood.

MR ROLAND OLIVER: This is quite a newpoint. We have never heard this before.

MR HEMMERDE: It is not, really.

MR ROLAND OLIVER: Not only is that not so, and it has never before been stated, but the evidence was that at a later stage he did light the left-hand gas, and he did not step in the blood.

MR HEMMERDE: That is exactly what I am going to say. If I may say so, he goes round and lights the right-hand lamp. He says as to that: "Oh, we always have that one lighted". Then at a later period, as my learned friend quite rightly says, this is the evidence, that Police Constable Williams was in the room, and he had not noticed the mackintosh, but while he was there the prisoner, as he said apparently quite unconcerned, and without any suggestion from him, stepped across and lighted the left-hand light, and with the extra light there thrown he then noticed the mackintosh. But his first movement -- I submit that it was an utterly unnatural thing first of all to light a match in the doorway in one's own familiar room, every object of which is clearly marked upon the walls. If you know the horror that there is there, light a match. At any rate, he strikes a match, and he then sees the woman lying there. He says at first he thought she was in a fit, and he notices at that moment ---

a point not without significance --- the mackintosh. Your Lordships will remember that in the statement, to which I will draw your Lordships attention because I think it is of acme importance, he said. right at the end of his first statement, exhibit No. 42: "When I discovered my wife lying on the floor I noticed my mackintosh lying on the floor at the back of her. - wore the mackintosh up to noon today but let it off owing to the fine weather. My wife has never worn the mackintosh to my knowledge. The only point that I draw your Lordships attention to for the moment is that when he first came in that he noticed the mackintosh lying on the floor at the back of his wife. Now, having as we know done all this, and lighted the right-hand lamp, he goes out. Your Lordships will remember that he goes up to the Johnstone's and he says: She is dead. Come and see". And then they go in. Then, my Lord, one has passed from the locked doors-----

THE LORD CHIEF JUSTICE: Forgive me a moment. I thought you were going to say that he took the course that he did in order to avoid stepping into the blood.

MR HEMMERDE: Yes, my Lord; that is what I mean to suggest, and as & fact not one drop of blood was ever found upon him. I asked the Police, when there was a suggestion of his having touched the notes, and I asked him, and so far as he knew not one drop of blood ever got upon him. I submit that man going into this room like that, -suspecting nothing --- Why should he suspect? She might have gone to the post. --- would have walked straight across to the lamp on the left or right and lighted it, and would have come straight across the body. He does not do anything. of course, one man shews his emotions more than another, but only two cries are heard by the watchers outside, in this little house only a few feet apart, and those cries he personally Bays are: Julia. Julia.", as he goes upstairs. There is no cry of anguish or sorrow, audible at any rate, when he comes out. He may be a man of iron control. He goes out, and according to Mrs Johnstone, until her husband has later gone for the Police

he lo quiet and collected, after that he sobs once or twice and breaks down, a thing which may have some bearing upon it or may not. It is my duty simply to put before the Court what all these people thought about his demeanour but apart from the extraordinary incident of searching the house in this way --

MR JUSTICE HAWKE: Who was it who said this: "(Q) When he came out to you what did he say? (A) Come and see; she is killed'. (Mr Justice Wright): Did you hear my sounds from him while he was in the house? (A) NO, I heard nothing. (Q) He came out and said Come and see; she is killed'? (A) Yes, (Mr Walsh): What was his manner when he came out and said that?

(A) In a distressed tone, his words, and very hurried. you know. (Mr Justice Wright): Do you mean agitated (A) Yes. (Q) He hurried as if he was agitated? (A) Yes."

MR HEMMERDE: That was Mrs. Johnstone my Lord. I thought I had made it clear that Mrs. Johnstone said one thing and he said another, but I have it here.

MR JUSTICE HAWKE: Johnstone said he looked as if he was suffering from a shock.

MR HEMMERDE: May I point out exactly what he said? (A) He said come and see; she has been killed'. (Q) Are you sure that is what he said? (A) Yes. (Q) What was his manner when he said that? (A) He seemed a bit excited. (Q) When he said that did you go into the house? (A) Yes; we all went in." ---

I do not know if your Lordship would allow me to break off now, because I can find this more accurately during the adjournment.

THE LORD CHIEF JUSTICE: Very well.

(Adjourned for a short time.)

MR. HEMMERDE: When Your Lordship adjourned I was trying to deal with one or two matters that I would now like to clear up, if I may. First of all there was the point put to me by the Lord Chief Justice, the question about stepping into this room, about which I want to draw attention to certain of the evidence. I was pointing out how difficult it would be to walk straight into that room, if he had gone round on the left of the body, to have avoided the blood; that is at question 2374.

MR. JUSTICE BRANSON: Before you begin to read the evidence about it, would you mind making precise the point that you are relying upon with reference to this?.

MR. HEMMERDE: In this matter it is this, my Lord, that a person who had every reason to believe that his wife was in the house and quite well -- there was no reason to suspect any foul play -- coming from the door to the parlour where the light was quite sufficient, not only to see the gas opposite but the pictures on the wall, would have naturally walked straight over to the gas and let it, and he could not do so without stopping straight over the body.

MR. JUSTICE BRANSON: My difficulty in following that is this. You told us this morning that from the reflected light from the kitchen and the mirror which was outside, there was sufficient light in the sitting room to enable you to see the groups on the pictures on the wall?.

MR. HEMMERDE: That is so.

MR. JUSTICE BRANSON: Would not give sufficient light to enable anybody throwing open the door to see a body lying on the floor?.

MR. HEMMERDE: I should think it is possible, though doubtful. I will read the evidence on that very point. My point is that the striking of the match was all drama, quite unnecessary.

MR. JUSTICE BRANSON: If what happened was that when the door

was thrown open there was sufficient light to see there was something upon the floor, is it not natural that before stepping on to it, or over it, a man would light a match to see what it was?.

MR. HEMMERDE: It is possible, my Lord, but he does not say he saw anything before he struck the match. When I draw attention his evidence, it will be seen he struck the match before. My Lord, I will read about that. He struck the match and then saw a body; it might be a good thing if I at once looked at that evidence upon it, it is in Mr. Wallace's evidence. Will your Lordships look at question 3210, on page 246: "(Q) What did you do? (A) The door was closed to and I pushed it a little open and then I struck a match in quite the ordinary way. That I probably did every night I went into the room in the dark. I held it up and as I held it up I could see my wife was lying there on the floor. (Q) You told the officer you thought she was in a fit?". Now I think that, having just cleared up that point, I would like to come to the evidence upon that question, which I point out is very important, question 2374, at page 176, the evidence of Superintendent Moore: "(Q) When you came to the door could anybody get across to the gas without stepping into the blood? (A) It was very very difficult. On the left side between the sideboard you see in Exhibit No. 6 there were two large clots of blood, one nearest the fire about the size of a saucer. (Q) Looking at No. 6, is that on the left of the body as you look at it? (A) That is right. (Q) Was there any blood on the right of the body? (A) Very little on the right; there was none on the right. As a matter of fact. There was some the right side of the head."

MR. JUSTICE HAWKE: What is that on the right side of the head, it looks like a large pool of blood; I am looking at the photograph?.

MR. HEMERDE: All I can tell your Lordship is as regards where

the pools are there to no dispute between us. I see what your Lordship sees there.

MR. ROLAND OLIVER: If I am not interrupting, there was positive evidence where the pools were in fact. I put to Superintendent Moore, at page 194, a plan, which I have here, which shows the exact position of every pool, and he agreed it. MR. JUSTICE HAWKE: Was not that a pool on the poor woman's right?.

MR. ROLAND OLIVER: Yes.

MR. JUSTICE HAWKE: It is obvious from the photograph.

MR. ROLAND OLIVER: Yes. Here they are, is anyone wants to see them.

MR. HEMMERDE: I think what really happened, as my learned Junior reminds me, was, the distinction was this. On the left was blood, on the right was, mainly, brain; I think that is what was said. I will clear it up by reading this, I think, at question 2377, page 176: "(Q) We know as a fact that he lit the right hand gas. Did he tell you so at the time? (A) That was the gas that was lit when I was there. (Q) We have heard that that was the one that was lit first? (A) Yes. (Q) Looking into the room there you say on the left of the body ho could hardly have missed the blood? (A) You would have to be careful and walk almost sideways. (Mr. Justice Wright) And the big pool? (A) That was farther on, my Lord, near the fender; there was a further pool six or eight inches this side of that one, and then there was a big smear. (Mr. Hemnerde) When the light is on in the inner kitchen what effect, if the kitchen door is open, has that upon the light in the sitting room? (A) Its lights are fairly well. (e) I want to get it in this order. Supposing there is no light at all in the sitting room but there is a light on in the kitchen and the kitchen door is open, how much light would there be then? (A) In this particular sitting room with a light paper, I made a test of it last night and you can see the pictures on the wall, what they were of, and the ornament on the mantel piece and the gas

or the gas brackets. (Q) could you on the floor? (A) would be more difficult on the floor by reason of the furniture. (Q) Would your vision be assisted at all by the fact that the light in the middle bedroom was slight? (A) NO, not at all. (Q) Is there a mirror in the hall? (A) There is a hat stand in the hall with a piece of gloss in the centre, and that reflects on to the glass inside. I tested it last night. (Mr. Justice Wright) It is an indirect reflection? (A) Yes. It is a very small room: it is exactly 11 by 11 ft. and 9 ft. 6 ins. from the door to the fireplace -- a very small room. (Mr. Hemmordo) Would there be any need to light & match to 800 the gas brackets? (A) You can see them from the hall. This was at half-past nine last night, my Lord. (Mr. Justice Wright) That you saw the gas bracket from the hall? (A) Yes, but not alight. (Mr. Hemmerde) Simply from the reflected light? (A) Yes, the pictures, and as a matter of fact you can see the forms of the ladies and gents on the wall. (Q) You can actually see what the pictures are. You went last night to make these tests? (A) Yes. Inspector Gold was with me. (Q) When you went last night was the door off or on? (A) The door of the parlour was off. (Q) Would that make any difference? (A) Yes, it might". Then there is a further passage at Question 2561, page 194, where my learned friend, in dealing with this very matter, says: "Your Lordship will see what I am using it for. If he had to walk across here he would have to go through the blood".

MR. ROLAND OLIVER: You are not suggesting I meant to the left of the body, are you?.

MR. HEMMERDE: I find it a little difficult to follow. I think I am right.

MR. ROLAND OLIVER: The word "not" is obviously missing. My point is that he would not have to go through the blood, and my plan shows it. That was the whole point, that no one had to go through the blood, of all the people in the room that

night. The word "not" is omitted.

MR. HEMMERDE: Let me just try to clear that up. For the moment I do not quite follow that. I have sufficiently made my point, whatever Mr. Roland Oliver said on that occasion. I think that is all I want to draw attention to on that point. Then I would like for a moment to clear up some thing that Mr. Justice Hawke said about Johnstone's. First of all there is page 78, Question 1097. After they had met and said "Good evening": "(Q) When your wife had said 'Good evening, Mr. Wallace', what did he say? (A) He said: 'Have you heard anything unusual tonight'". Now let me pause there for a moment At that time he was quite, as he said, willing to accept the fact that she had gone to the post as a possibility. What could he mean: "Have you heard anything unusual to-night?". Mr. Johnstone gave exactly the same evidence. Then they go on to say they both said he said that the door was fastened against him to the front and the back and they were looked against him. He said: "Have you heard anything unusual tonight?". Then at question 1257 there is one passage I think I ought to have noted. I had better begin at 1255: "Then my husband said "Try again, Mr. Wallace, and if you cannot manage I will get my key'; if it was only a common lock in all probability our ley would open his door. (Q) At that time you were all in the passage just outside? (A) Yes; Just on the steps, really. (Q) When Mr. Wallace went in to try again did you hear him say anything? (A) Yes; he looked over his shoulder and said 'She', meaning Mrs. Wallace, will not be out; she has such a bad cold.'". That hardly looks like uneasiness at the moment.

Then on the question as to demeanour, about which I was being asked at the adjournment, there are two or three passages as regards the Johnstones I would like to call attention to. Question 1196 deals with Mr. Johnstone at page 84: (Q) Can you tell me what his attitude, his demeanour, was during this time after he had gone in with you from the yard



into the front room and goes into the kitchen, and reaching down his Cash box? (A) He appeared to me though he wild suffering from shock. He was quiet. walking round; he did not about or anything like that."

THE LORD CHIEF JUSTICE: That was read yesterday.

MR. HEMMERDE: Yes, my Lord. I was not quite sure. It really only arises out of a remark made by my Lord. I think there is one other page upon that and than I can pass on to 1868.

MR. JUSTICE HAWKE: That was read this morning.

MR. HEMMERDE: That exhaust the points I think upon that. There is a passage at 1336: "(Q) Can you tell me what his attitude was the whole of this time?. Did he seem excited, or did he seem calm, collected, or what? (A) At first he was quite collected. ( ) wat do you mean by 'at first'?. (A) Before my husband left for the police".

Now the next point, having dealt with his getting into the room there, I wish to deal woth is the question of the raincoat or mackintosh, Your Lordship will remember first instance, that in his statement he said: "When I discovered my wife lying on the floor I noticed my mackintosh lying on the floor at the back of her. I wore the mackintosh up to noon today, but left it off owing to the fine weather." That being the case, he puts it quite clearly that he noted it at once when he came in. Your Lordship will follow what actually happened in the sequence in dealing with it. Mr. Johnstone never saw it. Mrs. Johnstone says at page 89 Question 1274: "(Mr. Justice Wright) Did you see a mackintosh anywhere? (A) I did not notice & Mackintosh until Mr.Wallace drew my attention to it. (Q) Tell us about that in order of time. At that stage you did not notice the mackintosh; is that right? (A) Yes, that is right. (Mr. Walsh) Can you say how far it appeared to you Mrs. Wallaco's head was from the door? (A) From the door itself? The door was standing open, (Mr. Walsh) The door standing upon. (Mr. Justice Wright) The door was open about half way, I think? (A) Yes -- I should

think about a foot or so. but of course it might be a little more. (Mr. Walsh) How far did you go into the room? (A) stood right behind Mrs. Wallace. (Q) How do you mean, right behind her? (A) Behind her shoulders, just where the mackintosh lay. (Mr. Justice Wright) You had not seen the mackintosh? (A) No, I had not. but know where the mackintosh was now. (Q) You had not noticed the mackintosh then? (A) NO, I had not, but I was just behind her shoulder, perhaps a little further into the room, I should say. (Mr. Walsh) On the left or right hand side of the body as you went in? (A) On the right hand side, the sideboard side. I did not cross the room at all. (Mr. Justice Wright) I should have thought that was your left hand side, was it not? (A) Yes; I thought you mount the side of the body. (Q) It was on your lofty (A) Yes". Then some question arose about the chair, and so on, and about her position where she was standing. Then your Lordship will come to page 92, Question 1308: (Q) When you all went into the kitchen did you see the accused point to that cabinet and reach down the cash-box? (A) Yes. (Q) And he went upstairs and said there were £5 missing? (A) Yes. (9) When your husband had gone for the doctor and the police what did you and Mr. Wallace do?". Your Lordship will remember before Mr. Johnstone had gone he never saw the mackintosh; this happened after he had gone. "(A) We were in the kitchen for a few minutes and then Mr. Wallace returned to the sitting-room; I did also. (Q) Did you go together, or did Mr. Wallace go first and you follow some time afterwards, or what? (A) Mr. Wallace went first; I went right behind him, almost altogether, you see. (Q) What did Mr. Wallace do then? (A) Mr. Wallace stooped over Mrs. Wallace and he said they have finished her; look at the brains', and I said 'Whatever have they used?', glancing round the room. (Q) Did he say anything further, or do anything? (A) Mr. Wallace rose and came to the other side to leave the room, and he said: "Why, whatever was she doing with her mackintosh and my mackintosh'.

My learned friend suggested that it have been "with a Mackintosh and my mackintosh. It seemed to me natural, and I accepted it, and it was probably with a mackintosh and my mackintosh. Your Lordship will remember that he states afterwards that he had noticed the mackintosh when he first came in, and then, as you will see in a moment he leans down and touches it: "Whatever we who doing with a mackintosh and my mackintosh?". Then: (Q) You say he came to the other side. Which side had he been on? (A) on the window side. (Q) He came round the body and said "Whatever was she doing with her mackintosh and my mackintosh' (A) Yes. (Mr. Justice Wright) You mean he had gone across from the door to the window side of the body? (A) Yes; and I forgot to say he felt her hand, and I did also". Then he said it was his mackintosh. Then my learned Junior put the question: "What were you asking about then?".

THE LORD CHIEF JUSTICE: Mr. Welsh evidently thought that the words were "her mackintosh and my mackintosh".

MR HEMMERDE: Yes. I only say I do not think I ought to press the other point; it seems to me to be very reasonable to take my learned friend's construction of that there were not two there. At any rate that suggests a little conversation. Then at Question 1318: (Q) what were you asking about then; what mackintosh? Was there a mackintosh there? (A) Well, Mr. Wallace stooped and fingered the mackintosh. When I said "Is it your mackintosh of course then you could not recognise it as a mackintosh; that is what I meant to convey to you. In the position it lay there would not have known it was a mackintosh. (Q) When it was shown to you and you saw it was a mackintosh, did you remember if you had seen it there when you first went in? (A) Well, it appeared to be something roughed up, you know; I did not know really what it was. (Q) But what you saw when it was pointed out to you as a mackintosh you had noticed before, although you had not know what it ? (A) Yes. (Q) It was not something fresh that was not there when you first went in? (A) No. (Q) That I follow. (A) But it was almost hidden under the body, you see. (Mr. Wallace): And he stooped down and said "It is mine? (A) Yes." As regards being almost hidden under the body, your Lordships will have perfectly clear police evidence that although it might appear to be so, it was hardly under the body at all. I will call attention to that in a moment. The point I want to make about this is that at once when there alone with Mrs. Johnstone, although he had known it perfectly well before and said he saw it immediately he went in, he kneels down and according to him he fingers it, and not only that but he says what 18 she doing with my mackintosh, and, again, when she says to him: Is it your mackintosh. he again fingers it and says Yes, it is my mackintosh. The next stage on that I think is at Question 1403 and 1404. May I just put the point as it is made by this witness: "(Q) You say when you first saw the mackintosh the body was on top of it; is that right ? (A) Yes, it appeared so to me. There was very little of it to be seen. (Q) Under the shoulders ? (A) Yes, under the

shoulders". Then we come to Question 1543; this was Police constable Williams: "(Q) when you went into the sitting room did you say anything to the accused ? (A) I spoke to both the accused and Police Sergeant Breslin and said that looks like a mackintosh'. (Q) where were you when you said that looks like a mackintosh' ? (A) I was inside the room. (Q) Were you standing up or sitting down? (A) Standing up. (Q) When you said "That looks like a mackintosh', what did the accused say (A) The accused was standing in the doorway. He looked into the hall, at the same time saying "It is an old one of mine'. (Q) Did you see him look into the hall ? (A) I did; I noticed him do it. (Q) And he said 'It is an old one of mine!. Anything else? (A) That is all. (Q) That is all you remember ? (A) Yes. (Q) You do not remember when he looked into the hall whether he said anything -- I mean about the mackintosh? Never mind that; you do not remember ? (A) That is all I can remember". Then he goes on to say at Question 1552: "I have not told you the position of the mackintosh as I saw it. The mackintosh was lying near the body and was all crumpled up and spattered with blood". Then at Question 1560, Mr. Oliver says: "(Q) we have been told by Mrs. Johnstone, who was with the accused all the time, that no one moved the mackintosh or touched it except to finger it until you came in. When you came in and saw them was the mackintosh partly under the body ? (A) It was. (Q) and partly under the shoulder ? (Yes) (Q) And only sort of rumpled bits of it sticking out ? (A) Yes, near the back of the head".

MR JUSTICE HAWKE: That is Police Constable Williams?

MR HEMMERDE: Yes. Upon the position of the mackintosh, may I draw attention to Question 1839. This is Professor McFall. "(Mr. Hemmerde): supposing that someone had been wearing that ? (A) That is the source of the blood from the front, and if anybody was wearing this then there had been a spurt of blood from the front because it comes in this direction. (Q) Looking at that, the suggestion has been made that the deceased might have thrown it over her shoulders to go to the door and then to have been.

I suppose, struck when she had it on ? (A) When I saw it there was no suggestion from the appearance that that was the case. (Mr. Justice Wright): You mean from the position ? (A) Yes, it was tucked under the right shoulder almost in this direction, tucked like that (illustrating). There was no suggestion of it having been on the arms whatever, nothing whatever".

MR JUSTICE HAWKE: That only means she had not had her arms through the sleeves

MR HEMMERDE: I do not think it one that it was all rucked up. Your Lordship will see that from the next passage I will quote from superintendent Moore; he will tell your Lordship XBOX what he found when he went in there. This 1a Question 2560, at page 175: "(Mr. Hemmerde): Can you tell my Lord and the Jury was there any part of the body resting on it ? (A) No part of the body was resting on it". Then following upon that, there is pointed out to me Question 2362. a) You saw it there ? (A) It was like this, as though it had been put in this position round the shoulder and tucked in by the side as though the body was a living person and you were trying to make it comfortable. No portion was resting under the body. (2) Under the area of the body? (A) Yes, but the body was not resting on it. I made an examination and I found the collar, and from that I gathered that it was a mackintosh. I called the accused in from the kitchen, and I was standing inside the doorway. He came and stood on my left slightly behind me. I said to him: "Is this your mackintosh?! He stooped slightly and put his left hand to his chin. I looked at him, and he made no reply for probably half a minute or so. I said: "Had Mrs. Wallace a mackintosh like this?! He remained in the same position and did not answer. The witness Sergeant Bailey was standing in front of me by the sideboard, and I said "Take it up and let us have a look at it.. (Q) You said that to Bailey ? (A) Yes. (Q) Did Bailey take it up ? (A) Bailey took it up and held it like this. (Indicating). I got hold of the sleeves and pulled it out like this, and said 'It is a gent's mackintosh'. By that time the accused had actually

got hold of the mackintosh and was examining it. (Q) Did he say anything? (A) If there are two patches on the inside it is mine'. By that time we found the two patches". Now so far as that witness is concerned he was pressed very much as to whether he did not know that this man had already acknowledged the ownership of the mackintosh, and your Lordships see that he is pressed upon the matter and I definitely asked, on page 188 what inference he draws from it, at Question 2508: "(Q) Are you surprised that he was doubtful? (A) I do not know all the more reason he should say at once 'It is mine'. (Q) He has told three different policemen, 'That is my mackintosh', then you, one of the heads of the Liverpool Police, and Inspector Gold and another say: 'Whose is it?' and he said 'It is mine'. (A) All the more reason why he should say so. (Q) What inference do you draw from it; what do you think? That he was trying to conceal it, or what? (A) Perhaps I had better not say what I think he had in his mind. (Q) Do not say anything you have not said yet unless it is true. (A) You asked me what I think. (Q) What inference do you draw, was my question, from his hesitation to acknowledge that mackintosh to you when he had already acknowledged it to four different people, three of them policemen? (A) That he was beginning to think the mackintosh was dangerous and that the police had formed a certain idea".

MR ROLAND OLIVER: Will you read the next.

MR HEMMERDE: Certainly. "(Q) That would be a splendid chance for him, after he had already told four people, three of them police officers, to be suddenly doubtful about it. However, that is argument. You talked about his demeanour being quite calm", and so on.

MR JUSTICE BRANSON: May I put a question to you: What inference do you draw from this hesitation in acknowledging the ownership of the mackintosh?

MR. HEMMERDE! Assuming that he knew that mackintosh as he had said he knew it on his statement. The Inference I draw is that, having seen it and being alone with Mrs. Johnstone he should suddenly say: "What is she doing with my mackintosh That conversation, I submit, is completely unnatural. If he had said: "You see she has got my mackintosh there" that would be perfectly natural, but in the conversation as it is repeated, which apparently is the discovery of the mackintosh I should suggest it is very unnatural. Then you come to the point that when he is asked by Mr. Williams although he knows perfectly well it is his mackintosh, he is seen to glance first of all to the hall where it usually hangs. He has to already made up his mind it is his. He does that, and should say that is unnatural. It is true, whatever way one looks upon the case, one has to ask that question. Then he says: "It is mine if it has two patches upon it", then he proceeds to look for the patches. Is it a coincidence that he did not know before.

THE LORD CHIEF JUSTICE: Supposing two or three people put it to you whether a coat was yours, saying: "Is this your coat", would not you say, if it was the fact: "If there are any patches on the back it is mine.

MR. JUSTICE BRANSON: That is to say, the reiteration of the question suggests there is some doubt, about which he proceeds to try and resolve by saying: "If there is a mark on it is mine"?

MR. HEMMERDE: May I respectfully ask, does that enter into the point and know perfectly well that it was his when he first came in?. He then says to Mrs. Johnstone: "what is she doing with my mackintosh?".

THE LORD CHIEF JUSTICE: Do you mean he repented having said it was his?.

MR. HEMMERDE: That is what the Inspector suggests, and if your Lordship asks me whether that is the suggestion, I was inclined to identify it.



THE LORD CHIEF JUSTICE: I am asking you ?.

MR. HEMMERDE: That is rather what I suggesting, just in the same way that when he has originally and, as I have pointed out, it opens up difficulties.

MR. JUSTICE BRANSON: I still do not follow if the theory is right that he had repented himself of the confession that it was his mackintosh, he is only clinching it by saying: It has two patches on it it is mine. Upon the hypothesis, that shows it was his, because he know the two patches were there.

MR. HEMMERDE: Supposing the patches had been burnt; much of it had been burnt. Your Lordship will see it goes almost up to the patches.

MR. JUSTICE HAWKE: It was a mackintosh that had, for I do not know how long, been hanging in the passage where he looked for it.

MR. HEMMERDE: He looked after he had identified it twice.

MR. JUSTICE HAWKE: Williams says he noticed him look towards the passage; that is what I refer to. What on earth would be the use of his repenting and trying to deny, if he knew it from the first?. You say from 6.45 he knew the mackintosh was his?.

MR. HEMERDE: It usually hangs there.

MR. JUSTICE HAWKE: And it was put under the body?.

MR. HEMMERDE: Your Lordship said, at 6.45?.

MR. JUSTICE BRANSON: You have proceeded to show that it was done at 6.45?.

MR. HEMMERDE: Yes.

MR. JUSTICE HAWKE: He says: "It is my mackintosh". He said so to three people, and it has been his for years, and it hung in the hall, as everybody notices. What would be the use of his repenting, and saying: "It is not mine"?. It is possible to read too much into casual answers.

MR HEMMERDE: I am in your Lordships hands in these matters. It is a point that I personally thought there was something in and, with great respect, still think so. I think such the most important point or that is the conversation with Mrs. Johnstone, the other seems to be much less vital. But is it natural that a man who knows perfectly well that it is his mackintosh, and does his own statement throw light upon the case ? He knows perfectly well it is. Why should he suddenly while there with her say: What was she doing with my mackintosh in that tone ? It was clear from the way Mrs. Johnstone put it that that was how the question was put. I would suggest that it is, coupled with a number of other things, a very odd way of approaching the question. As your Lordships will remember, I pointed out that it was made clear at Question 1456, at page 10 it is difficult to give all these references: "You said something about his stooping down. Can you remember was the stooping down before or after he had said whatever was she doing with my mackintosh' or her mackintosh! (A) He stooped on both occasions, the first time we were in the room and the second time -- (Q) when he said why, whatever was she doing' ? (That was just as we were leaving the room to go into the kitchen". It is simply as it strikes different people, and I think I can almost complete that by about two or three other references. I have one here at Question 2363.

MR JUSTICE BRANSON: That we have had.

MR HEMMERDE: Yes, my Lord, I am sorry. Then a question arose as to this mackintosh, that it had had very rough usage. Our case was at the Trial that the assailant had been wearing it, and a question arose as to the number of direct spurts that there might be upon it, and I think two were identified as being possible direct spurts, though possibly also they might be caused by drips of blood, and that was accepted by the witnesses called for the Defence as well; but it was also accepted by the Defence that it was very difficult to judge from the condition of the mackintosh at that time, because it had been very

roughly handled. Upon that I am told there is something at page 131 I should direct your Lordships attention to. Will our Lordships 800 Question 1820 ?

THE LORD CHIEF JUSTICE: We have already had this, you know, yesterday

MR HEMMERDE: Is that so, my Lord ?

THE LORD CHIEF JUSTICE: Yes, "showing a projection mark of blood".

MR HEMMERDE: It was only Just suggested to me. The one I was going to give is one I think you have not had; that is at page 294, Question 3780. I was cross-examining then. "As regards the mackintosh, you noticed these two marks which were pointed out. I suppose with the usage that that mackintosh has had, being pushed under the body and all covered with blood it la very difficult to say there might not be very many marks ? (A) Certainly". That was also said by Professor McFall.

JUSTICE HAWKE: That does not prove anything. YR HEMMERDE: It only proves this, that a suggestion might be made if that man was wearing the mackintosh there would be a number of projection marks upon it, and what I am seeking to show is you can only show some because it was obviously all huddled up, your Lordships see my point and therefore it is necessary to clear that point up. So far as that is concerned, I think my learned friend will bear me out, that whatever surprise might have been caused by anything aid about those projection marks, the mackintosh had been examined by his experts and had been in their possession for examination.

MR ROLAND OLIVER: When ?

MR HEMMERDE: Your experts examined it at the police office.

MR ROLAND OLIVER: NO medical experts examined the mackintosh; someone from the Mackintosh Company examined it.

MR HEMMERDE: I thought it was a matter that was beyond controversy. However, I drop it. I think that deals with that matter, and also deals with the question I did deal with before, the lighting of the gas.

Now there is another point I want to deal with, to which

I attach importance. The evidence was quite clear that bar like this indicating) had been for months in the front room, the parlour, and the evidence is also quite clear that that parlour was used considerably. At one time some suggestion was made that it was only used on rather important occasions, but that is not the evidence or Mr. Wallace himself, so far as I remember. At Question 3290: "So far as the use of your parlour was concerned, did you use it for music ? (A) Yes, quite fair amount. (Q) when you had an evening off, I suppose, being both musical you were inclined to spend it with music ? (A) Yes".

Therefore, one has the fact that this room was considerably used and that being considerably used, that particular bar of iron, or one like that particular bar of iron as the witness had said, had been there as long as she had been the servant at the house, and she was there nine months, and it was there when she had left there on January 7th; apparently she had made a mistake.

THE LORD CHIEF JUSTICE: Mrs. Draper ?

MR HEMMERDE: Yes. I a man had said, I do not know what has happened to that bar, that might be one thing, but what he does say is, I have never seen such a bar. It was used, as Mrs. Draper says, for fishing things out, and was there for some time. There was some suggestion that a poker was mentioned, but we never made anything of that; apparently it was quite a light all poker. This is a bar not only in itself a thing which you can imagine anyone who had seen it when lighting the fire and so on, if it was either standing there or lying down, would remember, but of course, there is this to be said about it, that nothing could be much easier to get rid of than a bar like this. As he himself said, Mr. Wallace admitted, you could press that down in winter-time into the earth anywhere; It is the easiest thing in the world. As the learned Judge said: Well, someone must have found it easy to get rid of. What could have been easier to get rid of than that.

MR JUSTICE HAWKE: Where did the learned Judge say someone could

have found it easy to get rid of ?

MR HEMMERDE: I had much better quote his Lordship's exact words.

MR JUSTICE HAWK: It is upon the assumption of the innocence of his son. There is nothing to show what difficulty the person who used the thing may have had to get rid of it.

MR HEMMERDE: I think I am quoting correctly. It is at the bottom of page 197. He was being asked about the places: "is there waste ground actually adjoining Wolvorton Street ? (A) Yes. just off Richmond Park, (Mr. Justice Wright): I gathered you searched that ? (A) Yes. my Lord. (Mr. Hemmerde): Are there any other places on the way there? They are all streets and entries there. (Mr. Justice Wight): The mystery is someone must have got rid of it if that is the instrument used.

JUSTICE HAWKE: I thought you said the Judge and somebody found it easy to get rid of ?

MR HEMMERDE: I do not think I said that.

JUSTICE HAWKE: I thought so

MR HEMMERDE: I meant to quote that passage: I have that marked down on my note. Your Lordships will remember what, again, I do submit is a very important point at Question 1312. This again comes from a completely unimpeachable witness, even from the point of view of the Defence, Mrs. Johnstone. At Question 1312 she is alone with Mr. Wallace, and she says: "Mr. Wallace stooped over Mrs. Wallace, and he said: 'They have finished her; look at the brains', and he said "Whatever have they used', glancing round the room". Is that a natural remark ?

THE LORD CHIEF JUSTICE : You read it to us this morning.

MR HEMMERDE: I am so anxious not to waste time, but I am trying to deal with just each issue as it arose in order. I did not comment on it. but it seemed to be that is of very considerable importance. Is that a natural remark for a man to make standing there with his wife in that condition? Here is what he said. looking round the room as though to see what there can be. the case for the Prosecution is it had been done with something that was in that room, and the case for the Prosecution must be that was very much in his mind.

THE LORD CHIEF JUSTICE: Something that had been in that room?

MR HEMMERDE: Something that had been in that room, and he was looking round and seeing what they had done it with, knowing perfectly well, if I am right, that it had gone. I do submit to your Lordships that it is impossible for a man to be in a room like that and never to have seen a thing which must have been in more or less constant use. It would be extraordinarily difficult to imagine: I do not say impossible, because nothing is impossible, but extraordinarily difficult.

Now I think I have dealt with in detail practically the whole of the evidence which I think it my duty to call to your Lordships attention. May I just in a few words summarise the results of that which I may call the second branch of my argument. what there was before the jury in this case, starting from the idea that it must have been this man telephoning. What do they find? On 100 lang into the matter they find this, that he goes on the tram the next night again, and to the first tram conductor saying three times, apart from private matters about himself, his anxiety to get to Menlove Gardens East. Then he gets on to another tram, and in the few minutes he is on it, he is asking about it again; he is put down, and we then find him asking three or four people going through a considerable time, and eventually after his last enquiry from Miss Pinches, and he says, first of all. that he went home immediately, and afterwards we heard of him being suspicious, and one question that the jury might well ask themselves is: What could he be suspicious of

His explanation at the trial was not really that he was suspicious, but he thought he must have been given a wrong number, or something to that effect. He says he hurried home being suspicious. We find him upon the way, if the evidence of Miss Hall is to be believed, talking to someone else; and then we find him outside the premises as saying he cannot get in, by a singular coincidence both looks being out of order; out of order to an extent that they first make him unable to get in at the back, and in the front the matter is possibly complicated by a bolt. He then comes round and he finds the Johnstones. He goes into the house. First of all, before that, he says he is made more suspicious by the fact that he cannot see light in the inner kitchen. It is clear beyond all dispute that if the door between the kitchens was shut he could not see the light there. He goes into the house saying "She must be in because she has a very bad cold", not looking as if he is suspicious at all. Then one can trace him going into every room, including the little laboratory, until he comes down to the room downstairs. There, quite unnecessarily, as I suggest, he strikes a light upon the threshold, goes across to the right hand light, thereby avoiding the body, and comes out. He has, first of all, asked the Johnstones if they have heard anything unusual. Why they should have heard anything unusual it is a little difficult to understand. He comes out. Then comes the question of what he says to them, and the question tax which I have always suggested is important of his demeanour during the following hours. Then you find him making different statements to the police that he walked down the entry and then saying "No, he did not say that at all". You have Williams saying confidently he did not know at the time he was drawing certain inferences from it. Then you find a weapon that was in the house 12 days before has disappeared: and although it is in a room that he himself uses again and again he says he has never seen it. You find him alone with

Mrs Johnstone looking round the room and saying "Whatever have they done with it". Then you find him also when he is alone with Mrs Johnstone fingering the mackintosh and saying "Whatever was she doing with my mackintosh", although we know he new it was his mackintosh when he went into the room. My Lords, you come than to the possibilities that mackintosh was used by the assailant. What possible ground can one have for supposing that the deceased woman was wearing that mackintosh in any form? The prisoner said -- I need not draw your Lordships' attention to it because it is clear on his statement he had never seen her wear it. I put it to him on that night she had a cold. She came down to see you off at the back on try; was she wearing it then? No". Shortly afterwards when it was merely a question of spring to let the someone in, which is now the theory, why she should put on the mackintosh in such a way that when she falls she burns herself and the mackintosh, and the mackintosh is found not under the body, as the police say, but appearing to be under with none of the weight of the body upon it. I submit it is clear upon that evidence that whoever did the murder must have been using that mackintosh, and then there it was all bloody on the floor, and it is just pressed up against the body exactly in the way the police have described. I submit that upon that evidence which I have out lined to your Lordships, and which your Lordships have so clearly in your minds, there is abundant evidence upon which a jury could have come to the conclusion they did. I say so with all respect, but the jury were surely entitled to consider that the other story, the suggestion that it was this man Qualtrough bent on finding money, and apparently having murdered the woman 40t looking for it, is an absurd story. This jury has evidently thought so. Although they were most definitely warned" the responsibility they ran they said that this evidence satisfied them. My Lords, is not it evidence which might



abundantly satisfy a jury. They have seen the man, They have heard his explanations of certain things. These points have all been put to him. They have heard his answers and they have come to the conclusion; and I would submit to your Lordships there are certain outstanding things which not only might but should lead them to the conclusion that something very strange has happened here. There is all the business of the locks; his attitude when he goes into the house, which are very vital points, his attitude when he went into the house developing afterwards into his demeanour which made it, in my opinion, necessary that one should go into with every witness what was his demeanour. Looking all through these things, and remembering that all these things are slender in themselves, I submit that when they are put together they make not only a very strong case here which the jury were entitled to rely upon, but in my respectful submission almost an overwhelming one when you consider the alternatives. I myself told the jury again and again that they could not go on probabilities or coincidences; and that they had to be intensely careful. I said you must not find this man guilty because you do not think that someone else is guilty: For instance, if you do not think the men Qualtrough could possibly have done it, you have to be satisfied that the case is brought home against this man. How can one satisfy a Jury except by following the course of events right out and saying: Does that in your view point irresistibly to the conclusion that this is the man who telephoned the message to himself, and that all that happened on that day fits in with that theory? Supposing that one knows instinctively that all those things he did, the talking with the tram-driver, the over emphasis upon at the Menlove Gardens district, the stating that he was suspicious, and the things that made him suspicious; the difficulty in getting into the house that did not exist; his conduct in the house: if those things seem to fit! in a sort of inevitable sequence, I submit that the jury

is abundantly justified if they choose to take the responsibility in coming to the conclusion they did.

I am not going to argue with your Lordships any question as to the powers of this Court. Your Lordships have the power wherever you think a verdict is unsatisfactory to set it aside, but I venture to point out the extraordinary reluctance particularly today of juries to find people guilty of murder. There was a long exhaustive examination in this case, and at the end of that a full summing up by the Judge in no way encouraging them to find a verdict of guilty, and yet on full consideration of these facts they have done so. I submit, my Lords, that although, as I have said, I have no inter in pressing the Court in a matter like this -- I am simply here to represent the Director of Public Prosecutions in this most important and difficult case -- the jury in this case have done what they conceive to be their duty upon evidence which was amply sufficient to justify them in doing so, and that their verdict should not be discharged.

MR ROLAND OLIVER: My Lords, my learned friend has been anxious to impress upon the Court how fairly and with what restraint to conducted this prosecution. I would like to begin my reply by reading the end of his peroration: "If this man 11d what he is charged with doing it is murder foul and unpardonable. To more brutal can over have been committed - this elderly lonely woman literally hacked to death for apparently no reason at all. Without any apparent enemy in the world she goes to her account, and if you think that the case is fairly proved against this man, that brutally and want only he sent this unfortunate woman to her account, it will be your duty to call him to his account". That is 4 sample of my friend's eloquence. It continued. I do not propose to read any more of it.

My Lords, there are one or two matters, questions of fact, I am sorry to say, which I should like to set right before I address such further arguments as I have. It was

stated by my friend, I presume upon instructions, that all the statements taken by the police relevant to this matter were shown to my Solicitor by the Solicitors instructing my friend. The answer is that not one single statement was so shewn in spite of the letters that I have read to your Lordships, and that according to the evidence on page 221 Inspector Gold said this -- and I am dealing with this matter because ----

MR JUSTICE BRANSON: I was wondering whether we were really trying this case or trying the Liverpool police.

MR ROLAND OLIVER: If your Lordship tells me your Lordships are not interested, I will not pursue it, only I have thought pro per to make criticisms of the police in a murder case, and it seemed to me unless your Lordships did not want to hear it that I ought to make them good.

MR JUSTICE BRANSON: Of course, but it seems to me that before we can really deal with that matter we shall have to carry on quite a different investigation from what we are here to deal with.

MR ROLAND OLIVER: May I conclude the observation by pointing out that at the bottom of this page the answer given by the Inspector is (Q) I suppose you have taken a large number of statements of people you have not used? (A) Yes". May I not put it in this way. If the police have been acting unfairly in this matter there is a great deal in this case that depends very largely upon the evidence, and inferences drawn by the police: and if I can show they have been acting unfairly in this matter am I not entitled to use that in aid of my argument?

MR JUSTICE BRANSON: Of course you are, but you are inviting us to say that they withheld statements they ought to have shown you. How can we decide that without seeing the statements?

MR ROLAND OLIVER: I can only show your Lordships that there were such statements in evidence.

MR JUSTICE BRANSON: There were statements you did not have.

MR ROLAND OLIVER: And that we had none.

MR JUSTICE BRANSOW: It does not follow they were relevant.

MR ROLAND OLIVER: My Lord, I shall not be advancing the cause of my client if I pursue a matter which your Lordship does not think it worth pursuing.

THE LORD CHIEF JUSTICE What you have to show us, to go back to your opening yesterday, and I use one of your own phrases, is that the Prosecution never sustained the onus of proof; that the evidence did not exclude the reasonable probability of somebody also committing the crime.

MR ROLAND OLIVER: Of course that is the main part of my argument. I will not be further drawn into controversy, but there were a number of matters which I could have pointed out to your Lordships which have not been accurately stated. One thing I would like to point out, which I do not think is quite before your Lordship at the moment, is this: The Appellant is accused -- this is the whole gravaman of the case against him--of having faked a situation in which he could pretend that someone other than himself had set let into the house, not had broken into it, and there had murdered his wife. That is the accusation. Might I draw your Lordships' attention to page 211 of the transcript and see the answers he gave the same night to Inspector Gold which do not form part of any written statement. "I asked him if he know of anyone who would be likely to have sent the message to the Chess Club, and he said "No, I cannot think of anyone'. I asked him if his wife would be likely to let anyone in the house during his absence on business or any other purpose, and he said "No, she would not admit anyone unless she knew them personally: if anyone did call she would show them to the parlour".

That, in my submission, is a most innocent statement in the mouth of a man who is accused of having faked a situation in which his wife had let someone in. It had not at that time occurred to him that this man who had rung him up might present himself at the door. It goes on "I asked him if there was any body besides the paper boy, any trades people, or anybody like that, who would be likely to call, and he said

"I cannot call to mind anyone likely to call, and I do not know that she had any friends unknown to me. I asked him who gave him the message at the Chess Club, and he said 'Captain Beattie'. I asked him if he knew anyone who knew he was going to the Chess Club, or had he told anybody he was going, and he said "No! I had told no one I was going, and I cannot think of anyone who knew I was going!". Had he had in his mind the oration of this situation, he must have had in his mind to tell that officer "There were hundreds of people who used that restaurant who would know what my motives were".

I do not want to address arguments to your Lordships which your Lordships do not wish to hear.

JUSTICE HAWKE: It is only that the whole of that has been read to us already.

ROLAND OLIVER: I did not think it had.

MR JUSTICE BRAMSON: Yes, it has.

MR JUSTICE HAWKE: It has been referred to in the speech we have just heard.

MR HEMMERDE: Yes, I opened it this morning.

MR ROLAND OLIVER: This comment has not been made upon it, and, in my submission, it is a grave comment and worthy of consideration.

My Lords, might I point out what my friend has not done in his speech? He has not made any effort to deal with the difficulty of the burning of the mackintosh, coupled with the burning of the skirt. He has not pointed out to the Court any piece or the evidence that the mackintosh was on the assailant, and if it was not the whole case is quite inconsistent with the Appellant being guilty. Those so-called projection marks are not evidence of projection marks; they are consistent with being something else,

My Lords, I know that your Lordships have before you very fully the evidence in this case, and I do not want to take up further time with it. I am only anxious that nothing

should be left unsaid that ought to be said in order to put the case, as it seems to me, fairly and grappling with everything. There remain here a number of suspicious circumstances, but nothing in the nature of proof. There is no fact, and no series of facts, which you could say prove that this man committed this crime. Under those circumstances, in my submission, he is entitled to have this conviction quashed.

THE LORD CHIEF JUSTICE: We will adjourn for a little time.

(The Court adjourned from 3.30 pm. until 4.17 pm)

#### JUDGEMENT

THE LORD CHIEF JUSTICE: This appellant, William Herbert Wallace, was charged, the Assizes in Liverpool, with the murder of his wife on the 20th January last. In the result he was convicted, and on the 25th April last was sentenced to death. He now appeals against that conviction.

Three facts, at any rate, are obvious. The first is that at the conclusion of the case for the Crown no submission was made on behalf of the Appellant that there was no case to go to the jury. Mr Roland Oliver has explained the circumstances in which, and the reasons for which, no such submission was made. The fact remains, however, that there was no such submission.

The second fact which seems to be obvious is that the evidence was summed up by the learned Judge with complete fairness and accuracy, and it would not have been at all surprising if the result had been an acquittal of the prisoner.

The third obvious fact upon which it is unnecessary for me to dwell is that the case is eminently one of difficulty and doubt.

Now the whole of the material evidence has been closely and critically examined before us during the past two

days by learned and experienced Counsel on both sides, and it does not appear to me to be necessary to discuss it again. Suffice it to say that we are not concerned here with suspicion, however grave, or with theories however ingenious, Section 4 of the Criminal Appeal Act of 1907 provides that the Court of Criminal Appeal shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it cannot be supported having regard to the evidence. I should like to add that there is not, so far as we can see, any ground for any imputation upon the fairness of the police, but the conclusion at which we have arrived to that the case against the Appellant, which we have carefully and anxiously considered and discussed, was not proved with that certainty which is necessary in order to justify a verdict of guilty, and, therefore, that it is our duty to take the course indicated by the Section of the Statute to which I have referred. The result is that this appeal will be allowed and this conviction quashed.