preference to his own. At any rate, he could hardly have rejected it without saying why he did so. He has, in truth, by his misdirection, disabled the assessors from giving him the aid which they should have given; and thus in turn disabled himself from taking their opinions into account as he should have done. This is a fatal flaw."

One or both assessors might have been of opinion that, dreadful as the facts were, they amounted to manslaughter and not murder. One or both might have been of opinion that they amounted to murder. We do not think it possible to say that they must inevitably have been of the latter opinion had the matter been referred to them. Consequently, we do not think this a case in which the proviso (as it is called) should be applied.

We, therefore, allow the appeal, quash the conviction, substitute a finding of manslaughter and impose a sentence of seven years' imprisonment.

Freetown
March 20,
1963.
Ames Ag.P.
Dove-Edwin
J.A.
Bankole Jones
Ag.C.J.

[COURT OF APPEAL]

ROYAL EXCHANGE ASSURANCE CO. . . . . *Appellants*

v.

JAMIL KARRIT . . . . . *Respondent*

[Civil Appeal 2/63]

Contract—Insurance—Fire Insurance—Evidence—Goods lost in fire—Merchant's evidence as to value of goods lost—Whether evidence credible—Onus of proof.

Respondent, an illiterate merchant at Kangahun, carried insurance with the appellant company on his shop, furniture and stock of merchandise. The shop was insured for £2,000, the furniture for £1,000 and the merchandise for £10,000. The shop and everything it it, including all records, were destroyed by fire, and respondent brought suit against appellants. The court gave judgment for respondent for £3,000 for the shop and furniture, but referred the claim for merchandise to the master and registrar to determine the actual loss sustained by respondent. The master and registrar held an inquiry and reported to the judge that respondent should be indemnified in the amount of £10,000. The judge entered judgment for that sum. Against this judgment the company appealed on two main grounds: (1) that the master and registrar erroneously placed the burden on the company to prove that there was not a £10,000 loss; and (2) that there was insufficient evidence of the loss.

Respondent's evidence of his loss consisted of a list which he compiled from memory showing the items of merchandise in the shop at the time of the fire and their values totalling over £14,000.

Held, dismissing the appeal, (1) that the master and registrar correctly placed the burden on respondent to prove the amount of his loss; and

(2) That respondent's list of the items of merchandise and their values, compiled from memory, was credible evidence, and, therefore, was sufficient to support the judgment.

John E. R. Candappa for the appellants.
Zinenool L. Khan for the respondent.

AMES AG.P. The plaintiff/respondent is an illiterate merchant at Kangahun, in a way of business sufficient for the employment of two " shop boys," one clerk and three labourers. He insured the building in which he lives and carries on his business, his furniture and his stock of merchandise for £2,000, £1,000 and £10,000 respectively. The defendants/appellants were the insurers.

This appeal is against a judgment dated January 18, 1963, for £10,000 awarded in respect of the stock of merchandise, which was totally destroyed by fire; everything was, the building, the furniture and the stock. The fire was such that even " everything in the safe was burnt."

It is necessary to emphasise that this appeal is against that judgment of January 18, 1963. There was a time when the appellants denied any liability at all on the ground that the policy had not been renewed, and a time when the matter of the figures of the loss could have been settled by arbitration, perhaps should have been, and a time when the respondent submitted figures and the appellants put the matter into the hands of a firm of accountants, and a time when the respondent was requested to supply copies of his income tax returns and of his bank account, and a time when the appellants argued that the respondent had not complied with two conditions precedent as stipulated in the policy before any liability could fall on them. These matters were touched on in the argument before us. But whatever were the rights and the wrongs of them, they were, all of them, swept out of the way by a judgment of the Supreme Court, dated December 7, 1962, ordering the respondent to recover £3,000, being the £2,000 of the building and the £1,000 of the furniture, " these said amounts having been admitted by the defendants "; and referring the matter of the £10,000 to the master and registrar for him to hold an inquiry and determine—" (i) The details which would form a basis of the award, with regard to the claim of £10,000; (ii) the amount constituting an indemnity of the actual loss in stock to the claimant." There was no appeal against that judgment of December 7, 1962, and it is not in question now.

The master (as I will call him) held the inquiry and reported his finding to the judge, which was that the respondent should be indemnified in the sum of £10,000. The matter came before the judge in court and he entered judgment for the £10,000. The master's report was before the judge, and counsel for the appellants was present.

The record does not contain any notes of any argument on the merits of the report, nor any comments of the judge about it. It must have had his approval because he entered judgment accordingly for £10,000, which judgment is, I repeat, all that is sought to be upset by this appeal.

Of course, as the judge gave no reasons for accepting the master's report, the appeal is inevitably more or less an appeal against that report. All the grounds of appeal attack it directly or indirectly. There were six in all, one filed with the notice of appeal, four additional ones added before the argument started (notice had been given to the respondent) and one further one added orally, without objection by the respondent and with our leave, at the beginning of the second day's argument.

It is not necessary to set them out: they overlap and were not, and could not be, argued separately, as Mr. Candappa pointed out.

They can, I think, be fairly summarised as this: that the master misunderstood the nature of the inquiry; that he conducted the proceedings on the erroneous basis that the onus was not on the respondent to prove his £10,000 loss but on the appellants to prove that there was not a £10,000 loss; and that

there was no proof of a £10,000 loss or anyhow none anywhere near any acceptable standard of proof.

Mr. Khan, for the respondent, agreed that the onus was on the respondent but argued that the onus had been discharged in a very adequate degree in the circumstance that everything, including the respondent's business papers, was completely burnt.

Now first, did the master misunderstand the nature of the inquiry? I do not think so. He had to refer something to the judge for clarification at the outset of the inquiry. It concerned the document referred to as Exhibit " B." That was a copy of a detailed list of the stock which the respondent claimed had been burnt in the fire. It had been made out by the respondent, with a copy. The original had been given by him to Mr. Hunt, the appellants' manager here. Before the judge, the original was not produced and the copy was put in evidence " by consent " and so marked. At the outset of the inquiry, counsel for the respondent argued (and to me it is a most astonishing argument) that the document was so marked because the appellants had consented to the respondent's averment that the goods itemised in it were what was burnt in the fire. Counsel for the appellants said that it was so marked because the defence consented to the copy being put in evidence and not the original. Counsel for the appellants was right and the learned judge said so, and the inquiry was continued by the master.

Did the learned master put the onus on the appellants instead of on the respondent? The order in which the witnesses were called might seem to suggest that he did; and it is not clear to me why they were called in that order. His report shows that in weighing up the evidence he knew that the onus was on the respondent. I think that the reasoning of the report can be summarised briefly like this: The plaintiff swore that his loss amounted to the figures in Exhibit " B." He called witnesses who supplied him with goods, and their quantities and figures show that the loss could well have been as in Exhibit " B." That evidence must be accepted because it is uncontradicted. The defendants brought no evidence to refute it, although the plaintiff had given to the defendants' manager his figures.

The report does not seem to err as to the question of onus. It says nothing as to the standard of proof. The evidence of the respondent and his witnesses was accepted, because it was uncontradicted. (" I cannot reject the plaintiff's claim or the evidence of his witnesses. The defendant and his witness have not given evidence to refute the plaintiff's claim.") Was it of an acceptable standard?

Mr. Candappa has argued for the appellants that it was far from it. It must be remembered that whatever books of account and so on the respondent may have kept were burnt. The respondent had to show what merchandise was burnt in the fire. He swore to a list of items, and his witnesses only swore to total values of goods supplied to him. It was argued that his witnesses' figures only proved general indebtedness, which is so, and that copies of detailed invoices should have been obtained and produced. I do not see that detailed invoices would have had any more probative weight as to what was in the shop on February 9 and burnt than evidence of the total value of the goods in the invoices.

Mr. Candappa also argued that the respondent should have put in evidence before the master his income tax returns and bank statements. I have already said that there was a time when the appellants asked him to authorise them to

examine these. The respondent's evidence before the judge was (and it was not contradicted):

> ". . . A Mr. Ashley called on me . . . sent by the Royal Exchange. He asked me for details of my business . . . also about my income tax. He invited me to his office. I went . . . he asked me to sign a letter in connection with my income tax and bank account. I told him I was not literate but I asked him to hand me the letter so that I could get an independent person to see it. He refused to give me the letter and insisted I should sign it. I did not sign the letter."

The income tax returns were not in evidence before the master. Nor were any bank statements. Counsel for the appellants did not put any questions about either. Indeed, there was no evidence before the master that the respondent had a bank account.

The master accepted the respondent's evidence because it was uncontradicted. Uncontradicted evidence in order to be accepted must be credible. The master saw and heard the respondent and must have found him credible. The court has not seen or heard him, but, nevertheless, can consider this point and come to its own conclusion. It seems to me that the matter boils down to this. Is it credible that the respondent should have been able to sit down after the fire and compile this very long list of what was in his shop at the time of the fire, of a total value of £14,620 13s. 4d. with any sort of accuracy?

For myself, I think it is credible. In this country, merchants like the respondent more or less live amongst their stock. Suppose that my house in England and everything in it were to be burnt, I think that my wife and I could sit down and produce between us a reasonably accurate list of the entire contents of the house, from top to bottom, room by room. We could only estimate values; our things are not for sale, and cost prices, selling prices and so on are not the stuff and substance of our lives as they are of a merchant's life. The total value of our list would not be anywhere near a half £10,000, let alone £14,000. But I think that there would be at least as many different items in the list as there were in that of the respondent.

Of course, the contents of my house are relatively static as compared with the respondent's stock. But merchants like the respondent need to have a reasonably accurate knowledge of their stock from day to day between their periodical stock takings, when it becomes absolutely accurate again. Why should not the respondent be able to visualise his shop, wall by wall and shelf by shelf (or however it may have been) and recall with reasonable accuracy what was there before the fire?

All books and records having been burnt, it was well nigh impossible for the respondent to bring evidence of what was burnt, of any better sort. His other witnesses showed that his transactions with them were on a scale such as to make his list credible. At no time have the appellants suggested that it was a fraudulent fire.

I would dismiss the appeal.