

(*New Zealand Law Reports*, 1952, page 111)

COURT OF APPEAL. WELLINGTON. 1951. OCTOBER 1, 2, 3;
DECEMBER 10. FAIR, A.C.J.; GRESSON, J.; STANTON, J.;
HAY, J.

THE KING v. HORRY

*Criminal Law—Evidence—Murder—Proof of Corpus delicti—
Body of Person Alleged Killed not found—No Confession
by Accused—Fact of Death provable by Circumstantial
Evidence—Requirements as to Such Evidence.*

At the trial of a person charged with murder, the fact of death is provable by circumstantial evidence, notwithstanding that neither the body nor any trace of the body has been found and that the accused has made no confession of any participation in the crime. Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for.

Blundell v. Medical Council ((1949) Court of Appeal, Wellington; unreported) followed.
Peacock v. The King ((1911) 13 C.L.R. 619)
and *R. v. Davidson* ((1934) 25 Cr. App. R. 21) applied.

Reg. v. Woodgate ((1877) 2 N.Z. Jur. (N.S.) C.A. 5), *R. v. Brown* ((1911) 31 N.Z.L.R. 225), *R. v. Hindmarsh* ((1792) 2 Leach 569; 168 E.R. 387), *R. v. McNicholl* ([1917] 2 I.R. 557), and *Reg. v. Burton* ((1854) Dears. 282; 169 E.R. 728) referred to.

So held by the Court of Appeal, dismissing an appeal from a conviction for murder.

At the trial of the appellant for the murder of his wife, whose body had not been found, the jury found him guilty of the crime. On appeal from that conviction,

Held, 1. That the jury, viewing the evidence as a whole, was entitled to regard the concurrence of so many separate facts and circumstances—themselves established beyond all doubt, and all pointing to the fact of death on or about July 13, 1942—as excluding any reasonable hypothesis other than the death of the person alleged to have been murdered, and as having, therefore, sufficient probative force to establish her death.

2. That, if the evidence were sufficient to establish the death of the deceased (as a jury could have regarded it to be), there was ample evidence pointing to the appellant's having murdered her.

3. That there was no misdirection of the jury by the learned Judge.

APPEAL under s. 3 (a) of the Criminal Appeal Act 1945 against the appellant's conviction of the murder of Mary Eileen Turner at Auckland on or about July 12, 1942.

The facts appear from the judgment of the Court (*Post*, p. 116). (*P.L.R.* Vol. VIII, p. 230.)

The appellant appealed on the following grounds:

(1) That there was no case to go to the jury, and that the learned Judge should have directed the jury to acquit.

(2) That the learned Judge directed the jury erroneously in summing up, in that he declined to direct the jury that, where no body or part of a body has been found which is proved to be that of the person alleged to have been killed, an accused person should not be convicted of murder or manslaughter, unless there is evidence either of the killing or of the death of the person alleged to be killed.

(2) (a) That the learned Judge wrongly directed the jury in that (i) he directed it that there was evidence which it might treat as a confession of the accused admitting the fact of death, or (ii) did not direct the jury that there was no such evidence.

(3) That the learned Judge directed the jury erroneously in summing up, in that he declined to direct the jury that, in the absence of direct evidence of the killing or of the death of Mary Eileen Turner, there was no onus upon the prisoner to account for her disappearance or non-production.

A. K. Turner and *Shieff*, for the appellant.

V. R. S. Meredith and *Speight*, for the Crown.

A. K. Turner, for the appellant. An affidavit has been lodged with regard to the publication in *Truth* of matters which, should a new trial be granted, will make it impossible for the appellant to receive a fair trial anywhere in New Zealand. It is proposed to ask the Court to receive the affidavit which shows that *Truth* exhibited in various parts of New Zealand a poster with the words "Staggering Criminal Record" of "Murderer Cecil Horry" and that in the newspaper itself was an article, detailing the appellant's previous convictions, and a statement containing the words: "It was reported last week that an appeal" "will be lodged."

V. R. S. Meredith, for the Crown. The matter is one for discussion in the Supreme Court; it is not one for discussion in these proceedings.

[FAIR, A.C.J. It is difficult to see how exception can be taken to the Court's seeing the affidavit and the newspaper.]

Turner, continues. The statement made by the appellant to Detective Fell cannot be treated as a confession. From the Crown's point of view, it was, at best, a completely equivocal statement. The statement made by the appellant in his letter from Brisbane could not be treated as a confession. The learned Judge referred to those two matters in his summing-up, and left it in some doubt whether they could be treated as confessions. On the facts, the jury should have been directed to acquit the appellant: *Woolmington v. Director of Public Prosecutions* ([1935] A.C. 462, 481) and *Best on Evidence*, 12th Ed. 34, 35, 36. The Court is invited to consider whether it is possible in this case that the tribunal may have supposed a crime where none had been committed. It is essential to prove (i) that a crime has been committed, and (ii) the identity of the criminal. There can be no satisfactory proof, on all the evidence in this case, that a crime has been committed: *Evans v. Evans* ((1790) 1 Hag. Con. 35, 105; 101 E.R. 466, 491), *Reg. v. Murphy* ((1867) 4 W.W. & A'B. 63, 88), 2 *Hale's Pleas of the Crown*, 290. Here: (i) No body, or part of a body, is produced. (ii) There is no direct evidence from any one who saw Eileen killed or injured in any way. (iii) There is no confession of the fact of death. There are two small pieces of evidence which are the subject of argument—namely, the remark to Detective

Fell (*Post*, p. 120, l. 55, p. 121, l. 1) (*P.L.R.* Vol. VIII, p. 232, ll. 114 and 115) and the letter from Brisbane (*Post*, p. 119, l. 26) (*P.L.R.* Vol. VIII, p. 231, ll. 121 and 122). They are not confessions, and cannot be so regarded. A confession must be clear and unequivocal to be used as such. The remark to Detective Fell is neither, and the letter is not an admission of death; it is a fabrication: *Phipson on Evidence*, 8th Ed. 253. The letter must be read as a whole. The effect of the letter is to persuade Eileen's mother to believe that she will not hear from her daughter again. It cannot be put forward by the Crown as a document of truth. The learned Judge was of the opinion that neither operated as a confession in the circumstances.

The doctrine laid down in *2 Hale's Pleas of the Crown*, 290, is the one to be adopted by the Court: see *Best on Evidence*, 12th Ed. 373-375, *Kenny's Outlines of Criminal Law*, 15th Ed. 401, 402, 403, *R. v. Hindmarsh* ((1792) 2 Leach 569: 168 E.R. 387), and *Reg. v. Burton* ((1854) Dears. 282, 284: 169 E.R. 728, 729). In cases of homicide, the strictness of the rule cannot be departed from. *Hale's* rule was considered in *R. v. McNicholl* ([1917] 2 I.R. 557, 587, 590, 592, 593); but the reason for the conviction was that a confession had been made. Apart from Eileen's disappearance, there are here no surrounding circumstances to justify the presumption of death: *Roscoe on Criminal Evidence*, 15th Ed. 872. *Reg. v. Hopkins* ((1838) 8 C. & P. 591; 173 E.R. 631) was admittedly an unsatisfactory case. On the authorities cited, *Hale's* rule still applies, and, so far, it has not been derogated from. The statement of the law in *9 Halsbury's Laws of England*, 2nd Ed. 449, para. 768, is adopted; but the cases there cited do not support the latter part of the text: see *Hodge's Case* ((1838) 2 Lewin 227; 168 E.R. 1136). In *Reg. v. Gardner* ((1859) 1 F. & F. 669; 175 E.R. 899), the charge was manslaughter, and the lighting of a match was held to be direct evidence on a charge of having done damage to a ship. *R. v. Taylor, Weaver, and Donovan* ((1928) 21 Cr.App.R. 20) is merely an authority for the statement that circumstantial evidence may be useful in murder cases. In *R. v. Mason* ((1911) 7 Cr.App.R. 67), there was direct evidence, and also a confession. In *R. v. Robertson* ((1913) 9 Cr.App.R. 189), a case of child murder, the remains were found beneath a floor, and the case is not an authority for saying that circumstantial evidence is sufficient to prove death. The passage in *Roscoe's Criminal Evidence*, 15th Ed. 872, is adopted; but the statement at p. 874 does not whittle away *Hales'* rule. An examination of the cases will show that there has been no relaxation of *Hale's* rule that death must first be proved. In *Garrow's Criminal Law in New Zealand*, 3rd Ed. 115, 116, the learned author, in dealing with *R. v. Brown* ((1911) 31 N.Z.L.R. 225, 233), goes rather too far. *Reg. v. Woodgate* ((1877) 2 N.Z. Jur. (N.S.) C.A. 5, 12), which is to some extent against this argument, was wrongly decided. There was a confession; the judgment was criticized in (1877) 2 N.Z. Jurist Jo. (N.S.) 65. It was really a

visi prius decision. In some of the cases, there seems to be one slight distinction made where a person alleged to have been killed is a child of very tender years in the custody of the accused; and in those cases the accused is under some greater obligation than in the case of the killing of an adult: see *R. v. Brown* ((1911) 31 N.Z.L.R. 225, 233) and *Wills on Circumstantial Evidence*, 17th Ed. 346, 348, 386, 388. *R. v. Towle, Badder, and Slater* ((1816) 3 Price 145; 146 E.R. 217) does not authorize the statement that the fact of death can be proved by circumstantial evidence: see *1 East's Pleas of the Crown*, 1883 Ed. 223, 224, *Archbold on Criminal Practice*, 32nd Ed. 895n, and *Reg. v. Cheverton* ((1862) 2 F. & F. 833; 175 E.R. 1308). Apart from *R. v. Hindmarsh* ((1792) 2 Leach 569; 168 E.R. 387), the other cases do not support the proposition that direct evidence need not be given. *Hindmarsh's* case is a modification of *Hale's* rule to the extent that, where there is evidence of bodily violence (as in that case), *Hale's* rule may be departed from. In *Peacock v. The King* ((1911) 13 C.L.R. 619, 628, 629, 630), the basis of the decision was that there was a corroborative confession, and that the remains found in the fire provided sufficient evidence of death; but the statement of the Chief Justice with regard to circumstantial evidence (*ibid.*, 628) is *obiter*.

Alternatively, the learned trial Judge should have directed an acquittal, as the evidence was insufficient to convict. In cases where circumstantial evidence is used, moral certainty must be produced: *Wills on Circumstantial Evidence*, 7th Ed. 348. If moral certainty is reached, contemplation of the contrary possibility ought to shake reason; but, if Eileen walked into this Court now, it would contradict no part of the evidence, and would not shock reason, and, therefore, her death is not proved with moral certainty: *Kenny's Outlines of Criminal Law*, 15th Ed. 402, and *Wills on Circumstantial Evidence*, 7th Ed. 348. The degree of certainty reached in *R. v. Hindmarsh* ((1792) 2 Leach 569; 168 E.R. 387) was not reached in this case: see *Peacock's* case ((1911) 13 C.L.R. 619, 628). The learned trial Judge referred in the summing-up to the hypothesis put forward by the defence to account for the woman's disappearance. Notwithstanding all that His Honour said, there was not enough evidence to produce moral conviction, or to dispose of the hypothesis put forward for the defence. The defence was not bound to put forward any hypothesis for her disappearance. His Honour did not put to the jury the further possibility—which arose out of the cross-examination of witnesses by the defence—that Eileen had died in New Zealand or had left New Zealand after January 1943. It is plain that no one examined the entries in the Deaths Register made after that month. Every reasonable possibility of her being alive must be excluded. It was vital that the jury should be directed with extreme accuracy on the point: see *Phipson on Evidence*, 8th Ed. 253. On that ground alone, the conviction cannot stand.

Shieff, in support. The learned Judge directed the jury erroneously in his summing-up, in that he declined to direct the jury that, in the absence of direct evidence of the killing or of the death of Mary Eileen Turner, there was no onus upon the prisoner to account for her disappearance or non-production: see *9 Halsbury's Laws of England*, 2nd Ed. 449, para. 768. His Honour said: "If there were merely 'a disappearance of Eileen Turner and nothing more . . . your own common sense would tell you how dangerous and how wrong it would be to 'convict of murder or manslaughter.'" He then quoted the final words of the passage in *Halsbury*, viz: "In the absence of such evidence [evidence of 'killing or of death'] there is no onus upon the 'prisoner to account for the disappearance or non-'production of the person alleged to be dead.'" In refusing to give the direction as requested by Mr. *Turner*, His Honour adopted the converse proposition, and misled the jury into believing that there was an onus on the accused to account for the disappearance of his wife. The appellant was put in a worse position than the accused in *R. v. Hopkins* ((1838) 8 C. & P. 591, 592; 173 E.R. 631, 632), because here there is no body or any trace of it. The rule in *Hopkins's* case ((1838) 8 C. & P. 591; 173 E.R. 631) was adopted in *R. v. McNicholl* ([1917] 2 I.R. 557, 592), but it was qualified on the ground of a confession: it was only when the prisoner had confessed that the Chief Justice held that there was a duty to explain. In *R. v. Davidson* ((1934) 25 Cr.App.R. 21, 26, 27), there was a confession. If there had been no confession, there would have been no onus on the accused to account for the disappearance.

As to the position in which an accused person would be placed if His Honour's ruling were adopted, or if a direction that there was no such onus were not given: see *2 Hale's Pleas of the Crown*, 290. In the light of *Woolmington v. Director of Public Prosecutions* ([1935] A.C. 462, 480, 481), His Honour's refusal to direct the jury on a question of onus as laid down in *2 Hale's Pleas of the Crown*, 290, was a whittling away of the rule that the Crown must prove its case, and there was no obligation on the accused to refute it. By his refusal, he in effect directed the jury that there was an onus on the accused to explain. But there was no such onus. The furthest His Honour should have taken the matter was to direct the jury to weigh what had been said for the accused by his counsel and by His Honour. His Honour's direction invited the jury to consider that the accused had failed to account for his wife's disappearance. Nothing can be taken from the accused's silence, and comment should not be made (as in this case) on the failure to explain: *R. v. Droux* ([1936] 2 D.L.R. 780, 786). A second interpretation of His Honour's direction is that there should not be comment on the accused's silence before the trial, after he had been warned: *R. v. Naylor* ([1933] 1 K.B. 685), *R. v. Leckey* ([1944] K.B. 80, 86; [1943] 2 All E.R. 665, 669, 670), and *R. v. Mareo*

(*No. 3*) ([1946] N.Z.L.R. 660). If, on consideration of any one of the three grounds for appeal, 2, 2 (a), and 3, the Court concludes that there has been a misdirection, then the conviction should be quashed, for the reasons given by Mr. *Turner*—namely, that, in view of the publicity given to the appellant by *Truth*, it would be impossible anywhere in New Zealand to find a jury of which it could with certainty be said that it had not been influenced by such publicity: see *R. v. Clark* ([1946] N.Z.L.R. 522).

V. R. S. Meredith, for the Crown. Proof of actual death can be established by circumstantial evidence. The rule laid down in *2 Hale's Pleas of the Crown*, 290, does not restrict proof by circumstantial evidence, and, if it is so interpreted, it has been whittled down: *3 Chitty on Criminal Law* (1816), 738, *Wills on Circumstantial Evidence*, 7th Ed. 340, 342, 347, 348, 358, *Best on Evidence*, 12th Ed. 377, para. 446, *Blundell v. Medical Council* ((1949) Court of Appeal, Wellington, unreported), *Reg. v. Woodgate* ((1877) 2 N.Z. Jur. (N.S.) C.A. 5), *R. v. Brown* ((1911) 31 N.Z.L.R. 225, 231, 232, 233, 234), and *9 Halsbury's Laws of England*, 1st Ed. 378. The learned Judge quoted from the note, and not from the paragraph. The equivalent is contained in the second edition at p. 184: see *R. v. McNicholl* ([1917] 2 I.R. 557, 583). The matter has been discussed in some Australian cases: see *Peacock v. The King* ((1911) 13 C.L.R. 619, 629, 630, 650, 651, 654, 661, 670), *R. v. Ryan* ([1906] St.R.Qd. 15, 35, 37), and *R. v. Kenniff* ([1903] St.R.Qd. 17, 41). If one assumes that the fact of death can be proved by circumstantial evidence, the only question is whether there was sufficient matter on which twelve reasonable men, properly instructed as to law, could come to the conclusion to which they did, and find the crime proved. It is not a question of whether this Court would come to the same conclusion. All the facts have to be considered. It was open to the jury to infer from all the evidence before it that Horry set out to acquire Eileen's money to enable him to marry Miss Geale: *R. v. Davidson* ((1934) 25 Cr.App.R. 21, 27). [Refers to the facts.] Not only was there sufficient evidence on which the jury could find as it did, but it is almost impossible that it could come to any other conclusion.

With regard to the grounds of appeal relating to the summing-up: There was no misdirection. The summing-up should be read as a whole. In *Reg. v. Murphy* ((1867) 4 W.W. & A'B. 63), *R. v. Nash* ((1911) 6 Cr. App. R. 225), *Reg. v. Woodgate* ((1877) 2 N.Z. Jur. (N.S.) C.A. 5), *R. v. Hindmarsh* ((1792) 2 Leach 569; 168 E.R. 387), *Peacock's* case ((1911) 13 C.L.R. 619), *R. v. Kenniff* ([1903] St.R.Qd. 17), and *R. v. Ryan* ([1906] St.R.Qd. 15), no body was found and there was nothing to enable identification of the person alleged to be killed. The fact of death was proved by circumstantial evidence; and in all those cases there was a conviction, except in *Peacock's* case ((1911) 13 C.L.R. 619), where a

new trial was granted on the evidence of an accomplice: see *R. v. Robertson* ((1913) 9 Cr.App.R. 189, 191), *R. v. Nash* ((1911) 6 Cr.App.R. 225, 228), and *R. v. Davidson* ((1934) 25 Cr.App.R. 21, 25).

As to the affidavit lodged: It cannot be received, and this Court cannot consider it: see ss. 4 and 5 of the Criminal Appeal Act 1945 and *Garrow's Criminal Law in New Zealand*, 3rd Ed. 380. All that this Court can deal with is this case as heard in the Supreme Court. If a new trial were granted, the matter should come before the Supreme Court for decision on an application for change of venue.

Turner, in reply. If the Court comes to the conclusion that a new trial should be granted, then it should go further and quash the conviction. If justice has been perverted by the article in *Truth* and by its posters, the affidavit should be read. It is relevant to the issues before the Court, and is admissible under s. 9 (c) of the Criminal Appeal Act 1945. On the question of onus, it is conceded that the jury was entitled to take into account the fact that a false explanation had been given; but His Honour went further, and left the jury with the impression that there was an onus on the defence. In this case, an exceptionally high degree of proof is required: *R. v. McNicholl* ([1917] 2 I.R. 557, 584). On the evidence, one cannot exclude either the possibility that the appellant's wife went to America or the possibility that she died between January 1943, and April 1943.

Cur. ad. vult.

The judgment of the Court was delivered by

GRESSON, J. The evidence as to accused having murdered Mary Eileen Turner (hereinafter called "Eileen") was wholly circumstantial. The facts on which the Crown relied were not seriously controverted. The more important facts and circumstances as deposed to in the evidence are as follows:

Appellant was married to Eileen on July 11, 1942. She was then thirty-eight years old, and had divorced a previous husband in 1939. Appellant was a tailor; he had been employed at the Maida Vale factory since March 13, 1942, and continued to be employed there until July 24, 1944. During the whole of that period he was absent from work only five whole days—namely, July 15, 24, 27, 1942, and October 5, 6, 1942—and for part of the day on April 17, 1942, June 2, 1943, and July 24, 1944. Before his marriage to Eileen, appellant had been associating with a woman, Eunice Marcel Geale, whom he subsequently married on December 12, 1942. On April 15, 1942, he opened an account at the National Bank of New Zealand in Auckland in the name of G. Horry. He asked to open a joint account in the name of himself and Miss Geale, but, when told it would be necessary for her to call, said that was not possible and opened the account in his own name with a deposit of £6. He told the ledger-keeper he had been discharged from the British Army and sent out to New Zealand to undertake work connected with the war. He gave

his occupation as a tailor. Two days later, on April 17, 1942, he called and stated he wished to close the account, as he was leaving for Australia on secret work for the New Zealand Government. He withdrew the sum of £6, using a counter cheque. There was no evidence as to when appellant first met Eileen. During the first week of July, 1942, Eileen told her employer, a Mrs. Bennett, her mother, and her sister of her approaching marriage to appellant. He had introduced himself to Eileen and to her friends and relations as George Arthur Turner, under which name he was married. He regaled them all with stories as to his antecedents and associations which were quite untrue. When appellant first took the licence to the minister who was to marry them, it was arranged the wedding should be on July 2, but appellant subsequently asked for the licence back, in order that certain alterations could be made relative to his birthplace and to his mother's name. The particulars in the first application were in fact correct, and those in the second application incorrect. Eileen provided herself with an elaborate trousseau, and had much of the underclothing specially embroidered; her clothes were viewed and admired by many of her women friends. She bought as well a hat-box and two suitcases. She gave away her car to her brother, and put in train the sale of her house property. The day before the wedding, she withdrew all the money she had in the savings bank—over £300. The solicitor acting for her deposed that, on a sale of the property having been effected, she desired to have the transaction settled as soon as possible, and Friday, July 10, was fixed, though in fact it was not settled until the morning of Saturday, July 11, the day of the wedding. She received a cheque on the solicitor's trust account drawn in her favour as "M. E. Jones or order" and marked "Not Negotiable." It was for £687 6s. 8d. The wedding, at the Pitt Street Methodist Church at 11 a.m. on Saturday, July 11, was attended by Eileen's parents and some friends and relations. Eileen's mother had not previously met her prospective son-in-law. When Eileen's sister had been introduced to him, he had told her he was in the Secret Service, and said he could not explain his work, as it was of a secret nature and very important to the war effort. He said he had lost his mother, father, brothers, and sisters in England during a bombing raid. The sister was told that, after the marriage, he and Eileen would be going overseas, first to Australia, and then on to England. The story as to appellant's being engaged in Secret Service work was again told at the social gathering following the wedding. No photographs were taken, as appellant would not permit this. After the wedding breakfast at the Royal Hotel, Eileen went to her old home at 9 John Street to change her clothes and put on a travelling-costume. In the afternoon, the married couple left in a rental car. Eileen's mother was told she could not be informed when they arrived in Australia. Appellant said that, even if he sent a cable, it might be a code and the Germans

might pick it up. He said it would be about three and a half months before any word could be received. Eileen was never seen again by any member of her family.

The married couple spent the night at the Helensville Hotel, arriving about eight o'clock on the Saturday evening. At eleven o'clock Eileen rang through to her solicitor in Auckland at his home and left a message for him to ring the hotel whatever time he came in. He did so about midnight, and recognized Eileen's voice. She apologized for troubling him, but said the matter was urgent, and that she had not been able to cash the cheque received from him. She asked whether it could be made an open cheque, so that she could cash it. This he refused to do, informing her that she could herself bank it and arrange with the bank to clear it. She then said her husband wished to speak, and introduced the appellant through the telephone; he repeated the request that the cheque be made an open one. Though he was most insistent, the solicitor persisted in his refusal, and the conversation ended. Appellant and Eileen left the hotel early the next morning. They paid a visit to a Miss Shepherd on the main road at Titirangi about eleven o'clock on the Sunday morning. They told her they were going away and would pass overhead in an aeroplane, and forbade any further inquiry as to their plans, on the pretext that important military business was involved. Miss Shepherd saw them off at the gate driving citywards. That was the last time Eileen was ever seen.

Considerable evidence was led as to appellant's movements and conduct thereafter. The rental car, which was due to be returned at 8 p.m. on July 12, was returned by appellant about 5 p.m. on Monday, July 13. There were some further charges, and he asked that the account be sent to Miss Jones, 9 John Street, Ponsonby, as the hiring was in her name. This the parking-station proprietor refused to do, as he was aware the house had been sold, and accordingly appellant himself paid. On July 14, appellant applied to open an account at the Auckland branch of the Union Bank of Australia in the name of Charles Anderson, presenting £80 in notes and the cheque for £687 6s. 8d. which had been paid to Eileen. He represented he was an agent of J. Turner and Sons, Sheffield, England, who were, he said, cutlery manufacturers then engaged on munitions work. He said Mr. Turner of that firm had married a Miss Jones on July 11, 1942, and that they had to leave, or had left, hurriedly. The bank officer would not without inquiry accept the crossed "not negotiable" cheque, which had been endorsed; being unable to make the inquiries by telephone, he permitted the account to be opened with the £80 in cash. When, later, the cheque came back from Eileen's solicitor with a certificate that it appeared to be properly endorsed, it was lodged to the credit of the newly opened account, making in all a credit of £767 6s. 8d. Appellant gave his address as the Albert Hotel, but, when he came in again on July 15 to ascertain

whether the cheque had been duly lodged, he said he had gone to the Commercial Hotel. A fortnight later, the account was closed by the drawing of three cheques, the first, dated July 17, for £360, the next, dated July 20, for £300, and the last, dated July 27, for £107 6s. 8d. All these cheques were paid in cash. On July 27, 1942, appellant returned to the National Bank, where he had had an account in April, 1942, and, after informing the bank officer that he had returned from Australia and wished to reopen his account, deposited £300 in cash. He stated as well that the account would be fed by his future wife and himself. A further deposit of £100 was made on October 28. Four cheques were drawn against the account in October, November, and December, the last being on December 22 for £239 10s., which exhausted the credit. This account was maintained in the name of G. C. Horry, 135 Landscape Road, Mount Eden, which was the address he had given originally in April, and which he again gave on his return.

In August 1942 a letter dated July 26, 1942, headed "Sydney" and signed "George and Eileen," was received by W. Spargo, Eileen's father. It told of their safe arrival in Australia, said that they were leaving for England almost immediately, and added that:

Eileen is busy just now writing a letter to some one else and she asked me to scribble these few lines to you so that you would not be disappointed.

It was stated that the next letter would be from England and might be looked for about October. It was proved that this letter had in fact been sent by the accused to the manager of the Hotel Australia, Sydney, with a covering letter asking that it be delivered to a Mr. T. L. Langton if there were such a guest at the hotel, but that, if not, it should be posted back; the covering letter was signed "an ex-guest, W. Spargo." The manager of the hotel, after keeping the letter for some ten days or so, sent it to Mr. Spargo, but with a covering letter explaining that, there being no record of a Mr. T. L. Langton, the letter was being returned. Early in December 1942 Mrs. Spargo became uneasy, and consulted the Police.

On December 19, 1942, the appellant appeared at Mrs. Spargo's home. In answer to her question where Eileen was, he said he had come to bring the news that they had been wrecked on their way from America to England; that a German submarine had sunk the *Empress of India*, on which they were travelling; and that the womenfolk were put in lifeboats, Eileen among them, and not seen afterwards. He said he himself had been picked up by a British warship, and that he had to return to a British boat, then in Auckland, and had to be back by 12.30. He said he was going to try and trace Eileen, and would write later if he found any trace whatsoever. He left soon afterwards. He claimed cables had been sent, but none was ever received by the Spargos. In fact, there was no such ship as the *Empress of India*, and the story was a complete fabrication. In February 1943 Mrs. Spargo received

from appellant a letter, headed "Brisbane," in which he said that he had recently received information from England conveying the news that his wife together with others had lost their lives. He stated he had "lost everything now, first my family then "the business and now my wife." It was stated the letter was written on the train nearing Brisbane, and that he was returning to Sydney in a few days, and he asked for a few lines to be sent to him care of the G.P.O. Sydney:

Only write the one letter straight away for I do not know where I shall be. I may come back to New Zealand who knows?

This letter reached Mrs. Spargo through the instrumentality of the manager of the Y.M.C.A. at Brisbane, it having been posted to him with a request that it be delivered to Mr. Arthur Lexington, who was expected to be staying at the Y.M.C.A., but that, if he had already departed, or had not arrived, it be posted back to the sender, represented to be W. Spargo, but in fact appellant. At the suggestion of the Police, Mrs. Spargo replied to the letter on February 16, expressing sorrow at hearing the bad news about Eileen and giving appellant news of the family. As was expected, a letter was received by the G.P.O., Sydney, dated at Auckland, February 15, care of G.P.O., Auckland, signed "G. Turner," and stating that he expected a letter to be addressed to him care of G.P.O., Sydney, but that, as he had recently returned to New Zealand, he would like it readdressed to him care of G.P.O., Auckland. A watch was kept at the G.P.O., Auckland, and appellant was later seen to claim the letter. The policewoman watcher followed him, and saw him open the letter, read it, and then tear it up and throw the pieces away. She followed him back to his place of employment, the Maida Vale Clothing Co.

On June 26, 1943, appellant was interviewed by two detectives. He was then living with his present wife, formerly Miss Geale, whom he had married on December 12, 1942. She was present. On returning to the police-station after the interview, the detectives recorded the questions and answers which had respectively been put and received, and the one who gave evidence at the trial was permitted to refer to this record and refresh his memory. Appellant was told that Mary Eileen Turner had been reported to the police in the previous December as missing, and that they had been making enquiries. They retailed to appellant his and Eileen's movements up to the time he had returned the rental car, and stated that, since the visit to Miss Shepherd, the woman he had married had never been seen or heard of again. He made no reply. He was then taxed with the stories he had told of being a wealthy man, a member of the firm of Turner and Sons of Sheffield, with his tale of being engaged in confidential work in connection with the war effort, and with the account he had given of his family's having perished in an air raid. He said: "That's a lot of rot." He admitted he had married Eileen, and, when asked where she was, he said: "She

"left me." The story he gave may be summarized that she had left him the day after they were married, saying she was going to catch a train, that the marriage was in pursuance of an arrangement she had made with him to marry her so that she might go off with another man, and that, for his co-operation, he was to get £650, which was the reason she handed over the cheque; he alleged he gave her the difference in cash over and above £650. After a good deal of interrogation in regard to the clearing of the cheque, he was told that there was no trace of Eileen's having left the country, nor of any registration of her death under the names Turner, Jones, Horry, or Spargo. Again he was asked: "What has happened to her?" "You married her and were supposed to take her to "England." He said: "I don't know. I wish I "did. I can see now it is getting complicated." He was confronted with the letters which came from Australia, and declined to admit they were written by him. He admitted to having gone out in December to see Mrs. Spargo, and to having told her the story about the torpedoing of the ship Eileen was travelling in, and, on being asked for an explanation, he said that he got a letter from Eileen from Hamilton instructing him to do so, which letter he had torn up; that there was no address on it; that it merely came from Hamilton; and that he had received it a few days before December 12, 1942. When shown the letter purporting to be written from Brisbane, he denied having written it or knowing anything about it. He denied having written the redirection order. Questioned as to where he obtained the funds to buy the house and section he owned, he said he paid a deposit of £270 and that there were two mortgages, and that the £270 was "part of the £650 I got from "this woman." He denied having any of Eileen's property on the premises, but, on a search being made, there were discovered a hat-box and a suitcase identified as the property of Eileen and a great deal of ladies' apparel, much of which was identified as part of the trousseau which Eileen had exhibited to her friends.

On June 14, 1951, two detectives went to appellant's place of employment to arrest him. They read the warrant to him, and he replied: "It is "ridiculous." He was given the usual warning that anything he said would be taken down and might be used in evidence, and he repeated: "It is ridiculous." At his request, they took him to his home to see his wife, and, to her inquiry as to what was the matter, he said: "It's that Turner business." Mrs. Horry said: "Why, has she turned up?" Appellant replied: "That's impossible; she couldn't have." He added: "Say nothing more about it; say "nothing; tell them nothing."

The most material of the grounds upon which the appeal against conviction was based was that there was not sufficient evidence of the death of Eileen. It was not denied that, if the evidence could be regarded as sufficient to establish that she had been murdered, there was ample evidence that it had been done by the

appellant; and it was conceded that the evidence could be used for the double purpose of proving both the factum of the murder and who was its author. But it was strenuously contended that the evidence was insufficient to establish the *corpus delicti* itself.

There have been a great many cases in which the requirements of the law in this regard have been discussed. The statement in 2 *Hale's Pleas of the Crown*, 290—"I would never convict any person of "murder or manslaughter, unless the fact were "proved to be done, or at least the body found "dead"—has been often cited. It should be noted, as was said in the judgment of the six Judges who decided *R. v. McNicholl* ([1917] 2 I.R. 557) in the Irish Court of Crown Cases Reserved, that these words do not assert the wholesale proposition that there ought never to be a conviction for murder unless there is proof of the finding of the body, but convey no more than that, in order to convict an accused person upon a charge of murder, there must be proof either of the fact of the murder or of the finding of the dead body. It has been stated in much the same way in both editions of *Halsbury's Laws of England*. In 9 *Halsbury's Laws of England*, 2nd Ed. 449, it is said:

Where no body or part of a body has been found which is proved to be that of the person alleged to have been killed, an accused person should not be convicted of either murder or manslaughter, unless there is evidence either of the killing or of the death of the person alleged to be killed.

The same authority, discussing the obligation to prove the *corpus delicti*—i.e., that the offence charged has been committed by someone—notes (*Ibid.*, 183 (g)) "The *corpus delicti* may be proved by direct "evidence or by irresistible grounds of presumption " *Evans v. Evans* (1790) 1 Hag. Con. 35, 105; "161 E.R. 466, 491," and states with special reference to murder and manslaughter (*Ibid.*, 184):

In charges of murder or manslaughter a conviction can never, it seems, take place unless the body of the person whom the prisoner is accused of having killed is found or there is evidence, either direct or circumstantial, of the death of the person said to be killed.

In the same note, attention is drawn to the observations of *Maule, J.*, in *Reg. v. Burton* (1854) Dears. 282; 169 E.R. 728) that the rule was a matter of caution and prudence, and not an absolute rule of evidence. In some of the reported cases, there has been evidence emanating from the accused in the form of a confession; and in some of the reported cases there has been some evidence as to remains of a body, though often not in an identifiable state. In this case, there is nothing in the shape of a confession, nor is there any sort of trace of a body. There does not appear to be any case in which, without any evidence of a body, or traces of a body, or violence used to a body, or of anything approximating to a confession, the factum of the murder has been held to have been sufficiently proved by circumstantial evidence. In the absence of any authority exactly in point, the approach must be to determine the governing principle and to apply it to the somewhat unusual

facts of this case. Both in *Reg. v. Woodgate* (1877) 2 N.Z. Jur. (N.S.) (C.A. 5) and in *R. v. Brown* (1911) 31 N.Z.L.R. 225), decided in this Court, there were confessions. But in *R. v. Brown* (1911) 31 N.Z.L.R. 225) the observation made in the judgment in *Reg. v. Woodgate* (1877) 2 N.Z. Jur. (N.S.) (C.A. 5) that direct evidence was not indispensable and that "the so-called rule . . . is no more than "a prudential maxim" (*ibid.*, 10) was approved. In the High Court of Australia in *Peacock v. The King* (1911) 13 C.L.R. 619) *Sir Samuel Griffith, C.J.*, said: "With regard to the well-known caution "given by *Sir Matthew Hale*, I think it is now settled "law that the fact of death may be proved by circumstantial evidence as well as any other part of the "case" (*ibid.*, 629, 630).

In this case, the propositions which require to be established are (i) that Eileen was murdered, and (ii) that it was done by the appellant. The evidence of the *corpus delicti* is not separable from that of the guilt of the appellant, as sometimes happens. In this Court, in *Blundell v. Medical Council* ((1949) Court of Appeal, Wellington; unreported) it was said: "The case made out against the appellant was "dependent upon circumstantial evidence, but there "is no rule of law against proof by circumstantial "evidence of both the *corpus delicti* and the connection of the person charged with the crime: 9 " *Halsbury's Laws of England*, 2nd Ed. 183, para. "268, note (g), and cases there cited. As was "observed by *Denniston, J.*, in *R. v. Brown* (1911) "31 N.Z.L.R. 225): "There is no logical ground for "any distinction between proof of the fact of the "crime and proof of the actor of it" (*ibid.*, 231, "232); and *Denniston, J.* (*ibid.*, 233), repeated the "observation of *Johnston, J.*, in delivering the judgment of the Court in *Woodgate's case* (1877) 2 "N.Z. Jur. (N.S.) (C.A. 5): "the same evidence "often applies to both the fact of the crime and the "individuality of the person who committed it" (*ibid.*, 17). Either may be proved by circumstantial "evidence, and by circumstantial evidence alone, if "that evidence is cogent enough. Since in this case "all the appellant's acts in relation to Mrs. Jenkins, "and the whole of his association with her, may be "regarded as one transaction consisting of connected "events, it necessarily follows that evidence tending "to establish the *corpus delicti* may at the same time "tend to prove who was the perpetrator. But "though, for this purpose, all the circumstances of "the case and every part of the conduct of the "appellant may be taken into consideration, if there "is any reasonable hypothesis consistent with "innocence, the charge must fail for lack of proof. "The governing principle is that it is not sufficient "that the evidence should carry a strong probability "of guilt; the inferences proper to be drawn must "so clearly and completely overcome all other inferences or hypotheses as to leave no reasonable doubt "of guilt, though a bare possibility of innocence does

"not preclude a finding of guilt if that is the only inference open to reasonable men upon a consideration of all the facts in evidence."

Reading "Eileen" for "Mrs. Jenkins," these words are equally applicable in this case, although this is a case of murder, which *Blundell's* case was not. There are many cases where convictions for murder have been upheld in the absence of evidence of the body in an identifiable form of the person alleged to have been murdered; in such cases, it has been held that either the finding of traces of a body or evidence as to violence having been shown to the person whose body had disappeared (as in *R. v. Hindmarsh* (1792) 2 Leach 569; 168 E.R. 387) would suffice, or that a confession, even if subsequently denied or retracted, was sufficient evidence, together with such other evidence as was present, to lead to a moral conviction that murder had been committed. In this case, there is neither the body nor traces of the body, nor anything in the form of a confession, but, in our opinion, that does not exhaust the possibilities. There may be other facts so incriminating and so incapable of any reasonable explanation as to be incompatible with any hypothesis other than murder. It is in accord both with principle and with authority that the fact of death should be provable by such circumstances as render it morally certain and leave no ground for reasonable doubt—that the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for.

The circumstances pointing both to murder and to appellant as the perpetrator are so interwoven that, even though the inquiry falls into two successive stages—namely, (i) the question as to whether Eileen was murdered, and (ii) the question whether it was done by appellant—the whole of the evidence bears on both questions. Proof of the commission of the murder is inextricably bound up with the proof of the connection of the appellant with it. Isolating, so far as it is possible to do so, the first question (whether the missing Eileen has really been killed or not), the evidence in its entirety may be weighed to consider whether it presents a set of facts so incriminating as to be incapable of any reasonable explanation save that Eileen was murdered. It was contended that, for all the evidence proved to the contrary, Eileen might still be alive and have left the country; alternatively, that she might have died a natural death in New Zealand or elsewhere. It was for the jury to decide how much credence was to be given to the explanation offered by the appellant to account for her disappearance, and, too, it was for the jury to weigh all the circumstances as to whether, their combined effect did not support overwhelmingly a supposition that she had been murdered, and so negative both the explanation and the hypothesis that she was alive or had (unknown to her parents) died a natural death. In our opinion, there was evidence to go to the jury that Eileen had been murdered. This

case does not in substance differ greatly from the case of *R. v. Davidson* ((1934) 25 Cr.App.R. 21). Davidson was charged with murder of his son, who had disappeared and whose body had not been found. Before the trial, Davidson had made several confessions to the effect that he had murdered the boy and disposed of the body; but at the trial he retracted these and said he had found the boy's dead body in a canal. Apart from evidence emanating from the accused himself either in confessions made before trial or on oath at the trial, there was no evidence of the *corpus delicti*, the body never having been found. Even though at Davidson's trial the trial Judge did not direct attention to the question of what evidence there was of the *corpus delicti*, or emphasize to the jury the primary question whether it was satisfied that the child was dead (as was done with considerable particularity in this case), the Court of Criminal Appeal held it was perfectly open to the jury "to hold that the boy was dead, and, after hearing the evidence of the appellant, to disbelieve the retraction of his confessions which he made, and to accept the statement which he had previously made, namely, that he was the cause of the boy's death . . . all his conduct was inconsistent with the view that this child had come by his death in a way not involving guilt upon the part of the appellant" (*ibid.*, 27). There was, therefore, both the confession subsequently retracted and the sworn testimony as to death given by the accused on his trial.

In this case, though there was nothing approximating to a confession, there were statements, both verbal and in writing, that Eileen had died; appellant asserted his belief in the fact of her death with such insistence that a jury was entitled to accept it as having happened, and, if that were true, all the other evidence points to her having met her death at appellant's hands. The appellant in arranging the marriage used deceit, falsehood, and concealment on a large scale. He impressed on Eileen's friends and relations that they would receive no word from her for some time. It was to be three and a half months before they would get any news. He told the bank officer, when on July 27, 1942, he reopened the account at the National Bank, that it would be "fed by his future wife and himself." He married Eunice Marcel Geale on December 12, 1942. He called on Mrs. Spargo on December 19, 1942, and, though the story he then told was a tissue of lies, the jury was entitled to hold that it was designed to lead Mrs. Spargo to believe that Eileen was dead, and that that at least was the truth; the letter purporting to have been sent by him from Brisbane in February 1943, was also a fabrication, but again the jury was entitled to accept as true its central theme that Eileen had perished. In *Davidson's* case ((1934) 25 Cr.App.R. 21), the jury accepted the accused's testimony that the boy was dead whilst rejecting his assertion that the boy was already dead when accused found the body. Finally, at the time of appellant's arrest, he

said, in answer to his wife's inquiry whether Eileen had turned up: "That's impossible; she couldn't have."

This evidence is reinforced by many other circumstances of deep inculpatory import. In our opinion, it was competent for the jury to infer the fact of death from the whole of the evidence as a matter of moral certainty leaving no ground for reasonable doubt. A formidable array of circumstances leading irresistibly to such a conclusion was available to the jury. In addition to those already referred to:

(a) Appellant's explanation of the reason for the marriage and his account of Eileen's conduct might well be regarded as too incredible to be accepted: that she should have been willing to pay him £650 to enter into a marriage intended to be a sham is unbelievable; moreover, if the marriage was to be merely a cloak to an elopement with another man, it is highly improbable that Eileen's behaviour would have been what it was proved to have been, or that the wedding would have been carried through in the manner it was.

(b) Such a scheme or pact as appellant alleged did not require that he and Eileen should spend the night together at the Helensville Hotel—a circumstance for which there is no adequate explanation: the efforts made from Helensville by telephone, first by Eileen and then by appellant, to have the cheque representing the proceeds of the sale of her property made an open one, so as to facilitate cashing it, might well have been thought by the jury to have a sinister character.

(c) Then there was the finding on September 5, 1942, in the railway waiting-room of the fur coat Eileen wore away after the wedding, the tab with the maker's name having been removed. Appellant is not shown to have been in any way connected with this apparent abandonment of the fur coat, but a jury would be entitled to think that a fur coat is an article which such a clothes-minded woman as Eileen was shown to have been would have prized, and one which she would certainly have sought to recover had she been alive. The circumstance is susceptible of being regarded by the jury as a device to get rid of a garment capable of recognition.

(d) It would be extraordinary that Eileen should immediately after her marriage of her own volition disappear completely, without any sort of word to her parents, relatives, or friends. Even if there had been any "secret" work on which her husband was engaged, preventing her disclosing her whereabouts, she could at least have sent a message.

(e) In June 1943, nearly a year after appellant's marriage to Eileen, her hat-box and one of her suitcases were in appellant's possession, as well as much of her clothing, not all together in one place but distributed through the house occupied by appellant and a woman he had married in December 1942. Appellant said he had bought them—an assertion too incredible for acceptance.

Counsel for appellant placed much emphasis on the limitations of the searches made—under the names Turner, Jones, Horry, and Spargo—to trace Eileen. The investigation was widespread: as well as publication in the *Police Gazette* of Eileen's photograph and description, some inquiries were made from the Post and Telegraph Department, the Internal Affairs Department, the Government Statistician, the National Service Department, the Customs Department, and the Marine Department. The records of the Registrar-General of Births, Deaths, and Marriages were searched over a period from July 1942 to January 1943. For all that there is any proof to the contrary, there may have been an entry subsequent to January 1943, and the possibility of Eileen's having left by an American ship or by an American aeroplane was not negatived. But it is a very much more cogent consideration that no word or message of any sort was ever received from Eileen by her parents, relatives, or friends, with all of whom she was on affectionate terms. A jury viewing the evidence as a whole was, in our opinion, entitled to regard the concurrence of so many separate facts and circumstances—themselves established beyond all doubt, and all pointing to the fact of death at or about July 13, 1942—as excluding any reasonable hypothesis other than her death, and having, therefore, sufficient probative force to establish her death. No alternative reasonable explanation had been put forward.

If the evidence is sufficient to establish Eileen's death, as we hold a jury could have regarded it to be, there was ample evidence pointing to appellant's having murdered her. His explanation that the marriage and her subsequent disappearance were pursuant to an arrangement he had made with her to facilitate her going off with another man, and in regard to which he was to receive, and did receive, £650 for his co-operation, might well have been thought by the jury to be too fantastic to be accepted. He said the scheme was hers in its entirety: "every-thing was arranged by her." Such conduct by her would have been both extraordinary and discreditable; the alleged plan is inconsistent, too, with the trousseau she went to such pains and expense to provide, and with the night spent at the Helensville Hotel; it is left unexplained why, if there was to be deception of her parents, sustained by letters from Australia, she could not herself have sent such letters; in short, it was such a story that any jury might well regard it as unbelievable. Once the story is rejected as incredible, the appellant is left in a network of facts not explainable upon any other hypothesis than that he murdered Eileen, and therefore sufficient in their cumulative effect to establish guilt.

A further ground of appeal was a contention advanced that the learned trial Judge misdirected the jury by telling it that there was evidence which it might treat as a confession of the accused admitting the fact of death, and failed to direct the jury that there was no such evidence. What the learned trial

Judge said in this connection was that he had been asked to direct that the accused's reply to Mrs. Horry's inquiry whether Eileen had turned up ("That's impossible; she couldn't have") did not amount to a confession on the part of the accused. He proceeded:

Gentlemen, of course they do not amount to a confession of murder, or of killing the woman Eileen in any way at all. The Crown puts them forward as evidence of knowledge on the part of the accused that Eileen was dead. It is for you to say what value you attach to those words in that connection, but I would suggest to you that there may be other things far more worthy of consideration than those words. There is the possibility of mishearing or misquoting of the words, and they are words which are a little difficult to understand on any view of the matter, and perhaps you will feel that you would not wish to rely too much on what was said, or on what may be the meaning of those words. Mr. Turner points out that the man had been charged with murder, and that he could hardly then be expected to say that it is impossible that this woman could turn up; but I do not think I need try to work out the meaning of it for you. Mrs. Horry, of course, knew nothing, apparently, as far as we know, of the charge at that moment, but it does seem to me that there may be some explanation of those words which would not convey the full meaning assigned to them by the Crown, and you may perhaps think it better not to rely too much on those words.

The letter from Brisbane to Eileen's parents was alluded to—and, in our opinion, properly—as one which did "tell a story of death." The learned Judge said:

According to that letter—I am not quoting its words—but according to that letter Eileen was dead; and it was Turner—that is, the accused—who wrote that letter to her parents to convince them that Eileen was dead. The Crown relies on that also as being to some extent a confession, indicating knowledge on his part that the woman was in fact dead, and that her parents, who might still be hoping to hear from her, would never hear from her again.

We do not think that what the learned trial Judge said in this connection amounts to telling the jury it was evidence which it might treat as a confession of the accused admitting the fact of death. The learned trial Judge said of the verbal statement categorically that it did not amount to a confession of murder or of killing the woman Eileen in any way at all; as to the letter, the learned trial Judge made no pronouncement as to its value, but said merely that the Crown relied on it as being "to some extent a confession indicating knowledge on his part that the woman was in fact dead." We do not think any proper objection can be taken to the learned Judge's handling of the matter.

As a third and last ground of appeal, it was contended that the learned trial Judge directed the jury erroneously in declining to direct that, in the absence of direct evidence of the killing or of the death of Eileen, there was no onus upon the prisoner to account for her disappearance or non-production. In fact, what the learned Judge said to the jury was that he had been asked to direct it in terms of the passage in *9 Halsbury's Laws of England*, 2nd Ed. 449.

In the absence of such evidence [of the killing or the death] there is no onus upon the prisoner to account for the disappearance or non-production of the person alleged to be dead.

The learned trial Judge said to the jury:

I do not do so. There are circumstances in which that statement would be appropriate—for instance, in the case of a mere unexplained disappearance of a man's wife or child—but there are other circumstances in which a failure to explain may be relevant, not as a matter standing alone, but as something to be considered along with all the other facts of the case. If you reject the explanation put forward by accused and his counsel to account for the disappearance of Eileen Turner as being an explanation beyond the bounds of reasonable possibility, then the failure of the accused to account for his wife's disappearance is a matter which you may consider in conjunction with all the other facts, and the weight to be given to it is for you to decide.

The learned Judge did no more than tell the jury that, if the explanation put forward by the appellant were rejected, the position would then be that the failure of the accused to account for the disappearance other than by an incredible story was "a matter which you may consider in conjunction with all the other facts, and the weight to be given to it is for you to decide." Having regard to the fact that the summing-up earlier stressed the burden of proof resting entirely on the Crown in the following words:

It is not for the accused to prove anything. It is for the Crown to prove everything that is necessary to establish its case. On every doubtful point that arises in the course of your deliberations it is your duty to resolve the doubt in favour of the accused, never in favour of the Crown.

it cannot, in our opinion, be considered a misdirection for the learned Judge to have dealt with this aspect of the matter as he did.

For the foregoing reasons, we think the appeal fails, and is dismissed accordingly.

Appeal dismissed.

Solicitors for the appellant: *Finlay and Shieff* (Auckland).

Solicitors for the respondent: *Crown Law Office* (Wellington).

(*New Zealand Law Reports*, 1952, page 84)

SUPREME COURT. WELLINGTON. 1951. DECEMBER 17, 19.
FAIR, J.; HUTCHISON, J.; HAY, J.

ATTORNEY-GENERAL v. CRISP AND
"TRUTH" (N.Z.), LIMITED

Contempt of Court—Article in Newspaper giving Criminal Record of Convicted Person—Such Article featured prominently in Posters—Appeal from Conviction pending—Duty of Directors of Newspaper—Liability of Printer and Publisher notwithstanding Lack of Knowledge of Contents of Newspaper—Printers and Newspapers Registration Act 1908, s. 11.

After the conviction of one Horry for murder, and before the time for appeal had expired, the defendant company published in its weekly newspaper an article describing in detail Horry's criminal record and expressing its opinion as to his character and conduct in respect of the alleged murder and generally. This was published and featured on its posters in a form giving the utmost prominence to the facts referred to and to the opinion of the paper. It referred in detail to "his frightful record," and described him as guilty of "almost every manner of • "deceitful and vicious offence," "an unspeakable monster," and "a suave black-hearted fiend." On the posters advertising the issue were displayed in very