

COURT OF APPEAL.

NOVEMBER 19TH, 1912.

REX v. PILGAR.

4 O. W. N. 330.

Criminal Law—Criminal Procedure—Trial for Arson—Questions Reserved—Disqualification of Juror's Interest—Right to Challenge for Cause—Application Too Late—Ambiguous Remark by Judge—Counsel Misled Thereby—Criminal Code, sections 1014, 1022.

Certain questions reserved for the opinion of the Court by the County Court Judge of Halton County after a trial for arson at which defendant was convicted. Before the jury was called defendant's counsel intimated that he would object that any members of a certain mutual fire insurance company were disqualified as jurymen, on the ground of interest. The trial Judge replied "We will see when the question arises." The jury were then called and certain of the panel challenged peremptorily by defendant's counsel but none challenged for cause, and they were then impaneled and sworn. Defendant's counsel then requested the trial Judge to ascertain if any of the jury were members of the company above referred to, but the learned Judge ruled that the application was made too late. The questions submitted were, firstly as to whether defendant's counsel's request was made at the proper time, and secondly, if the proceedings prior to the impaneling of the jury amounted to a refusal of the right to challenge for cause.

COURT OF APPEAL (MEREDITH, J.A., dissenting), answered both questions in the negative.

MEREDITH, J.A., held that the trial Judge's remark "We shall see when the question arises" misled defendant's counsel into thinking that his right of challenge would be safeguarded and brought up by the Judge at the proper time, and that therefore the second question should be answered in the affirmative.

The accused was tried for arson at the Halton sessions before the County Judge and a jury, and found guilty.

The Judge reserved two questions for this Court. The facts are set forth in the stated case by HIS HONOUR, as follows:—

"At the opening of the trial, and after the defendant had pleaded, not guilty," the following conversation took place between counsel for the defendant and myself:—

"Mr. Cameron: Before they call the jury, I would like to ask each of the men who are called whether they are interested in the Halton Mutual Fire Insurance Company. If any of them are interested in that company, I submit they would not be eligible to sit on this jury.

His Honour: We will see when the question arises.

Mr. Cameron: Of course, I cannot tell without asking them."