

there was ample reason for admitting the statement in evidence.

The first question ought, therefore, to be answered in the affirmative.

As to the second question, there can be no reason for excluding the testimony proving quarrels between the deceased and the prisoner, and the latter's threats. Taken in the connection in which it was given, it tended to shew an animus and furnish a motive for the crime with which the prisoner was charged. The only other instance of threats was in the case of the witness Aggi Radzig. That came out in the course of giving testimony to shew that the prisoner possessed a revolver, and it was in connection with proof of that fact that the witness testified to a threat to shoot her made on one occasion. Strictly, it should not have been received, but no special weight was attached to it, and, although the learned Chief Justice alluded to it in his charge, he only did so incidentally and in connection with the other testimony as to the prisoner's quarrels with and threats against the deceased.

We have to consider whether its reception, under the circumstances, ought to vitiate the proceedings. The case of *Makin v. Attorney-General*, [1894] A. C. 57, was pressed upon us. In that case the evidence objected to was held to be properly admissible, but the Judicial Committee expressed an opinion as to the scope and effect of a section of the Criminal Law Amendment Act of New South Wales and its bearing on the case in review, assuming that the evidence was not admissible. The words there under consideration are very dissimilar to those in sec. 1019 of the Code. The words of the New South Wales Act are: "Provided that no conviction or judgment thereon shall be reversed, arrested, or avoided in any case so stated unless for some substantial wrong or other miscarriage of justice." Their Lordships were of opinion that it could not properly be said that there had been no substantial wrong or miscarriage of justice, where, on a point material to the guilt or innocence of the accused, the jury had, notwithstanding objection, been invited by the Judge to consider in arriving at their verdict matters which ought not to have been submitted to them. Stress was laid on the fact that the evidence was on a point material to the guilt or innocence of the accused. In another part of the judgment (p. 70) it is remarked that the evidence improperly