As regards the balance the defendant maintains that part was applied in payment of the plaintiff's debts and the remainder handed over to the plaintiff ; but he holds no receipts from the plaintiff for sums alleged to have been thus paid.

In these circumstances, while the amounts paid to the plaintiff's creditors by the defendant, as admitted by the plaintiff or as evidenced by receipts, are to be credited to the defendant, the balance of the cane moneys for the three years in question must be charged against him.

(*c*) In the absence of a receipt for the sum of £66 10s. 0d. included as part of the consideration in the Mortgage of the 18th January, 1939, that sum must be held not to have been paid.

(*d*) The plaintiff has urged that the rate of interest is excessive. The Usurious Loans Ordinance 1932, however, was repealed by the Moneylenders Ordinance 1938, and the Court has therefore no authority to reduce the rate of interest.

The costs of all proceedings to the date of this judgment will be paid by the defendant.

R. *v.* PARBHU.

[Criminal Jurisdiction (Corrie, C.J.) September 11, 1941.]

Attempting to set fire to a building—handing tins of petrol over a fence to a confederate—tins of petrol and petrol soaked hessian placed under floor of house by confederate—whether evidence of attempted arson.

Parbhu was on bad terms with the occupier of a house in Margaret Street, Suva. He conceived the plan of burning down the house and drew up a plan of the building showing where tins half full of petrol and connected by strips of petrol soaked hessian were to be placed under the floor. He showed this plan to a friend named Tamaru and asked for his assistance. Tamaru informed the police of the plan, but pretended to assist Parbhu. On the night when the house was to be burned down a police party was concealed in various vantage points in the vicinity. Parbhu was seen to hand two petrol tins over the fence to someone inside and was then arrested. Under the building were found two petrol tins half full of petrol and a third tin containing petrol soaked hessian.

Tamaru in evidence gave a detailed account of the plot and described receiving the tins from Parbhu on the other side of the fence and placing them in position. There was evidence that about a week before the incident Parbhu had purchased a quantity of petrol in cases.

HELD.—The evidence was evidence on which the accused might be found guilty of attempting to set fire to a building.

[**EDITORIAL NOTE.**—As to attempts *vide* Penal Code, Cap. 5, ss. 404, 405, 406.]

Cases referred to :—

(1) *R. v. Robinson* [1915] 2 K.B. 342; 84 L.J.K.B. 1149; 113 L.T. 379; 79 J.P. 303; 31 T.L.R. 313; 24 Cox. C.C. 726; 11 Cr. Ap. 124 ; 14 Dig. 104.

(2) *R. v. Taylor* [1859] 175 E.R. 831 ; 14 Dig. 104.

(3) *R. v. Dayal Bawri* [1869] 14 Dig. 103 ; 3 B.L.R. A.C. 55 (IND.)

(4) *R. v. Goodman* [1872] 14 Dig. 105 ; 22 C.P. 338 (CAN.)

(5) *R. v. Laitwood* [1910] 4 Cr. Ap. 248 ; 14 Dig. 101.

(6) *R. v. White* [1910] 4 Cr. Ap. 257 ; 2 K.B. 124 ; 79 L.J.K.B. 854 ; 102 L.T. 784 ; 74 J.P. 318 ; 26 T.L.R. 466 ; 22 Cox. C.C. 325 ; 14 Dig 106.

(7) *R. v. Punch* [1927] 20 Cr. Ap. 18.

(8) *R. v. Cheeseman* [1862] 9 Cox C.C. 100; 31 L.J.M.C. 89; 5 L.T. 717; 26 J.P. 163; 14 Dig. 104.

(9) *R. v. Linnekar* [1906] 2 K.B. 99; 75 L.J.K.B. 385; 94 L.T. 856; 70 J.P. 293 ; 22 T.L.R. 495 ; 21 Cox. C.C. 196 ; 14 Dig. 104.

PROSECUTION for attempting to set fire to a building.

A. D. LEYS, for the accused, in submitting at the close of the prosecution that there was no evidence of an overt act sufficiently connected with setting fire to the building to support a conviction for the attempt, suggested that the acts of the witness Temaru must not be taken into account as, in any case, he was the agent of the police and whatever he did was not directed to setting fire to the building. He quoted in support of his argument that mere preparation is not an attempt:—

R. v. Robinson [1915] 2 K.B. 342 (at page 349)
R. v. Taylor [1859] 175 E.R. 831.
Archbold [30th Edition] Page 1443.
R. v. Dayal [1869] 14 Dig. 103.
R. v. Goodman [1872] 14 Dig. 105.
R. v. Laitwood [1910] 4 Cr. Ap. 248.
R. v. White [1910] 4 Cr. Ap. 157.
R. v. Punch [1927] 20 Cr. Ap. 18.

A. G. Forbes, Acting Attorney-General, for the Crown quoted *Russell on Crimes,* 9th Edition Vol. 2 p. 1429 and *Archbold,* 30th Edition, p. 1443 as authority for the submission that the whole transaction must be regarded as one. He pointed out that it is not a defence that the offence attempted could not be completed (*R. v. Cheeseman* 9 Cox. C.C. 100; *R. v. Linneker* (1906) 2 K.B. 199) and that *R. v. Dayal* was distinguished by the fact that in that case no particular building was indicated; that in *R. v. Robinson* the false pretence was made to a third party and not to the person intended to be defrauded.

A. D. Leys, for the accused, in reply: The plan is only evidence of intent. There must be an actual effort to set fire.

CORRIE, C. J.—Mr. Leys has submitted that there is no case for the defence to answer, in that the evidence for the prosecution, while it may establish that the accused intended to set fire to the house occupied by Dahia and made preparation for that purpose, does not prove that he did any act which can in law be held to constitute an attempt. Mr. Leys

maintains that there is no offence against the section until an effort has been made actually to ignite the building intended to be set on fire; and he has argued that the case is governed by the judgment in *R. v. Robinson* [1915] 2 K.B. page 342.

The evidence before the Court goes to show that the accused's plan included three distinct stages. First, the provision of inflammable material in the form of benzine and hessian ; secondly, placing the material in position under the house ; and thirdly, setting the inflammable material alight.

The first of these stages, the provision of the materials, was, in my view, merely preparation for the intended offence; but the placing of the benzine and hessian in positon under the house is in a different category. It was an act directly approximate to and immediately connected with the commission of the offence which the accused had in view: it was indeed a step essential to the fulfilment of the accused's purpose, for it was this inflammable material which, in the first instance, was to be ignited, and which in turn was to set fire to the house. The placing under the house of this material was indispensable to the accused's plan, as without it there could be no possibility of setting fire to the house by dropping the butt of a cigarette or a lighted match. In the words of Pickford J. in *R. v. Laitwood,* 4 C.A.R. page 248, at page 252 "there was here an act done in order to commit an offence which formed part of a series which would have constituted the offence if not interrupted."

The defence have taken a second point, namely, that the accused is to be judged only upon what he did himself, and not upon what he may have believed that his accomplice was doing on the other side of a corrugated iron fence: and that while the accomplice who placed the tins and hessian in position may have been guilty of an attempt handing tins of benzine and hessian over the fence was merely an act preparatory to the attempt.

I do not think that is a position which can be maintained. If, as I hold, the placing of the inflammable material under the house with a view to setting fire to that house constitutes an attempt to set fire to the house, it is clear that the accused was participating in that attempt.

I hold therefore that there is evidence before the Court upon which it can find that the accused attempted to set fire to a building.

[After delivery of judgment on this submission the accused changed his plea to one of guilty and was convicted and sentenced to five years penal servitude.]

R. *v.* RAMTAMANKAL.

[Criminal Jurisdiction (Corrie, C.J.) December 2, 1941.]

Statements of witness to police—extent of prosecution's duty to communicate contents to defence.

In the course of his address to the Court in a murder trial, Counsel for the defence commented on the fact that a statement made by a boy who was not a witness for the prosecution had not been communicated to him before the trial.