C.A.C. No. 129873

NOVA SCOTIA COURT OF APPEAL
Cite as: R. v. Shalaan, 1997 NSCA 87

Chipman, Jones and Freeman, JJ.A.

BETWEEN:

HER MAJESTY THE QUEEN	)	
	)	Stephanie Cleary
	)	for the Appellant
Appellant	)	
	)	
- and -	)	
	)	Patrick J. Duncan
	)	for the Respondent
FAYEZAH JASSIM SHALAAN	)	
	)	
	)	
Respondent	)	Appeal Heard:
	)	March 19, 1997
	)	
	)	
	)	Judgment Delivered:
		April 22, 1997
	)	
	)	

THE COURT: Appeal allowed, acquittal set aside and the matter remitted to the Supreme Court for sentencing per reasons for judgment of Jones, J.A.; Chipman and Freeman, JJ.A. concurring.

JONES, J.A.:

The respondent was tried in the Supreme Court before Palmeter, A.C.J. on an indictment containing the following counts:

> "That she on or about the 24th day of May, 1995 at or near Dartmouth, in the County of Halifax, Province of nova Scotia, did unlawfully cause the death of Salman Shalaan, and did thereby commit first degree murder, contrary to Section 235(1) of the **Criminal Code**;
>
> AND FURTHER that she on or about the 24th day of May, 1995 at or near Dartmouth, in the County of Halifax, Province of Nova Scotia, was an accessory after the fact to the offence of murder and did thereby commit an offence contrary to Section 240 of the **Criminal Code**.

The respondent's brother, T.A. a young person was also charged with the murder of Salman Shalaan in Youth Court. He was acquitted of the charge of murder.

The Crown alleged that the respondent and her brother participated in the murder and that after the murder the respondent received, comforted and assisted T.A. for the purpose of enabling him to escape. The evidence indicated that the deceased, was stabbed to death in the Shalaan residence, when only the respondent and T.A. were present. There was evidence that the respondent drove the vehicle which transported T.A. and herself from the scene of the murder along with blood-stained clothing worn by T.A. during the offence, to a place of disposal. The respondent orchestrated a discovery of the body by others and fabricated a false alibi for T.A. which she provided to the police.

The trial judge acquitted the respondent on the charge of murder. In doing so, based on the evidence, he found that T.A. killed the deceased and had committed murder. While acquitting the respondent of murder he stated:

> "I have not the slightest doubt that the accused was well aware of the murder. She was there, she was aware of who committed it, and tried to cover it up after the fact. She deliberately tried to mislead the police and other parties with whom she came in contact after the murder.

In considering the second count in the indictment he reviewed the authorities dealing with ss. 23.1 and 592 of the **Criminal Code**. He concluded:

> In my opinion we are all still left with the common law, and the obiter in **Vinette**, as interpreted by Moir, J.A. in **Anderson**, and that is, if the principal was acquitted, the accessory must be acquitted.
>
> Under these circumstances for me to find the accused guilty on this charge would, in my opinion, be perverse and result in inconsistent verdicts. It might well be inclined, I submit, to bring the administration of justice into disrepute.

The Crown has appealed from the acquittal on the second count in the indictment.

The issue is whether the respondent can be convicted as an accessory after the fact to murder where the principal offender has been acquitted of that offence.

It is necessary to review the law in Canada respecting accessories.

In the 5th edition of Tremeear's **Criminal Code**, the author, A.B. Harvey sets out s. 69 of the **Code** as then enacted. That section deals with parties to an offence. Those provisions are now contained in s. 21 of the **Code** which provides:

> "21(1) Every one is a party to an offence who
>
> (a) actually commits it;
>
> (b) does or omits to do anything for the purpose of aiding any person to commit it; or
>
> (c) abets any person in committing it."

In referring to those provisions the author stated:

> "Thus, what s. 69 has done is to make applicable to all crimes the rules formerly applicable in the case of misdemeanours only, abolishing the distinction between accessories before the fact and principals in the second degree (or accessories at the fact), and making them principals, equally guilty with the person who actually commits the offence. This is of course consistent with the abolition of the distinction between felonies and misdemeanours. The rules as to accessories after the fact remain.
>
> One effect of the abolition of this distinction is that it is possible under the **Code** to convict an aider and

> abettor, or a procurer of an offence, notwithstanding the acquittal of the principal offender. This was possible at common law in the case of a misdemeanour: **R. v. Burton** (1875), 13 Cox C.C. 71; **R. v. Daily Mirror Newspapers Ltd**.; **R. v. Glover**, [1922] 2 K.B. 530, 91 L.J.K.B. 712, 16 Cr. App. R. 131. Or the instigator of a crime may be convicted of murder, although the actual perpetrator has previously been convicted of manslaughter only. The verdict of the first jury is conclusive only as between the Crown and the person then on trial, and the guilt of an aider and abettor is not to be measured by that of the actual offender. Both are parties to the offence, and it is for the jury in each case to determine whether the killing was murder or manslaughter: **Remillard v. R.** (1921), 62 S.C.R. 21, 35 C.C.C. 227, 59 D.L.R. 340, 13 Can. Abr. 99."

Section 71 defined an accessory after the fact, and is now s. 23.(1) of the **Code**, and provides:

> "23.(1) An accessory after the fact to an offence is one who, knowing that a person has been a party to the offence, receives, comforts or assists that person for the purpose of enabling that person to escape."

Section 849 of the **Code** as set out in the 5th edition of Tremeear provides:

> "849. Every one charged with being an accessory after the fact to any offence, or with receiving any property knowing it to have been stolen, may be indicted, whether the principal offender or other party to the offence or person by whom such property was so obtained has or has not been indicted or convicted, or is or is not amenable to justice, and such accessory may be indicted either alone as for a substantive offence or jointly with such principal or other offender or person."

That section had its origin in s. 627 of the 1892 **Code**.

Section 592 of the **Code** now provides:

> "592. Any one who is charged with being an accessory after the fact to any offence may be indicted, whether or not the principal or any other party to the offence has been indicted or convicted or is or is not amenable to justice."

The following note is from Martin's **Criminal Code** 1955. In referring to accessories after the fact it is stated at p. 806:

> "This was part of the former s. 849(1); s. 627 in the **Code** of 1892, and s. 497 in the E.D.C. It was a rule at common law that an accessory could not be convicted unless his principal had been convicted.
>
> The provision in principle, comes from the **Accessories and Abettors Act**, 24 and 25 Vict., c. 94, s. 1 as to which it is said in Greaves' Cons. Acts, p. 14:
>
> > 'Where the principal in such cases had not been apprehended, the accessory would not have been triable at all under the former enactment.'"

In **Standefer v. United States** (1980), 100 S. Ct. 1999 Chief Justice Burger in delivering the judgment of the Supreme Court of the United States stated at p. 2003:

> "Because at early common law all parties to a felony received the death penalty, certain procedural rules developed tending to shield accessories from punishment. See **LaFave & Scott**, supra, at 499. Among them was one of special relevance to this case: the rule that an accessory could not be convicted without the prior conviction of the principal offender. See 1 M. Hale, Pleas of the Crown 623-624. Under this rule, the principal's flight, death, or acquittal barred prosecution of the accessory. And if the principal were pardoned or his conviction reversed on appeal, the accessory's conviction could not stand. In every way 'an accessory follow [ed], like a shadow, his principal'. 1 J. Bishop, Criminal Law 666 (8th ed. 1892).
>
> This procedural bar applied only to the prosecution of accessories in felony cases. In misdemeanour cases, where all participants were deemed principals, a prior acquittal of the actual perpetrator did not prevent the subsequent conviction of a person who rendered assistance. **Queen v. Humphreys and Turner**, [1965] 3 All E.R. 689; **Queen v. Burton**, 13 Cox C.C. 71, 75 (Crim. App. 1875). And in felony cases a principal in the second degree could be convicted notwithstanding the prior acquittal of the first-degree principal. **King v. Taylor and Shaw**, 168 Eng. Rep. 283 (1785); **Queen v. Wallis**, 1 Salk, 334, 91 Eng. Rep. 294 (K.B. 1703); **Brown v. State**, 28 Ga. 199 (1859); **State v. Whitt**, 113 N.C. 716, 18 S. E. 715 (1893). Not surprisingly, considerable effort was expended in defining the categories - in determining, for instance, when a person was 'constructively present' so as to be a second-degree principal. 4 Blackstone, supra, at 34. In the process, justice all to frequently was defeated.

> To overcome these judge-made rules, statutes were enacted in England and in the United States. In 1848 the Parliament enacted a statute providing that an accessory before the fact could be 'indicted, tried, convicted, and punished in all respects *like the Principal*.' 11& 12 Vic. ch. 46 1 (emphasis added). As interpreted, the statute permitted an accessory to be convicted 'although the principal be acquitted.' **Queen v. Hughes**, Bell 242,248, 169 Eng. Rep. 1245, 1248 (1860). Several state legislatures followed suit. In 1899, Congress joined this growing reform movement with the enactment of a general penal code for Alaska which abrogated the common-law distinctions and provided that 'all persons concerned in the commission of a crime, whether it be felony or misdemeanour, and whether they directly commit the act constituting the crime or aid and abet in its commission, though not present, are principals, and to be tried and punished as such.' Act of Mar. 3, 1899, §186, 30 Stat. 1282. In 1901, Congress enacted a similar provision for the District of Columbia.
>
> The enactment of 18 U.S.C. §2 in 1909 was part and parcel of this same reform movement. The language of the statute, as enacted, unmistakably demonstrates the point:
>
> > 'Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, *is a principal*.' Act of Mar.4, 1909, §332, 35 Stat. 1152 (emphasis added).
>
> The statute 'abolishe[d] the distinction between principals and accessories and [made] them all principals'. **Hammer v. United States**, 271 U.S. 620, 628, 46 S. Ct. 603,604, 70 L.Ed. 1118 (1926). Read against its common-law background, the provision evinces a clear intent to permit the conviction of accessories to federal criminal offenses despite the prior acquittal of the actual perpetrator of the offense. It gives general effect to what had always been the rule of second-decree principals and for all misdemeanants."

In **R. v. Camponi** (1993), 82 C.C.C. (3d) 506 the British Columbia Court of Appeal reviewed the history relating to accessories. Wood, J.A. in delivering the judgment of the Court stated at p. 509:

> "This section creates a separate and distinct offence for the charge of accessory after the fact to murder, with the result that the general 'accessory' offence provisions found in s. 463, which under para. (a) would otherwise mandate a maximum sentence of 14 years' imprisonment upon conviction, do not apply when the offence alleged against the principal is murder."

It is important to note that the offence of accessary after the fact is a separate and distinct offence from that committed by the principal.

He stated at p. 510:

> "592. Any one who is charged with being an accessory after the fact to any offence may be indicted, whether or not the principal or any other party to the offence indicted or convicted or is or is not amenable to justice.
>
> The appellant argues that this provision was intended by Parliament to give effect to the common law rule that an accessory could not be convicted if the principal offender had not first been convicted. In fact, the common law rule, simply put was that: '...no accessory can be convicted or suffer any punishment where the principal is not attainted or hath the benefit of his clergy' (Stephen, *A History of the Criminal Law of England*, vol. II, (New York, Burt Franklin, 1883), at p. 232).
>
> The rule was much criticized. Its early justification was that it ameliorated the severity of another common law rule, which was that an accessory was punishable in the same manner as the principal felon, i.e. by death (*Russell on Crime*, 11th ed., vol. 1, (London, Stevens & Sons Ltd., 1958), at pp. 164-5). In *Criminal Law: The General Part*, 2nd ed. (London, Stevens & Sons Ltd., 1961), at p. 407, n. 24, Glanville Williams describes the rule as 'absurd'. Referring to its latin incarnation, Stephen remarked: 'It is strange to observe how, even in our times, a commonplace which is not even true may be made to look plausible by putting it in Latin',*ibid*.
>
> In England the common law rule was replaced in 1848 with a statutory provision which permitted the conviction of an accessory notwithstnding that the principal had not been convicted or was not amenable to justice ('Act for the Removal of Defects in the Administration of Criminal Justice', 1848 (U.K.), c. 46, s. 2)."

In referring to s. 23.1 of the **Code**, he stated at p. 514:

"That brings me to s. 23.1, which was not in existence at the time Mr. Justice Watt wrote his learned article on the subject, and which does not appear to have been brought to the attention of the judge below:

> '23.1 For greater certainty, sections 21 to 23 apply in respect of an accused notwithstanding the fact that the person whom the accused aids or abets, counsels or procures or receives, comforts or assists cannot be convicted of the offence.'

This section was enacted in 1986, c. 32, s. 46 [see R.S.C. 1985, c. 24 (2nd Supp.), s. 45]. With what must be regarded as an unusually confident legislative tone, it announces an intention to bring greater certainty to the law relating to ss. 21-23 of the **Code**. Whether it has achieved that lofty goal will be for history to decide. Suffice it to say that in the context of the present discussion its intent seems to have been to put the *quietus* to any lingering notion that s. 592 preserved, or was intended to preserve, the essence of the common law rule relating to accessories after the fact.

The appellant also relies on the following dicta of Pigeon J. **R. v. Vinette** (1974), 19 C.C.C. (2d) 1 at p. 5, 50 D.L.R. (3d) 697, [1975] 2 S.C.R. 222 (S.C.C.):

> 'The situation is quite different when a charge of having been an accessory after the fact is involved. In such a case the principal and the accessory are not charged with the same offence, the charge against the accessory being that of having assisted the other party to escape justice. This offence is therefore subsequent to the principal crime. By its very nature it is subject to special rules. Whereas in the case of several persons accused of the same offence, each may be tried before or after the others, plead guilty before or after any of the others, or be convicted regardless of the decision against any of the others, *an accessory after the fact may not be tried or tender a valid plea of guilty until the principal is convicted*, so that if the latter is acquitted the accessory must of necessity be discharged.'

(Emphasis added.)

> In **Vinette** the accused was charged with being an accessory after the fact to manslaughter, the allegation being that he had helped the principal dispose of the body by putting it in a weighted trunk and then dumping the trunk into a water filled quarry. The issue was whether the principal's plea of guilty was admissible against Vinette. The Quebec Court of Appeal held that it was not, and quashed his conviction. In doing so, the majority in that court relied upon several cases in which it was held that a plea of guilty by one of two or more jointly indicted accused is not admissible against the others. It was in that context that Pigeon J., for the majority in the Supreme Court of Canada, found it necessary to draw a distinction, between the evidentiary rules applicable as between co-accused, and those applicable to accessories after the fact who are separately indicted and tried.
>
> In **R. v. Anderson** (1980), 57 C.C.C. (2d) 255, 26 A.R. 172 (Alta. C.A.), Moir J.A. concluded that the dicta of Pigeon J. in **Vinette** has been misconstrued. In **R. v. McAvoy** (1981), 60 C.C.C. (2d) 95, 21 C.R. (3d) 305 (Ont.C.A.), Jessup J.A. concluded that it should not be followed because Pigeon J. apparently did not consider what is now s. 592 of the **Criminal Code**.
>
> In light of the passage of s. 23.1 of the **Criminal Code**, it is no longer necessary to decide what was meant by Pigeon J. in the **Vinette** case. In my view that section has put to rest any notion that an accessory after the fact can only be tried and convicted after the principal, or another party to the alleged offence, has been convicted. In this case, because of the inadmissibility of his confession, Gee *cannot* be convicted, at least not until some new and admissible evidence, conclusive of guilt, comes to light. This seems to me to be precisely the contingency that s. 23.1 was meant to address.
>
> Before concluding, I must note that it is not necessary to consider whether an accessory after the fact can be indicted and convicted, if the principal offender has been acquitted, after a trial on the merits, of the offence with respect to which the accessoryship is alleged."

In an article (1981), 21 C.R. (3d) 307 entitled **Accessoryship After the Fact** the author, David Watt, after reviewing the Canadian legislation stated at p. 324:

> "From a practical standpoint one could scarcely question the correctness of the decision in **McAvoy**, for, as has already been observed, it is pointless to permit indictment simpliciter without at once permitting the

> proceeding to go forward to adjudication. In addition, accessorship after the fact is viewed in the **Criminal Code** as a substantive crime, so that A should be subject to conviction irrespective of P's position, provided, of course, that proof of P's principal offence and the other essential elements of accessoryship after the fact is properly made. What should be avoided, however, is the illogic of conferring upon the word 'indicted', twice used in the same **Code** section, two separate meanings."

As noted in **Camponi**, supra, s. 23.1 was not in force when the article was written.

In the text **Principles of Criminal Law**, 2nd ed. by Professor Eric Colvin, the author states at p. 367:

> "The conviction of a secondary party does not require the conviction of the principal. The principal may, of course, have escaped or be dead. Even if she is available for trial, she may make a bargain with the prosecution to plead guilty to a charge other than that on which the secondary party is tried. Moreover, the evidence which convicts a secondary party (e.g. a confession) may not be admissible against the principal.
>
> Secondary liability does, of course, require that there be a principal. There is, however, a line of English authority which holds that in this context a principal need not always be someone who could have been convicted of the substantive offence. It will suffice to constitute 'a principal' if the *actus reus* was committed. It is immaterial that the principal lacks the requisite culpability for the offence because secondary liability has its own standards of culpability. Thus, in **R. v. Bourne**, there was held to be an aiding and abetting of bestiality where a man coerced his wife into having sexual relations with a dog. The availability of a defence of duress to the wife was said to be no bar to the conviction of the husband. Similarly, in **R. v. Cogan; R. v. Leak** a husband was held to have aided and abetted the rape of his wife by another man, even though the other man was acquitted because of a mistaken belief in consent. The mistake had been induced by the husband who knew full well that there was no consent.
>
> A recent amendment to the **Criminal Code** has made it clear that the position in Canada is the same and that the principal's lack of culpability is not a barrier to

> convicting a secondary party. Section 23.1 provides: 'For greater certainty, sections 21 to 23 apply in respect of an accused notwithstanding the fact that the person whom the accused aids or abets, counsels or procures or receives, comforts or assists cannot be convicted of the offence.' Unfortunately, this provision does not cover counselling an uncommitted offence under s. 464 of the **Code**. Prior to the introduction of s. 23.1 the Manitoba Court of Appeal had held in **R. v. Richard** that s. 464 could not apply in a case where the person counselled was exempt from criminal responsibility. The accused had made sexual suggestions to a child who was under the age of criminal responsibility and was then charged with counselling uncommitted acts of gross indecency. The court ruled that, since the child could not commit the offence of gross indecency, the accused could not be convicted of the offence of counselling. The court did not discuss the English authorities. It is submitted that the decision was wrong as a matter of principle. The more sensible view is that the term 'offence' in ss. 21-23 and 464 means the **actus reus** of an offence. Section 23.1 makes this clear for ss. 21-23, but only 'for greater certainty'. Even without its inclusion, these sections would be interpreted in the same way. It would be absurd if there were no liability in the circumstances of cases like **Bourne** and **Cogan and Leak**. The position for s. 464 should therefore be the same, even though s. 23.1 does not apply to it."

The English cases are not consistent and apply the common law. The cases are reviewed by Professor Friedland in an article, **Issue Estoppel in Criminal Cases** 1966-67, **The Criminal Law Quarterly** at p. 163. At p. 206 he states:

> "In case of misdemeanours where there are no parties to offences that rule that an accessory cannot be convicted if the principal is acquitted is not applied. And if the distinction between felonies and misdemeanours in England is abolished and the law relating to misdeameanours adopted, the rule should cease to apply to all offences.
>
> In Canada, the distinctions between felonies and misdemeanours as well as between parties and accessories to offences were abolishsed by the 1892 Code and thus the English misdemeanour rule applies in Canada. In **Remillard v. The King** as previously discussed, the Supreme Court of Canada held that the accused who had instigated his son to kill could be convicted of murder even though the son was guilty only of manslaughter. The effect of the abolition of the

distinction between accessories and principals was clearly recognized by the Court. As Mignault J. stated:

> 'Unless the provisions of sect. [now 21] Crim. Code are borne in mind, confusion may be caused by treating the one as the actual perpetrator, the other as the aider and abettor, and measuring the guilt of the latter by the guilt of the former. Both the principals or rather parties to and guilty of the offence committed. ...'

Moreover, the Privy Council in **Surujpaul v. R.** has cast more than a substantial doubt on whether the English rule as to parties to felonies is correct. Lord Tucker giving the judgment of the Board pointed out that in **Hughes** the Court for Crown Cases Reserved had held that the old law did not apply and that such consistency is not necessary because of the statute of 1848 making the crime of being an accessory before the fact the same as the principal felony. Lord Tucker went on to say with respect to the judgment of the Court of Criminal Appeal in **Rowley:**

> 'It is to be observed that the case of **Hughes** was not cited to the court and it is true that counsel for the Crown did not seek to support the conviction.'

Further, and no doubt for similar reasons, the Court of Criminal Appeal in **Daily Mirror Newspapers, Ltd.** allowed a conviction for aiding and abetting to stand even though the conviction of the principal had been quashed on appeal and an acquittal entered. This approach, however, will not take care of all of the problems. It will not remove the necessity for formal consistency in the conspiracy cases; nor will it do so in cases involving an accessory after the fact (indeed, such as **Rowley, supra**) because in this latter case the accessory is not treated as a principal.

In any event, the effect of the felony cases has been lessened by the practice of including 'persons unknown' in such cases. Even if the named principal or co-conspirator is acquitted, the court is thereby able to hold that the offence was committed by 'persons unknown'. It is clear law that the principal need not be 'brought to book and convicted' before there can be a conviction of an accessory. Similarly, a co-conspirator need not be charged before the other conspirator can be found guilty."

In **R. v. Hick** (1991), 7 C.R. (4th) 297 the accused was committed for trial together with M. on charges of unlawful confinement and sexual assault. Shortly before the trial the accused entered a guilty plea on an indictment for unlawful confinement. A jury acquitted M. on both counts. On appeal to the British Columbia Court of Appeal that Court stated that the conviction could not stand as "it would be a mistake to say that the [accused] aided and abetted Marshall in the commission of a criminal offence when Marshall had not committed the offence".

The Supreme Court of Canada restored the conviction. Stevenson, J. in delivering the judgment of the Supreme Court of Canada stated at p. 299:

> "Without expressing any opinion on its correctness, **Rowley** does not purport to apply to principals and in my view cannot be applied to them. The acquittal of Marshall determines nothing in respect of the conviction of the accused. **Rémillard v. R.** (1921), 62 S.C.R. 21, 35 C.C.C. 227, 59 D.L.R. 340, makes it perfectly clear that the jury verdict is only conclusive as between the Crown and the accused at that trial. It follows, then, that the majority's conclusion that the conviction cannot stand is erroneous."

The following passage is from 22 C.J.S. par. 144:

> 144 **Previous Trial of, and Judgment as to, Principal in First Degree**
>
> *A principal in the second degree may, under the statutes, be tried and convicted before the trial and conviction of the principal in the first degree, and notwithstanding the acquittal of the latter.*
>
> Under statutes as to the punishment of principals in the first and second degrees, the court may put a principal in the second degree on trial, and he may be convicted, before the trial and conviction of the principal in the first degree. Generally, it is not essential that the principal in the first degree be convicted of the crime, and so, the principal in the second degree may be convicted even though the principal in the first degree has been acquitted.
>
> If principals in the first and second degrees are tried separately, the judgment against one has no bearing on the judgment against the other. The fact that a charge has been dismissed as to codefendant does not operate as an acquittal of accused whose offense consisted of

> aiding and abetting the codefendant, the judgment of dismissal not being an adjudication that the crime has not been committed. Moreover, the acquittal of the principal does not preclude punishment of an aider and abettor who has pleaded guilty."

It is clear from the previous paragraphs in that work that an accessory after the fact is a principal in the second degree.

It would appear that the provisions of the **Code** were intended to treat parties to offences in the same manner, i.e. that accessories before the fact, aiders and abettors and accessories after the fact would be treated as principals. This is confirmed by s. 23.1 of the **Code**. It is clear from that section and s. 592 of the **Code** it is not necessary to convict a principal in order to convict an accessory. While the language does not refer to the acquittal of the principal, in my view the words "whether or not the principal" is convicted, are broad enough to encompass the acquittal of the principal. Those provisions have changed the common law.

As stated by the Ontario Court of Appeal in **R. v. McAvoy**, supra, **R. v. Vinette** did not apply. Section 592 was applicable and permitted the convictions of the respondent. The Crown had proved all of the elements of the offence. I would allow the appeal, set aside the acquittal, enter a conviction on the second count in the indictment under s. 240 of the **Code** and remit the matter to the Supreme Court to impose a sentence on the respondent that is warranted in law.

Jones, J.A.

Concurred in:

Chipman, J.A.

Freeman, J.A.

C.A.C. No. 129873

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

HER MAJESTY THE QUEEN	)	
Appellant	)	
- and -	)	REASONS FOR JUDGMENT BY:
FAYEZAH JASSIM SHALAAN	)	
	)	JONES, J.A.
Respondent	)	