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.

HELD.—(1) There is no impropriety in not communicating to the defence a statement from a person who is not a witnes for the prosecution.

Obiter (1) It is a proper practice that, where the police take a statement from a person which appears to be clearly in favour of the defence, that statement is communicated to the defence.

(2) The only statements which the defence are entitled as a matter of law, to see are statements made by persons who are called as witnesses at the preliminary inquiry or, not having been so called, are called as witnesses at the trial.

[**EDITORIAL NOTE.**—The second *obiter dictum* quoted above is clearly meant to apply only to witnesses called by the prosecution. There is singular lack of authority on this vexed question. See however *Mahadeo v. R.* [1936]) 2 A.E.R. 813 ; and *R. v. Bryant and Or* [1946] 31 Cr. Ap. 146 ; *R. v. Clarke* 22 Cr. Ap. 58]

PROSECUTION for murder. The only points of present interest are dealt with in the opening portions of the summing up.

The Attorney-General, *E. E. Jenkins* for the Crown.

H. M. Scott, K.C. for the prisoner.

CORRIE, C. J.:—Before I deal with the facts of this case I must say a word about the statement which was taken by the Police from the boy Ramsahai, a brother of the accused. It was suggested rather strongly by Sir Henry Scott that there was some impropriety in the fact that that statement had not been communicated to him before the trial. I can see no such impropriety.

The position as regards statements taken by the Police is this. The only statements which the defence are entitled, as a matter of law, to see are statements made by persons who either are called as witnesses at the preliminary inquiry or, not having been so called, are called as witnesses at the trial.

There is a practice, and it is a proper practice, that where the Police take a statement from a person which appears to be clearly in favour of the accused, that statement is communicated to the defence, or at any rate they are informed that such a statement has been made.

The statement which the boy Ramsahai made to the Police, however, was not a case of that nature. He said he finished work at about 5 p.m. and reached home at about 6 p.m. He then went on to say that he went to the creek to have a bath. " After about fifteen minutes I returned home. I then went to the kitchen and had my meal, that is at 6.15 p.m."

According to the evidence of Inspector Holland it was 6.25 p.m. when he arrived on the scene of the assault. That is to say, the boy's evidence puts him at his own home, close to the scene of the assault, at the time when the assault is alleged in evidence to have taken place. Clearly therefore there is no such inconsistency between the case for the prosecution and the boy's evidence as would in any way make it incumbent upon the prosecution to communicate that statement to the defence. There was nothing to prevent the defence from going as no doubt they did, and obtaining a statement from the boy ; he was not a witness whom there was any difficulty about finding; he was the accused's brother, living with his mother close to the scene of the assault; and I can see no reason whatever why that statement should have been communicated to the defence.