

[HIGH COURT OF AUSTRALIA.]

MATTSON APPELLANT ;

AND

THE KING RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

H. C. OF A. *Criminal Law—New trial—Charge of murder—Motive—Counsel refraining from
1919. calling evidence which might show motive—Conviction for manslaughter—
Evidence of self-defence—Criminal Appeal Act 1912 (N.S.W.) (No. 16 of 1912).*

SYDNEY,
August 14.

Barton and
Gavan Duffy JJ.

On a charge of murder the accused was convicted of manslaughter. His counsel had refrained at the trial from calling evidence of previous hostility shown by the deceased towards the accused, counsel apprehending that it might supply evidence of a motive for murder.

Held, that a new trial should not be granted in order to enable the accused to call this evidence for the purpose of showing that he acted in self-defence.

Special leave to appeal from the decision of the Supreme Court of New South Wales refused.

APPLICATION for special leave to appeal.

Charles Mattson was, on 3rd July 1919, indicted before the Court of Gaol Delivery at Darlinghurst, Sydney, for the murder of Knight Patrick Clutch on 24th June 1919 on the sailing vessel *James Tuft* in Sydney Harbour, and was convicted of manslaughter. Against this conviction he appealed to the Full Court of the Supreme Court of New South Wales sitting as the Court of Criminal Appeal, on several grounds—the one material to this report being that, if other witnesses named were called at a new trial, they would be able to prove acts of such a nature on the part

of the man who was killed as to show that he was previously hostile towards the accused, and to lead the jury to come to the conclusion that the revolver with which the killing was done was produced by the deceased, and not by the accused, and that the shooting was done in self-defence. The witnesses referred to were four in number, and three of them had been called by the Crown on the trial. These three were not cross-examined as to the previous hostility, because the accused's counsel apprehended that evidence of this might be construed to supply motive, since evidence of provocation on prior occasions might tend to show that the offence was intentional and might be evidence against the accused on the question whether or not the killing amounted to murder. There was some evidence of the kind desired to be adduced given at the trial by the accused and another witness, of which the accused had the benefit, and the only evidence as to the production of the revolver was that of the accused, who swore that it was produced by the deceased and that the accused took it from him. The Court dismissed the appeal.

The accused now moved for special leave to appeal to the High Court from that decision.

Spear, for the applicant.

PER CURIAM. We see no reason to differ from the judgment appealed from. Special leave will be refused.

Special leave to appeal refused.

Solicitor for the applicant, *E. J. Spear*.

N. McT.

H. C. OF A.
1919.
MATSON
v.
THE KING.