Although the secretary of the court is not a corporation sole in the true sense of the term, having regard to the fact that the Civil Procedure Code provides for the appointment of the secretary of the court as administrator it may safely be assumed that the legislature intended that the secretary of the court should possess all such attributes of a corporation sole as are necessary for the proper discharge of his functions *qua* administrator. Such offices fall into the category of *quasi*-corporations sole. These are generally officers of the Crown, who for certain purposes are in the nature of a corporation sole. Such *quasi* corporations sole are familiar in our statute law, as for example the Attorney-General under the Civil Procedure Code and the Ceylon Savings Bank Ordinance, the Government Agent under the Land Acquisition Ordinance, and the Settlement Officer under the Land Settlement Ordinance.

We think we have sufficiently elaborated our view that the appointment of the secretary of the court as administrator under section 520 of the Civil Procedure Code is not an appointment of the individual holding the office of secretary but an appointment of the person for the time being holding the office of secretary and that in the instant case the secretary of the court has been rightly made a party to the proceedings to have the sale set aside.

The appeal is dismissed with costs.

GRATIAEN J.—I agree.

Appeal dismissed.

[COURT OF CRIMINAL APPEAL]

1949 *Present :* **Wijeyewardene C.J. (President), Canekeratne J. and Gunasekara J.**

THE KING *v.* SUGATHADASA *et al.*

S. C. 88—M. C. Colombo South, 13,792

Court of Criminal Appeal—Character of accused—Adverse newspaper report pending trial—Legal effect—Assigned Counsel—Right of accused to conduct his own defence.

The five accused-appellants were found guilty of murder. While their trial was pending a newspaper published a report that certain prisoners returning from Hulftsdorp had introduced explosives into the Welikada Prison and that they were parties to a conspiracy to break jail, using explosives for the purpose. A juryman reading the newspaper report would have concluded that the appellants were the persons referred to in the report. At least one member of the jury had read the report while the trial was pending and it was not unlikely that others too had read it before the verdict was returned.

Held, that, in the circumstances, a fresh trial should be ordered, as the case of the appellants could have been prejudiced by the newspaper report.

Held further, that an Advocate assigned by the Court has no authority to appear for an accused person when the latter wishes to conduct his own defence.

APPEALS against five convictions in a trial before a Judge and Jury.

C. S. Barr Kumarakulasinghe, with *C. C. Rasaratnam* and *Izadeen Mohammed*, for the first accused appellant.

G. E. Chitty, with *S. S. Kulatilleke* and *V. Wijetunge*, for the second accused appellant.

Lucien Jayetileke, with *T. W. Rajaratnam*, for the third accused appellant.

H. A. Chandrasena, for the fourth accused appellant.

Colvin R. de Silva, with *V. Thillainathan* and *K. C. de Silva*, for the fifth accused appellant.

H. A. Wijemanne, Crown Counsel, for the Crown.

Cur. adv. vult.

August 8, 1949. GUNASEKARA J.—

The appellants were tried on June 13, 14, and 15, upon an indictment containing three counts which charged them with committing

(1) an offence punishable under section 140 of the Penal Code by being members of an unlawful assembly the common object of which was robbery ;

(2) an offence punishable under section 296 of the Penal Code read with section 146 of that Code, by committing the murder of one Sugathadasa in prosecution of that object ; and

(3) an offence punishable under section 296 of the Penal Code by committing the murder of Sugathadasa.

By a unanimous verdict the Jury convicted them on the first and second counts and they were sentenced to death. No verdict was returned on the third count.

At the beginning of the proceedings in the Court of trial, before the indictment was read to the prisoners, an Advocate who had been assigned by the Court to defend the first, third and fifth appellants informed the Court that the first appellant wished to conduct his own defence. This request was not granted, and the first appellant's defence was conducted by the Advocate. In appeal it was contended on his behalf that he was in law entitled to conduct his own defence if he chose to do so, and that in the circumstances the assigned counsel had no authority to appear for him. We are of opinion that this contention is entitled to prevail, and that the case against the first appellant must be tried afresh

It was contended on behalf of all the appellants that the trial was conducted in an atmosphere of prejudice in that on the last day they were handcuffed in the dock and were surrounded by an armed guard, and that during the luncheon interval there was available to the members of the Jury an early edition of the *Times of Ceylon* which contained a report of an attempt to break prison alleged to have been made on the morning of that day by some prisoners in the Welikada Jail, and which specifically mentioned two of the appellants as having been concerned in the attempt.

It was established by evidence that the early edition of the *Times of Ceylon* of June 15 carried such a report, that it was available in Colombo shortly after twelve noon on that day, and that copies were being sold in Hulftsdorp shortly after 12.40 p.m. ; but there was no evidence that they reached any member of the Jury.

We gave Counsel an opportunity of adducing the evidence of members of the Jury, and Mr. J. V. Dawson, who was the foreman, was called on behalf of the appellants. It appears from his evidence that when the Jury re-assembled at the end of the luncheon interval one of them had in his hands a copy of the *Ceylon Observer* of that day and drew his attention to a headline about an attempt by some prisoners in the Welikade Jail to escape from jail. The *Observer* report, which was produced by the Crown, is in these terms :

"*EXPLOSIVES, BURGLARS' TOOLS FOUND IN JAIL.*
ESCAPE EFFORT BY WELIKADA PRISONERS.

Explosives and house-breaking implements were found in the possession of certain prisoners in the Welikada Jail this morning.

The discovery of the explosives and implements was made today when Mr. B. J. de S. Adhihetty, Jailor, searched the belongings of the prisoners. The explosives are believed to have been introduced into the jail by prisoners on their return from Hulftsdorp. It was their intention, it is suspected, to blast a prison wall to secure their escape."

It may be taken as established that at least one member of the Jury read this report while the trial was pending and it is not unlikely that others too read it before the verdict was returned at 5.20 p.m. It is also to be expected that the report, appearing as it did in a reputable newspaper, would have been accepted as reliable.

Was there anything in the context in which this report would have been read that could have led a juryman reading it to believe that the accused were parties to the plot to break jail ?

According to Mr. Dawson, the proceedings in court on that day were attended by unusual features : before the trial was resumed at 11 a.m. he noticed that there was more than usual police activity about the court-house, that the police guard had been increased, that the Acting Inspector-General of Police himself was present, and that the prisoners were brought into court handcuffed and chained. At about

five minutes to eleven he heard a rumour that firearms had been found in the possession of some of the accused, and the rumour had reached all seven members of the Jury.

There was also the circumstance that according to the Crown case upon the indictment that was being tried the five accused had conspired to use, and did use, revolvers in the commission of the offences charged. In all these circumstances, although the rumour related only to some of the accused, it seems to the majority of us to be pretty certain that a juryman reading the newspaper report would have concluded that the five accused were the persons referred to as the prisoners returning from Hulftsdorp who introduced the explosives into the Welikada Prison and that they were parties to a conspiracy to break jail using explosives for the purpose.

It seems to us that in this view of the matter the position is not dissimilar to that arising in a case where an inadmissible statement reflecting on a prisoner's character is made in court in the hearing of the Jury. *Lilian Grace Palmer (1935) 25 Cr. App. R. 97* is an instance of such a case. Before Palmer's case came on for hearing, counsel appearing for her son in another case and pleading in mitigation of sentence said that his client was the son of a mother who was a notorious shop-lifter. This remark was made in the hearing of the Jury that was to try Palmer on a charge of receiving stolen property. The presiding Judge told the Jury in his summing up—

> " Before the case came on, there was a remark about the female defendant which is not in evidence, and you must entirely dismiss it from your minds."

Delivering the judgment of the Court of Criminal Appeal, Lord Hewart, L.C.J., observed that that was a request to the Jury to perform a very difficult feat. " It clearly would have been more satisfactory ", he said, " if the case had been adjourned and tried before a jury who had not heard any such remark. That highly unfortunate incident is in itself a sufficient reason for allowing the appeal and quashing the conviction."

In the case before us the majority of the Court has reached the conclusion, though not without hesitation, that in all the circumstances the case of the appellants could have been prejudiced by the newspaper report being read by one or more of the jurymen and considers that it would be prudent to order a fresh trial, especially as this is a case in which five persons have been found guilty of murder by the application of section 146 of the Penal Code.

We accordingly set aside the conviction of all the appellants and the sentences passed on them and order a fresh trial upon the whole indictment.

Fresh trial ordered.