IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No.14 of 1984

O N A P P E A L

FROM THE HIGH COURT IN THE REPUBLIC OF SINGAPORE

B E T W E E N:

H. L. WEE — Appellant

- and -

THE LAW SOCIETY OF SINGAPORE — Respondents

IN THE MATTER of Originating Summons No. 456 of 1982

IN THE MATTER of the Legal Profession Act (Cap.217, 1970 Edn)

- and -

IN THE MATTER of an Advocate and Solicitor

~~CASE FOR THE APPELLANT~~

~~CASE FOR THE RESPONDENTS~~

RECORD OF PROCEEDINGS

KINGSFORD DORMAN
14 Old Square,
Lincoln's Inn,
London WC2 3UB

Solicitors for the Appellant

LINKLATERS & PAINES
Barrington House,
59-67 Gresham Street,
London EC2V 7JA

Solicitors for the Respondents

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No 14 of 1984

ON APPEAL

FROM THE HIGH COURT IN THE REPUBLIC OF SINGAPORE

BETWEEN :-

H. L. WEE — Appellant

- and -

THE LAW SOCIETY OF SINGAPORE — Respondents

In the matter of Originating Summons No. 456 of 1982

In the matter of the Legal Profession Act (Cap 217, 1970 Edn)

- and -

In the matter of an Advocate and Solicitor

INDEX OF REFERENCE

2/..

3/..

4/..

5/.

Documents not transmitted to the Privy Council

IN THE HIGH COURT

Agreed Bundle

AB7	Affidavit of R Tan	26.8.81
AB22	Application of R Tan	31.3.81

IN THE COURT OF APPEAL

Motion for leave to appeal	11.2.81
Affidavit of Appellant	11.2.81

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No of 1984

O N A P P E A L

FROM THE HIGH COURT IN THE REPUBLIC OF SINGAPORE

B E T W E E N :-

H. L. WEE — Appellant

- and -

THE LAW SOCIETY OF SINGAPORE — Respondents

In the matter of Originating Summons No. 456 of 1982

In the matter of the Legal Profession Act (Cap 217, 1970 Edn)

and

In the matter of an Advocate and Solicitor

Part I

IN THE MATTER OF HARRY LEE WEE
AN ADVOCATE AND SOLICITOR

And

IN THE MATTER OF THE LEGAL PROFESSION ACT

STATEMENT OF CASE

1. Harry Lee Wee (hereinafter called "the Respondent"), an Advocate and Solicitor of the Supreme Court of the Republic of Singapore of some thirty years standing, practises, and has at all material times practised, under the name and style of Braddell Brothers. The Respondent was at various times a member of the Council of the Law Society of Singapore, and was the President of the Law Society for the period 1975 to 1977, inclusive.

2. On the 7th November 1978 the Respondent was convicted on eight charges under Section 213 of the Penal Code.

Particulars of Charges

(i) "..... that you on or about the 4th day of March, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $39,181.31¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103."

(ii) "..... that you on or about the 9th day of March, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $79,751.08¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103."

(iii) "..... that you on or about the 10th day of March, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $20,877.68¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103."

(iv) "..... that you on or about the 11th day of March, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $87,146.05¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103."

(v) "..... that you on or about the 12th day of March, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $41,000.00¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103."

(vi) "..... that you on or about the 10th day of May, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $8,000.00¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103."

(vii) "..... that you on or about the 14th day of May, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $1,000.00¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103."

(viii) "..... that you on or about the 10th day of June, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $21,000.00 to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103."

3. Upon conviction as aforesaid, a fine of $3,000 was imposed in respect of each charge.

4. On appeal by the Respondent against conviction and sentence, the convictions were upheld by the High Court on the 12th March 1980, but the fine on each charge was reduced from $3,000 to $1,500.

5. In the premises, the Respondent has been convicted of criminal offences which imply a defect in the Respondent's character, rendering him unfit to practise as an Advocate and Solicitor.

6. The Council of the Law Society submits that cause of sufficient gravity exists for disciplinary action against the Respondent.

.....

J. GRIMBERG

Solicitor for the Council of the Law Society of Singapore

DISCIPLINARY COMMITTEE PROCEEDINGS

Hearing held on Monday, 3rd August 1981,
in Court No.23, Subordinate Courts,
Havelock Road, Singapore, at 10.05 a.m.

Mr. Eric Choa Watt Chiang, CHAIRMAN.
Mr. Lee Kim Yew.
Mr. Tan Wee Kian.

Counsel for the Law Society
of Singapore: Mr.Joe Grimberg.

Counsel for Mr.Harry Lee Wee: Mr. C.S. Wu.

(Present: Mr. Harry Lee Wee).

CHAIRMAN: Mr. Grimberg?

Mr.Grimberg:

Mr. Chairman, I appear for the Law Society; my learned friend, Mr. Wu, appears for the Respondent, Mr. Harry Lee Wee.

I suppose it is right that I should ask you, first of all, to ask Mr.Wee or his Counsel whether he has any objection to you, Mr.Chairman, sitting on this inquiry as, of course, you were involved in another inquiry arising out of substantially the same facts, and it may be that Mr. Wee has some objection. I don't know, but if he doesn't then it has to go on record that he has no objection.

Is that the position?

Mr. Wu:

Yes, we accept your sitting in this inquiry and have no objection.

In the Disciplinary Committee

No.2

Respondents Counsel's Opening Submissions

Mr.Grimberg:

I am obliged.

There are two bundles before you: the blue bundle is an agreed bundle which has been marked "A.B." You will have received this morning a yellow bundle ---

Mr.Wu:

Not yet.

Mr.Grimberg:

Oh, you have not received? Well, you will shortly be receiving the yellow bundle, and perhaps we can call that "R.B."; it is the Respondent's bundle, ---

Mr.Wu:

It is not; it is the Respondent's written submission.

Mr.Grimberg:

Well, we will call it the Respondent's bundle.

Mr.Wu:

It is less formidable than the volume appears: the submission covers 15 pages; the rest of it consists of annexures.

Mr.Grimberg:

Now my learned friend very helpfully put these things together last week and sent me a copy (in advance); and the way I was going to approach it was to read the agreed

Mr.Grimberg (cont):

bundle and tell you what my case is, and then deal with my learned friend's case, which is in his bundle. But he will say, "Please don't do that because you will be pre-empting me. I will be dealing with my case myself."

So what I propose to do is to deal very briefly with our case, and then you will hear my learned friend, and then I will respond to him. But I think that should be the end of it because there may not be a response to him.

If my learned friend wants me to deal with it in that way, I will be happy to do so provided I will have the last word.

So if my learned friend wants me to deal with it in that way I will be very brief in the Opening, have my learned friend respond to this case and then I will respond and that will be the end of it.

Mr.Wu:

Yes.

Mr.Grimberg:

I am much obliged.

Now that being so, Sirs, I will be very brief and ask you to go straight to the agreed bundle - that is, the blue volume. I won't be long in this. My learned friend will no doubt read the parts which I omit.

The first page which I refer you to is page 4.

In the Disciplinary Committee

No.2

Respondents Counsel's Opening Submissions

Mr.Grimberg (cont):

Page 4 contains section 213 of the Penal Code, which is the section under which Mr.Wee was charged; and it reads:

> "Whoever accepts or agrees to accept or attempts to obtain any gratification for himself or any other person or any restitution of property to himself or any other person in consideration of his concealing an offence or of his screening any person from legal punishment for any offence or of not proceeding against any person for the purpose of bringing him to legal punishment shall, if the offence is punishable with death, be punishable with imprisonment for a term which may extend to seven years and shall also be liable to a fine, and if the offence is punishable with imprisonment for life or with imprisonment which may extend to ten years, shall be punishable with imprisonment to a term which may extend to three years and shall also be liable to a fine" ---

and this is the important passage ---

> "and if the offence is punishable with imprisonment not exceeding ten years, shall be punishable with imprisonment for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence or with a fine or with both."

So what we are now concerned with is one-fourth of the maximum term of imprisonment which the court could have imposed on Santhiran for his criminal breach of trust.

If you go to the next page, page 5, you will see the section 405 under which Santhiran was charged:

> "Whoever being in ay manner being entrusted with property or with dominion over property dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation

Mr.Grimberg (cont):

"of any direction of law prescribing the mode in which such trust shall be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers such person to do so commits criminal breach of trust."

So that was the section under which Santhiran was charged and so there is included in this bundle section 406. Section 406 is the penalty section and you may care to note that the penalty, the maximum penalty for criminal breach of trust provided by section 406 is three years or a fine, or both.

So that, by a process of calculation, we are able to determine that the maximum term of imprisonment which could be imposed on Mr.Wee under section 213 was nine months, which is one-quarter of 36 months. And that is important when one considers, in the light of the authorities, whether it can be said that the offence in question is one that implies a defect of character: one of the tests is - as you would see in due course - one of the tests is the view the Legislature takes of the gravity of the offence in terms of the maximum punishment that can be imposed.

Now the next page I would ask you to go to, please, is page 8 of the agreed bundle; and that is one of the eight

In the Disciplinary Committee

No. 2

Respondents Counsel's Opening Submissions

Mr.Grimberg (cont):

charges on which Mr. Wee was convicted, and it reads:

> "You, Harry Lee Wee" --- etc. ---
>
> are charged that you on or about the 4th day of March 1976 at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $39,181.31 to the firm of Braddell Brothers by one S. Santhiran in consideration of your concealing the offence of criminal breach of trust of money of clients' account", etc. ---
>
> "committed by the said Santhiran and you have thereby committed an offence punishable under section 213 of the Penal code (Chapter 113)."

So that I am not going to read the other identical charges,but you may care to note that the total sum received by way of restitution amounted to $297,956.12. You may care tn note also that restitution took place between the 4th of March 1976 and the end of May 1976; and one of the points taken - I don't mean to pre-empt him - but one of the points taken by my learned friend in his written submission is that Mr.Wee could (conceivably) be charged under one charge for the whole amount over that period.

On that I would respectfully agree with him, perfectly right he could be charged on one charge. Instead, the State chose to charge him under separate charges for each sum of money that he received by way of restitution.

Now there is no need for me to read the rest of the

the Disciplinary Committee

No. 2

Respondents Counsel's Opening Submissions

r.Grimberg (cont):

charges, except to ask you to note that the first amount by way of restitution was received on the 4th of March 1976, as you have just seen, and then I ask you, if you would, Sirs, ~~first~~ to go to page 17 of the agreed bundle.

Now that was written some 13 months later by Mr.Wee to the Law Society and constituted his first complaint concerning the conduct of Santhiran; and it reads:

"Dear Sirs,

I have to inform you that ~~on~~ certain defalcations and misappropriation of monies of various clients' accounts and costs in my firm appeared to have been carried out by S. Santhiran, a former employee of the firm.
Investigations were initially carried out by members of my firm and subsequently undertaken by independent ~~auditors~~ auditors Messrs. Medora Tong &Co., who have produced a report. They and our usual auditor Messrs. Turquand Young & Co. have just completed a report under the Solicitors' Accounts Rules.

I enclose a copy of that report, which is a qualified report.

I will shortly be presenting the complaint against Santhiran for action to be taken but currently since the said report he has made certain representations for supply of information to Medora Tong & Co. which will ~~have~~ take in the form of a supplementary report of Medora Tong & Co. and they will have to be read with the joint report."

And then over the page, Sirs, is a letter from the Respondent dated the 26th of May 1977 to the Police:

on

"I have to inform you that/investigations by my staff and by special auditors appointed for the purpose, Santhiran, the above-named, a former Legal Assistant of Braddell Brothers has unlawfully

In the Disciplinary Committee

No. 2 Respondents Counsel's Opening Submissions

Mr.Grimberg (cont):

"transferred and dealt with various monies from various accounts held by or belonging to this firm.

I would appreciate it if you would inquire into this matter and cause an investigation to be made."

Page 19 is a letter written over a year and a half later to the Respondent by the Chairman of the Inquiry Committee dated the 13th of December 1978, in which he says:

"The Inquiry Committee has decided on its own motion to inquire into your conduct arising out of your conviction on the 7th November 1978 in the District Court in Singapore on nine charges under section 213 of the Penal Code.

Pursuant to the provisions of s. 87 (5) of the Legal Profession Act (Chapter 217, I forward herewith a copy of the charges and certificate of conviction.

The Inquiry Committee is of the view that the conviction implied a defect of character making you unfit for the provision under section 84 (2) (a) of the Legal Profession Act.

The Inquiry Committee has directed me to invite you within 14 days to give the Inquiry Committee in writing seven copies of any explanation you may wish to offer and to advise the Inquiry Committee if you wish to be heard."

Now, Sirs, the next document on the bundle, page 20, is Mr. Wee's explanation. I think there must have been correspondence between these (dates), and then this is the substantive explanation - page 20 - dated the 12th April 1979 addressed to the Chairman:

the
Disciplinary
Committee

No. 2

Respondents
Counsel's
Opening
Submissions

Mr.Grimberg (cont):

"Dear sir,
With reference to your letter of 30th March, I wish to give the following explanation.

(1) I do not accept the conviction on any of the nine charges handed by the District Court on 7th November 1978 and I am presently appealing against all the convictions as well as the sentence.

I respectfully suggest that the convictions are not of a nature implying a defect of character making me unfit for the profession under section 84 (2) (a) of the Legal Profession Act, and in this respect I would invite your particular attention to the fact that ---

(a) the learned District Judge when delivering the sentence did not imply any innate dishonesty on my part;

(b) the convictions are in respect of offences for which I could not be convicted in England as no such penalty exists in that country;

(c) under section 21 of the Criminal Procedure Code a person is not obliged to make a Police report in a criminal breach of trust case.

(3) My actions had throughout been guided by my determination to ascertain the true position of the clients' money that has been misappropriated by S. Santhiran. I was convinced, rightly or wrongly, that if reference to the proper authorities had preceded investigation into this matter within the office this would almost certainly have jeopardised my ability to ascertain the true position of the accounts, which I consider to be an essential duty I owe.

At that time it was my view, rightly or wrongly, that in the situation that prevailed my first duty lay in protecting the firm's clients' interests.

In this connection I have set out above in detail my explanation contained in the (inquiry) before your Committee in I/C No.17/78, to which I ask you to be good enough to refer.

In the Disciplinary Committee

No. 2

Respondents Counsel's Opening Submissions

Mr.Grimberg (cont):

"If my considerations have been misguided, then I would respectfully suggest that my errors had been errors of judgment, but did not imply a defect of character making me unfit for the profession. Since the subject under inquiry concerns the convictions per se, and as the convictions are presently under appeal, I would invite your Committee to consider postponing the Inquiry until after the disposal of the appeal. I am making thissuggestion with a view to facilitating the adjudication of these professional matters, which will be greatly simplified after disposal of the appeal, at which time, your Committee will certainly findit easier and less embarrassing to deal with the matter.

As I am represented by leading Counsel in London in the pending appeal, it is entirely possible that when the District Judge's Grounds of Decision are delivered, I may be advised to enlarge on the explanation given in this letter.

In that event, I would appreciate having an opportunity to supplement my explanation with any additional points that I may be under advice to raise.

May I, with some reluctance, submit that your request is not in accordance with the Legal Profession Act. Subject to that, I would appreciate being given the opportunity to be heard by your Committee on this explanation."

And then, Sirs, the Inquiry Committee having decided on its own motion in December 1978 - as you will see from page 19 in your file - there followed at page 22 a complaint from the Law Society to the Chairman of the Inquiry Committee dated the 19th of March 1980, which reads:

"The abovenamed solicitor was convicted by a District Court of nine (9) charges under section 213 of the Penal Code and fines totalling $30,000-00 were imposed on him. On appeal Mr. Justice Choor Singh affirmed the conviction on eight (8) of the charges but reduced the fine to $12,000. Nine copies of the Judgment delivered by Mr. Justice Choor Singh are attached.

The Council of the Law Society is of the view that the conviction implies a defect of character making Mr.Wee unfit for the profession under section 84 (2) (a) of the Legal Profession Act

In the Disciplinary Committee

No. 2

Respondent's Counsel's Opening Submissions

Mr.Grimberg (cont):

> "and have directed me to lay a formal complaint and to refer the matter to the Committee for investigation under section 84 (2) (a) of the Act."

And on the next page, page 23, as a result of that complaint the Inquiry Committee wrote another letter to Mr. Wee dated the 27th September 1980, which read:

> "Pursuant to the provisions of section 89 and 87 (5) of the above Act a copy of a letter dated 19th March 1980 from the Secretary of the Law Society to the Chairman of the Inquiry Committee, together with a copy of the Judgment of Mr. Choor Singh delivered on the 12th March 1980 and Magistrate's Appeal No.16/78 is enclosed.
>
> The complaint of the Secretary of the Law Society is that your conviction in respect of the eight charges under section 213 of the Penal Code as confirmed by Mr.Justice Choor Singh on the 12th March implies a defect of character making you unfit for the profession under section 84 (2) (a) of the Legal Profession Act."

Now, Sirs, you ought not to read the next two paragraphs, nor the paragraph at the top of page 34 as they do not concern this Committee. We carry on with the penultimate paragraph:

> "As we are satisfied that there are grounds for the complaint from the Secretary of the Law Society, Singapore" ---

and you omit the next few words and read after that on the third last word:

> "You are invited to give the Inquiry Committee an explanation in writing of which you must

In the Disciplinary Committee

No. 2

Respondents Counsel's Opening Submissions

Mr. Grimberg (cont):

"supply 11 copies", etc. "AND TAKE NOTICE that if you should", etc, etc.

And then, Sirs, Mr. Wee's Solicitor - page 25, the next page - responded substantively to page 23. There was some intervening correspondence, but on the 27th of October they wrote to the Acting Chairman in these terms:

"Further to our letter of 9th October 1980 addressed to your Secretary, we now write to provide on behalf of our client, Mr. Harry Lee Wee, his explanation to the three charges brought against him by the Secretary of the Law Society and by your Inquiry Committee" ---

Then ---

"Convictions under Section 213 of the Penal Code

On 13th December 1978, Miss Phyllis P.L. Tan, the then Chairman of your Committee, wrote to our client requesting his explanation in respect of these same convictions. Our client sent in his written explanation by letter dated 12th April 1979. We wish to adopt the explanations previously given. Copies of these letters are enclosed for your ease of reference and collectively marked "ANNEX A".

In addition to the learned District Judge's mention when delivering sentence that the offences did not involve any innate dishonesty on the part of our client, Mr. Justice Choor Singh also stated in his Judgment that he was "constrained to observe that the offence of accepting restitution of one's own property in consideration to conceal an offence should be abolished and that "it is not dishonest for a person to try and recover his own property from one who has committed criminal breach of trust in respect thereof." We respectfully submit that these passages lend support to our client's contention that the convictions are not of a nature that would imply a defect of character making him unfit for the profession under Section 84 (2) (a) of the Legal Profession Act.

the
ciplinary
Committee

No. 2

espondents
ounsel's
Opening
ubmissions

Mr. Grimberg (cont):

"In this connection, we invite your Committee's attention to the fact that prior to the criminal proceedings against our client, there had never been a case brought under Section 213 of the Penal Code in Singapore to our awareness. In view of the absence of any local case law on this Section, and the fact that no similar criminal offence exists in England, our client was unable to gauge the legal implications of his actions. Indeed, if he hadsought competent legal advice on the matter, we venture to suggest that it is by no means certain that such advice would have accorded with the Court's eventual construction of Section 213.

We should mention that our client will shortly be filing a motion before the Court of Appeal for a review of and/or appeal from Mr. Justice Choor Singh's decision in Criminal Motion No.9 of 1980, which bears on his Appeal Judgment. There is every likelihood that the review/appeal proceedings will eventually reach the Judicial Committee of the Privy Council."

So that we should omit the next paragraph, we should omit the whole of pages 27 and 28, and the whole of page 29, as none of those passages have any bearing on this investigation. Then, Sirs, I propose to omit pages 30, 31 and the whole of the transcript of the previous Inquiry from pages 32 to 56, inclusive, as I am not interested in that; perhaps my learned friend might ---

Mr. Wu:

No, I will not, certainly.

Could I interject here? These were documents included by my learned friend in the agreed bundle. We decided not to

Mr. Wu (cont):

object because they all form part of the enclosures attached to our letter of 27th October, and I thought that perhaps they were included for the sake of completeness; but they have no relevance.

Mr.Grimberg:

That is absolutely right. There is no relevance at all, they were merely included because they were enclosures to the explanation. So they can safely be ignored.

And then, Sirs, on page 57 you ought to read, which is all formal letters: 7th November 1980, letter to my learned friend's firm from the Acting Chairman of the Inquiry Committee:

> "With reference to your letter of 27th October with the explanation and enclosures, the Inquiry Committee has decided to hold a hearing of the complaint on Wednesday, 19th November 1980, at 4.30 in the Law Society's Office.
>
> Take notice that your client is required to attend at the aforesaid hearing and if he should fail to do so the Committee will,nevertheless, proceed with the hearing and make a finding having regard to the acceptable evidence before it."

And then there was the usual hearing before the Inquiry Committee, and on page 58, following the Inquiry Committee's

the Disciplinary Committee

No. 2

Respondents Counsel's Opening Submissions

Mr.Grimberg (cont):

deliberations, a letter was written by the new President to the Chief Justice on the 2nd of January of this year, saying:

"Dear Chief Justice,

I have to inform your Lordship that a complaint has been made against Mr. Harry Wee which has been investigated by the Inquiry Committee on a report made to the Inquiry Committee.

The Council determined that there shall be a formal investigation by a disciplinary board into Mr. Wee's conduct.

Mr. Wee is practising on his own account under his firm name, Braddell Brothers. The charge against his is that his conviction in respect of eight charges under section 213 of the Penal Code as confirmed by Mr.Justice Choor Singh on the 12th March 1980 implied a defect of chafacter which makes him unfit for the profession under section 84 (2) (a) of the Legal Profession Act.

Accordingly I am applying to your Lordship under section 90 of the Legal Profession Act for the appointment of a Disciplinary Committee to hear and investigate the matter."

And on the 2nd of January - the same day - a letter was written by the Secretary of the Law Society to Mr. Wee:

"I am directed to inform you that pursuant to the provisions of section 88 (1) (c) of the Legal Profession Act (Chapter 17), the Council has determined that there shall be a formal investigation by a Disciplinary Committee into the following complaint against you, namely ---

That your convictions in respect of eight charges made under section 213 of the Penal Code as confirmed by Mr. Choor Singh on the

In the Disciplinary Committee

No. 2

Respondents Counsel's Opening Submissions

Mr.Grimberg (cont):

"12th March 1980 implied a defect of character which makes you unfit for the profession under section 84 (2) (a) of the Legal Profession Act.

I have written to the Honourable Chief Justice for the appointment of the Disciplinary Committee."

And on the 15th January 1981 - on the next page - my learned friend's firm wrote to the President of theLaw Society:

"We act on behalf of Mr. Wee who requests us to put forward to the Council of the Law Society the following request of our client.

Your Council has determined that a Disciplinary Committee be appointed to investigate into the complaint of the convictions in respect of various charges brought against our client under section 213 of the Penal Code.

We have now received the findings of an ~~the~~ earlier Disciplinary Committee comprising Mr. C.C. Tan, Eric Choa and John Poh, requiring our client to show cause in respect of the charge of delay in reporting to the Law Society Mr.Santhiran's criminal breach of trust the subject of our client's conviction under section 213 of the Penal Code.

In the meantime Mr. Wee is appealing to the Judicial Committee of the Privy Council against the recent decision of the Court of Ciminal Appeal on various points of law arising out the conviction under section 213 of the Penal Code.

If the Disciplinary Committee now being formed to investigate into the charge relating to ~~the~~ said ~~xxxxxxx~~ convictions should return an adverse finding, our client would have to face yet another show cause hearing before the

In the Disciplinary Committee

No. 2

Respondents Counsel's Opening Submissions

Mr. Grimberg (cont):

"High Court. Such a hearing is unlikely to come on before the High Court before the second half of this year at the earliest.

We respectfully submit that it is not only unfair but also prejudicial to our client to have to contend with two separate show cause hearings on separate dates and in relation to matters that are directly connected, and arising out of one set of facts. If such a situation should arise in a criminal case, it isvery likely that the Court will view the separate hearings as an abuse of process, as they subject the accused to double jeopardy for obvious reasons. The delay in making the report was one of the basis on which the convictions was founded.

Our client requests that your Council give the matter their consideration, with a view to deferring the show cause hearing on the delay charge until the findings of the Disciplinary Committee investigating into the convictions charge are returned. In this way, if the findings should also result in a show cause hearing, then both hearings can be dealt with by the High Court at the same time. We invite your Council to consider obtaining the views of the Law Society in England on the matter if they should feel that such a course is appropriate.

Meanwhile, we would appreciate an early reply as to the Council's intentions, in order that the views and/or intentions of the Council may be disclosed to the High Court at the show cause proceedings on delay, in the event these proceedings are not deferred."

Of course, as you will appreciate, Sirs, since then a lot of water has passed under the bridge because the show cause proceedings arising out of the earlier deliberation on the Disciplinary Committee have taken place and the court has reserved its judgment.

And the other thing which has happened of course is

In the Disciplinary Committee

No. 2

Respondents Counsel's Opening Submissions

Mr.Grimberg (cont):

that Mr. Wee's Petition for leave to appeal against the decision of the Court of Criminal Appeal has been dismissed.

So we pass on to the last page in the agreed bundle, which is a letter from me as Solicitor for the Law Society to my learned friend's firm dated 21st January, written on the instructions of the Law Society, saying that -

> "I refer to your letterof 15th January addressed to the President of the Law Society of Singapore, and copied to my firm.
>
> I am instructed to say that under the Legal Profession Act the Council of the Law Society is obliged to proceed with an application ~~investigation~~ requiring the ~~xxx~~ solicitor concerned to show cause on receipt of the finding of the Disciplinary Committee.
>
> The Council cannot see any reason in this case for deferring the application to court requiring your client to show cause until the Disciplinary Committee investigating the conviction has issued its report."

And so as a consequence of that, we now find ourselves before you to consider the position following Mr.Wee's conviction irrespective of the fact an earlier Disciplinary Committee has considered the position arising out of Mr. Wee's delay in reporting Santhirdan's defalcation, following which, of course, there was the application to show cause in respect of which the court presided over by the Chief Justice is still (deliberating).

the Disciplinary Committee

No. 2

Respondents Counsel's Opening Submissions

Mr.Grimberg (cont):

The next document I ask you to go to, Sirs, is the Statement of the Case that you have before you.

CHAIRMAN: Mr. Grimberg, I don't think you need to read. We have read.

Mr.Grimberg:

You have? I am much obliged.

Mr. Wu:

There is a prayer.

Mr.Grimberg:

Prayer; we pass over that. Will you go to page 4 of the Statement of the Case.

I have one formal application to make in paragraph (c) (3). You will see there the quantum, on conviction a fine of $3,000 was imposed in respect of each charge.

I formally apply for that figure to be amended to 3,500. Any objection?

Mr.Wu: No.

Mr.Grimberg: And paragraph (4), the final line. You will see I repeat the error - 3,000. That figure should be 3,500.

So, Sirs, the case of the Law Society ---

CHAIRMAN: Just one minute - so this Statement of the Case and this bundle are to be included as Exhibits?

In the Disciplinary Committee

No. 2
Respondents Counsel's Opening Submissions

Mr.Grimberg:

Well, the Statement of the Case is the pleading; so it is already in.

CHAIRMAN: The bundle?

Mr.Grimberg:

I have asked for both bundles to be treated as Exhibits: the blue bundle, the agreed bundle, to be called "A.B.", and my learned friend's bundle - "R.B.". It is the Respondent's bundle.

It is the case of the Law Society, Sirs, that the convictions imply a defect in character which renders the Respondent unfit for his profession, and it is further the case of the Law Society that the fact of the earlier investigation before another Disciplinary Committee of Mr. Wee's delay of some 13 months in reporting Santhiran's offences is not a ground for staying this inquiry, as contended for by the Respondent and as to which you will hear more from my learned friend.

I say no more at this stage, Sirs, and I propose, if I may, to sit down and let my learned friend address you; and I will then respond.

CHAIRMAN: Yes.

(10.40 a.m. 3/8/81)

In the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu:

May it please you, Sirs, my written submission is before each of you.

If I may ask you to turn to this page of the substantive submission? What I propose to do is to take the Committee through the substantive submission, which consists of 15 pages and enlarge on certain areas of the substantive submission as may be necessary. The bulk of the bundle consists of the inclusion of the full report of the Connelly's case which stretches over 114 pages.

I certainly do not propose to take this Committee through the entire report, only certain passages in the report. And the only reason the whole report has been included is for the sake of completeness in case any Member of the Committee should decide to peruse the other passages of the report that I do not propose to cite; and, well, for ease of reference it is all there.

The substantive written submission is divided under various subheadings. The first is the Statement of Case which is somewhat in the form of our reply to the Law Society's statement of case, and it reads:

> "The Respondent admits paragraphs 1and 2 of the Statement of Case."

You will remember, Sirs, that paragraph 1 refers to the description of the Respondent, Mr. Wee, and paragraph 2 in the Statement of Case cites the various charges in

In the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

respect of which convictions were returned; "delay" charges. So we omit those two paragraphs.

It is not in the agreed bundle. This is the Statement of Case, Mr. Chairman (showing in hand). Can I assist you, Mr. Chairman? You are looking at the agreed bundle.

CHAIRMAN: Statement of the Case - yes, I have got it.

Mr.Wu:

As I say, paragraph 1 of the Statement of Case is merely a description of Mr. Wee, the Respondent; paragraph 2 is a citation of eight charges. Both these paragraphs we omit; save that a fine of $3,500 (as opposed to $3,000) was imposed in respect of each charge, the Respondent admits paragraphs 3 and 4 of the Statement of Case.

Paragraphs 3 and 4 deal with the convictions and the penalties imposed, and now that the error has been corrected by my learned friend the qualification no longer applies.

Lastly, the Respondent denies paragraphs 5 and 6 of the Statement of Case, and this of course is material. Paragraphs 5 and 6 allege that the offences in respect of which the Respondent was convicted imply a defect in the character of the Respondent rendering him unfit to practise as an Advocate and Solicitor: that we are disputing. In fact, that is all really that we are disputing in the entire Statement of Case, the nature of the offences alleged.

The next heading is the facts. I venture to suggest

the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont'd):

that my learned friend will not be disputing any of the dates set out in the paragraphs under this head because these are all factual dates that can be varified by correspondence or by official records.

"In early March 1976 the Respondent discovered that his Senior Legal Assistant, Sivanagnan Santhiran, whom he had hitherto trusted completely, had committed criminal breach of trust of money in the clients' account of Respondent's firm, Messrs. Braddell Brothers. By 10th June 1976 or thereabouts the Respondent had obtained from the said Santhiran a total restitution of $297,956.72."

I think the cents should be "12", and not "72". This amount is exactly the same as the total sums recovered in respect of the eight charges.

"However, *without* the said Santhiran's assistance the Respondent was unable to identify the clients whose money the said Santhiran had stolen, or the amount reimbursable to each of their accounts."

In fairness to the Law Society, I should mention that this motive on which we had relied on in earlier proceedings, in the first proceedings, was disputed as being the prime ~~mtx~~ motive *by* the Law Society. The Law Society attributed the motive of seeking restitution as the prime motive.

The next paragraph:

In the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

"On 30th April 1977" ---

and the date is obtained from "A.B.17" ---

Mr. Grimberg:

No dispute about it.

Mr. Wu:

Yes.

In case any of you, Sirs, may wish to check the source of the dates, perhaps you can make a note by the side this is "A.B.17" - that is where the date is derived --- 1

"On 30th April 1977 the Respondent first reported in writing the said Santhiran's defalcations to the Law Society" that is a letter my learned friend has read.

"On 26th May 1977" --- that is "A.B. 78" ---

"the Respondent made a report to the Police."

Again the letter has been read.

"The Respondent had throughout maintained that he had at all times intended to report Santhiran's defalcations to the authorities once he had obtained from the said Santhiran the maximum information possible, in particular the identities of the clients whose accounts had been affected." 2

In the event, Sirs, it is common ground that the reports were made but they were made 13 months late.

Mr. Lee: Mr. Wu, the "authorities" here in the third

the
sciplinary
committee

Mr. Lee (cont):

line - what do you mean by authorities?

No. 2

Appellant's
Counsel's
Submissions
In Reply

Mr. Wu:

The Law Society and the Police.

"The said Santhiran was arrested on 9th April 1978 and on 10th May 1978 he pleaded guilty to certain offences of criminal breach of trust, and asked for others to be taken into account."

I am afraid there is no source in the agreed bundle for those dates. I simply ask that the Committee accept these dates because I think my learned friend will be able to verify their accuracy.

"On 23rd April 1979 the said Santhiran was struck off the rolls."

And this is on the Law Society's records.

"The Offences: Although the Respondent was charged and convicted of eight offences under section 213 of the Penal Code, the Prosecution if they had so wished could have brought just one charge against him, namely, that of accepting restitution of $297,956.12, in consideration of concealing the said Santhiran's offences for 13 months."

This, as the Members have heard, has already been conceded by my learned friend.

"It is common ground that the money the said Santhiran had misappropriated belonged to the Respondent, as it had been

In the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

"taken from his firm's clients account. The Respondent had no idea at the time that his actions could amount to a criminal offence, namely, a breach of section 213 of the Penal Code. As far as can be ascertained, no one had previously been prosecuted in Singapore for an offence under section 213. There are no reported decisions on such prosecution in either Singapore or Malaysia.

It has since been ascertained that in India there are two conflicting authorities as to the necessary ingredients for the offence:

Chandra Mukherjee v.Emperor; and contrast this with Biharilal Kalacharan v. Emperor."

I do not propose to refer to these authorities. I would only explain that in the first place the High Court in India held that there must be actual concealment proven. Mere promise of concealment or mere pretext at concealment would not be sufficient to make out a case under section 213.

Whereas in the second case it was held that there was no actual concealment necessary to make out a case under section 213. In the first case the nature of the evidence that was concealed is not disclosed in the report, but the consideration was not restitution in the first case; it was gratification. So it could not be a case of breach of trust; it was acceptance of a bribe as consideration for concealment.

In the second case the nature of the offence concealed

the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

was the payment of premium for the transfer of premises. So it is not a C.B.T. case. In India the acceptance of premium for transfer of premises is a criminal offence and that is where the offence is that was concealed in that case.

If I may proceed to the next paragraph?

"Further, there is in Singapore a conflict of penal provisions in that on the one hand, section 213 of the Penal Code prohibits the concealment of an offence in consideration of obtaining restitution of one's own property but, on the other hand there is no duty and it is not an offence, to fail to report a criminal breach of trust (section 405 of the Penal Code)."

That is the section that (defines) criminal breach of trust and it is the section that my learned friend referred to.

"See Section 21 of the Criminal Procedure Code and section 202 of the Penal Code."

If I may refer to section 21? It is in the agreed bundle on page 1. Section 21 of the Criminal Procedure Code sets out the kind of offences which involve an obligation on a party to report to the Police:

> "Any person aware of the commission of or intention of any person to commit any seizable offence punishable under sections 6, 7, 8, 12 and 16 of the Penal Code" ---

and then the sections are given.

It would be noted that section 405, which is criminal

In the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

breach of trust is not in any of the recital sections.

And continuing on page 2:

"Usually in the absence of reasonable excuse the burden of proof (of knowledge) shall lie upon the person ... forthwith give an explanation to the officer in charge of the nearest police station or to a police officer or the nearest penghulu of such commission or intention or of such sudden or natural or violent death."

I should mention that of the offences, seizable offences, that come under Chapters 6, 7, 8, 12 and 16 of the Penal Code, Chapter 6 deals with (offences) against the State; Chapter 7 deals with Armed Forces offences; Chapter 8 deals with offences against public tranquility; Chapter 12 deals with coinage; and Chapter 16 deals with offences against the human body.

So C.B.T. does not come under any of those Chapters, and C.B.T. is excluded from section 21.

And proceeding with my written submission:

"Lastly, since 1967, the offences of which the Respondent had been convicted are no longer criminal offences in England - see section 5 (5) of the Criminal Law Act, 1967."

And, Sirs, if you will be good enough again to refer to the agreed bundle, section 5 (5) of the English Criminal Law Act 1967 is reproduced on page 6 of the agreed bundle, which is a page

the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

extracted from Halsbury's Statutes. This is the English Criminal Law Act, 1967, and the relevant section under section 5 (1) on page 6 of the agreed bundle, the blue one, "where a person has committed an arrestable offence any person who knowing or believing that an offence is or an offence has been committed and that he has information that might be of material assistance for securing prosecution and conviction of an offender for it, accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury caused by the offence."

That leaves out non-disclosure of criminal breach of trust in exchange for restitution; that qualification would exclude an offence in respect of C.B.T. under the local section 213.

If I may paraphrase paragraph 12 of the written submission in a different way: the reason I submit there is a conflict in these provisions in the Penal Code and the Criminal Procedure Code is this. Firstly, it is clear from section 21 of the Criminal Procedure Code that failure to report a criminal breach of trust is not an offence per se because it is not a reportable offence within section 21. Failure to report a C.B.T. is not an offence per se.

Secondly, receiving restitution of stolen property

In the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

is clearly not an offence per se.

But on the basis of these two propositions I would suggest h one can be excused for, according to section 213, the logical interpretation that the offence that is concealed within the meaning of section 213 is not to be a reportable offence. But this has been decided by the court in Mr. Wee's case for the first time; that need not be so.

Mr.Lee: Isn't it already decided?

Mr. Wu: 10

Of course; but the point I am trying to show is at that time one can be forgiven for not realising before the decided cases in the criminal proceedings in respect of which Mr. Wee is charged, one can be forgiven for not realising that the concealment of a C.B.T. becomes an offence under section 213. That is the point I am trying to make.

What it really amounts to is this: that a lawful omission, that is failure, to report an unreportable offence in consideration of a lawful act, that is receiving and obtaining restitution of one's own stolen property, amounts 20 to an offence under section 213: a lawful omission in consideration of a lawful act amounts to an offence under section 213.

And it is my submission that without the decided cases it would be extremely difficult before Mr. Wee's criminal proceedings for anyone to realise that that would be the

the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

case in construing the meaning and effect of section 213.

That is the point I wish to make. I am not challenging the decision of the courts.

Mr. Lee: You are in fact supporting what is written on page 3 - 'the Respondent had no idea at the time that his actions could amount to a criminal offence'?

Mr. Wu:

That is right.

Mr. Lee: That is the point.

Mr. Wu:

And paragraph 12 at page 3 is merely to explain how that could be.

Proceeding with the submission:

"And for these reasons the Respondent did not realise that what he had done would amount to a criminal offence. It is further respectfully submitted that most practitioners in Singapore would not at that time have realised any differently.

On giving Judgment in the Respondent's trial, the learned District Judge at page 92 of the Judgment"- and that is reproduced in Annex page 136; perhaps you could make a note along the margin of what my learned friend has asked tobe marked as "R.B.", Respondent's bundle?

In the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

136: it is an extract from the Judgment of District Judge Chandra Mohan and the passage cited has a marginal line showing it:

> "These offences do not involve any innate dishonesty..."

And in this context I ask you to bear in mind what I have said as to the apparent conflict in the relevant provisions under the Criminal Acts.

In delivering Judgment on the Respondent's appeal against conviction, Mr. Justice Choor Singh said:

> '... I am constrained to observe that the offence of accepting restitution of one's own property in consideration of concealing an offence should be abolished. It seems to me that it is not dishonest for a person to try to recover his own property from one who has committed criminal breach of trust in respect of it.'."

That passage appears in page 140 of the same bundle - that is "R.B.140", at the bottom of the page.

Mr. Lee: But Mr. Choor Singh's remarks or comments are not based on facts. It is a sort of inference from the previous sentence.

Mr. Wu:

I beg your pardon?

Mr. Lee: He says that it should be abolished, and he goes on to say 'it seems to me it is not dishonest for a person' ---

In the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

"'not dishonest for a person to try and recover his own property from one who has committed criminal breach of trust in respect of it.'"

Mr. Lee: Are those words - 'It seems to me that it is not dishonest' - based on facts before him?

Mr. Wu:

Well that, I would invite the Members' attention again to the fact that it has never been suggested that it is dishonourable for one to receive restitution of property that has been stolen from him. No one has ever suggested it. There is nothing dishonest in recovering property stolen from oneself. And that passage, it should be appreciated that passage does not bear on the entire offence under section 213.

That passage refers to concealment of a C.B.T., not, for instance, of a murder charge in return for receiving gratification - that is totally different. That, no one is going to suggest that that should be abolished. But it is the offence of concealing a criminal breach of trust in consideration of recovering one's own property - that is the offence that the learned Judge was referring to that should be abolished.

Mr. Lee: Yes, that was understandable.

Mr. Wu:

Because there is nothing of dishonesty, no such question.

In the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

And that is of course the same view taken by District Judge Chandra Mohan. He said that 'the offence did not imply an innate dishonesty': same thing, same words.

The next heading in the written submission represents the main thrust of the submission: Duplication of disciplinary proceedings.

"On 20th July 1978 the Respondent was served with notice by the Council of the Law Society that there was to be a formal investigation by the Disciplinary Committee into the following complaint against him:

> 'Failure to report the criminal breach of trust committed by Mr.S. Santhiran when he was a Legal Assistant in the firm of Messrs. Braddell Brothers to the Law Society earlier.'."

That is a direct quotation of the charge and the date is important; the date the charge was preferred was 20th of July 1978.

"The Disciplinary Committee comprising Messrs. C.C.Tan, Eric Choa and John Poh conducted their hearing on 23rd, 24th, 25th, 26th September 1980 and 1st October 1980. On 19th November 1980, they delivered their written report to show cause. In March 1981, the show cause proceedings were heard before three Judges in the High Court. Judgment was reserved, and has still to be given."

It is to be noticed that there was a lapse of nearly two years from the bringing of the charge by the Law Society to the actual hearing of the charge, investigation of the

the Disciplinary Committee

Mr. Wu (cont):

charge by the first Disciplinary Committee.

No. 2

Appellant's Counsel's Submissions In Reply

"The Respondent's criminal convictions and the first Disciplinary Proceedings both arose out of the same incident involving a common set of facts, namely, the Respondent's failure to report the said Santhiran's defalcations at an earlier stage, such failure being attributed to his determination to seek recovery from the said Santhiran of the monies defalcated.

As a result of this common set of facts arising from the same incident, the Respondent has had to face three different sets of proceedings, namely, the criminal prosecution, the first Disciplinary Proceedings, and now, the second Disciplinary Proceedings. There was nothing to prevent the Council of the Law Society from referring the present charge to the first Disciplinary Committee for investigation in conjunction with the "delay" charge. The criminal convictions arose on 7th November 1978, and the hearing of the first Disciplinary Proceedings did not commence until 23rd September 1980" - two years later. "The Council cannot claim that the duplication of Disciplinary Proceedings was due to its desire to await the outcome of the Respondent's appeals against the criminal convictions before bringing the "convictions" charge, since this charge was brought on 13th December 1978,

In the Disciplinary Committee

No. 2

Appelant's Counsel's Submissions In Reply

Mr. Wu (cont):

and the hearing of the "convictions" charge before the second Inquiry Committee was held on 19th November 1980, and the Respondent was informed by letter dated" - the date is derived from "A.B.59" - "the Respondent was informed by letter dated 2nd January 1981 of the appointment of the second Disciplinary Committee to investigate into the "convictions" charge, all of which occurred at a time when the Respondent's appeals against the criminal convictions were still in progress."

Because these appeals did not come to an end until final disposal by the Privy Council in May this year.

"It is a fundamental principle of justice that no proceedings, whether criminal or civil, should be instituted in a manner that is oppressive or prejudicial to an accused or a defendant. In a criminal case, the Court would stay a prosecution if it is satisfied that the charges are founded on the same facts as charges brought in an earlier prosecution, or form part of a series of offences of the same or similar character as the offences charged in an earlier prosecution that has been tried, even though the nature of the actual charges brought on the different occasions are technically different, unless there are just and compelling reasons

the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

for separate prosecutions on the different charges. This is because a failure to join such charges under one prosecution is oppressive and prejudicial to the accused.

Similarly, in civil proceedings, a claimant is obliged to bring forward his whole case in one action, and the doctrine of res judicata prevents a litigant from raising in subsequent proceedings matters that could and should have been litigated in earlier proceedings between the same parties. Multiplicity of proceedings amounts to an abuse of process.

The leading authorities in support of the propositions made in paragraphs 22 and 23 above are -

Connelly v. Director of Public Prosecution

(1964) Appeal Cases" -

that is a House of Lords decision -

"(the Judgment of Lord Devlin appears commencing from page 1346) and -

Yat Tung Co. v. Dao Heng Bank" -

that is a Privy Council (decision) reported in 1975 Appeal Cases, page 581.

"(Lord Kilbradon's Judgment commencing from page 590 line E). Copies of these citations are attached hereto and marked "Annex 1" and "Annex 2" respectively."

If I may refer now to the relevant passages in these

In the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

two authorities , as I have explained, Connelly's case covers 114 pages. I certainly do not propose to read through the whole report, but it is Annex page 1 in the same bundle. If I may summarise the background to this appeal?

What happened here was the appellant was originally convicted of the charge of murder. The conviction was set aside on appeal by reason of a misdirection to the jury. The prosecution then brought a charge against him, indicted him for the offence of robbery which was committed at the same time when the murder was alleged to have occurred.

And in respect of the second set of proceedings, the second indictment, the accused raised the issue of prejudice and oppressive proceedings, and also the issue of autrefois acquit. And the passages dealing with the principle, the rule against oppressive and prejudicial proceedings starts at page 1346 - and that is "R.D.93" in the Judgment of Lord Devlin.

If I may start from there - at the second complete paragraph, Judgment of Lord Devlin:

> "The appellant's final contention was that the court has general discretionary power to quash or stay an indictment when to try would be oppressive to the accused. The substantial defence to both cases was the defence of alibi. The appellant was tried twice on the same set of facts; and that offends against

In the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

"the spirit (though not, as at this stage of the argument the appellant has to concede, against the letter) of the rule against double jeopardy. The court, he submits, has power to prevent this and ought to exercise it.

As I have said Stephenson J." ---

that was the trial judge ---

"would have prevented it, if he had thought he had the power to do so. To this contention there is a short and a long answer. If this case had not involved a charge of murder, there should not, in my opinion, have been two indictments.

The prosecution could not prove murder against the accused unless it first proved robbery and so the only result of the separation is to present the prosecution with a second charge of destroying the alibi, and that on the face of it seems to be oppressive. But it is not suggested that the separation was the deliberate choice of the prosecution. A decision of the Court of Criminal Appeal - Rex v. Jones - has laid it down that no count for another offence is to be included in an indictment for muder. The short answer is, therefore, it cannot be oppressive for the prosecution to do what the court has told it that it must do.

But the short answer concedes - or at least does not dispute - that the court has power to stay a second indictment, if it considers that a second trial would be oppressive. The Solicitor-general disputes that. He does not wish to take shelter behind Rex v. Jones unless he has to. He insists that the Crown has a right to bring forward its case in as many indictments as it chooses and that the court is bound to proceed on each of them, whether or not it considers that the Crown is behaving oppressively.

Thus, before the merits of this particular

Mr. Wu (cont):

"case can be considered there is raised for your Lordship's determination a point of criminal procedure of the greatest importance which requires to be dealt with fully.

My Lords, in my opinion, the judges of the High Court have in their inherent jurisdiction, both in civil and in criminal matters, power (subject of course to any statutory rules) to make and enforce rules of practice in order to ensure that the courts process is used fairly and conveniently by both sides. I consider it to be within this power for the court to declare that the prosecution must as a general rule join in the same indictment charges that 'are founded on the same facts, or form or are part of a series of offences of the same or a similar character'.
(I quote from the Indictments Act, 1915, Schedule I, rule 3, which I shall later examine); and power to enforce such a direction (as indeed is already done in the civil process) by staying a second indictment if it is satisfied that its subject-matter ought to have been included in the first. I think that the appropriate form of .. order to make in such a case is that the indictment remains on the file marked 'not to be proceeded with'.
I propose to put under three heads the reasoning which, in my opinion, supports this conclusion. First, a general power, taking various specific forms, to prevent unfairness to the accused has always been part of the English criminal law and I shall illustrate this with special reference to the framing of indictments. And I shall

Secondly, if the power of the prosecutor to spread his case over any number of indictments was unrestrained there could be grave injustice to defendants.
Thirdly, a controlling power of this character is well established in the civil law.

In the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

"Under the first head I must observe that nearly the whole of the English criminal law of procedure and evidence has been made by the exercise of the judges of their power to see that what was fair and just was done between prosecutors and accused. The doctrine of autrefois was itself doubtless evolved in that way. The process is still continuing and it is easy to think of recent examples."

And then for the next five pages the Judgement proceeds to trace the history of autrefois and refers to the exception made to the indictment of murder.

I do not propose to cover those five pages; they do not have any direct bearing on the present proceedings.

If I may ask you, Sirs, to continue at page 100, starting from the third line at page 100?

"I now turn to my second head. The doctrine of autrefois wa protects an accused in circumstances in which hehas actually been in peril. It cannot, naturally enough, protect him in circumstances in which he could have been in peril but was not. Yet even the simplest set of facts almost invariably gives rise to more than one offence. In my opinion, if the Crown were to be allowed to prosecute as many times as it wanted to do on the same facts, so long as for each prosecution it could find a different offence in law, there would be a grave danger of abuse and of injustice to defendants. The Crown might, for example, begin with a minor accusation so as to have a trial run and test the strength of the defence. Or, as a way of getting round the impotence of the Court of Criminal Appeal to order a new trial, when, as in this case, it quashes a

In the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

> "conviction, the Crown might keep a count up its sleeve. Or a private prosecutor might seek to harass a defendant by multiplicity of process in the different courts.
>
> There is another factor to be considered, and that is the court's duty to conduct their proceedings so as to command the respect and confidence of the public."

I submit that in the same manner a Disciplinary Committee has a similar duty to conduct its proceedings in a manner that commands the respect of the legal profession as a whole.

"For this purpose it is absolutely necessary" - I would emphasise that phrase -

> "it is absolutely necessary that issues of fact that are substantially the same should, whenever practicable, be tried by the same tribunal and at the same time. Human judgment is not infallible. Two judges or two juries might reach different conclusions on the same evidence, and it would not be possible to say that one is nearer than the other to the correct. Apart from human fallibility the differences may be accounted for by differences in the evidence. No system of justice can guarantee that every judgment is right, but it can and should do its best to secure that there are no conflicting judgments in the same matter. Suppose that in the present case the appellant had first been acquitted of robbery and then convicted or murder. Inevitably doubts would be felt about the soundness of the conviction. That is why every system of justice is bound to insist upon the finality of the judgment arrived at by a due process of law. It is quite inconsistent with that principle that the Crown should be entitled to reopen again and again what is in effect the same matter."

the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

The next two paragraphs deal with the appellant's submission in Connelly's case that has no relevance to these proceedings.

If I may ask you, Sirs, to proceed to page 101, half-way down the page, starting with the second complete paragraph about 20 lines from the bottom?

> "The fact that the Crown has, as is to be expected, and that private prosecutors have (as is also to be expected, for they are usually public authorities) generally behaved with great propriety in the conduct of prosecutions has, up till now, avoided the need for any consideration of this point. Now that it emerges, it is seen to be one of constitutional/great importance. Are the courts to rely on the Executive to protect their process from abuse? Have they not themselves an inescapable duty to secure fair treatment for those who are brought before them?
> To questions of this sort there is only one possible answer. The courts cannot contemplate for a moment the transference to the Executive of the responsibility for seeing that the process of law is not abused.
> Yet, if this matter is governed by the decision of the Divisional Court in Reg. v. Chairman, County of London Sessions, ex parte Downes, as literally interpreted by the Solicitor-General in his argument, this would be the inevitable result.
> What was decided in that case was that the court had no power to quash an indictment because it was anticipated that the evidence would not support the charges.
>
> In the course of his Judgment Goddard C.J. said that once an indictment was before the court it must be tried except in four cases, namely, if it was defective, if matter in bar was pleaded, if a nolle prosequi was entered and if the court had no jurisdiction. This statement describes in

In the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

"general terms and quite sufficiently for the purposes of the point which the learned Chief Justice was considering the usual circumstances in which the court will not proceed upon an indictment. I think it is wrong to divorce a statement of this sort from the facts of the case and to treat it as if it were a comprehensive statement of the law for all purposes. In the same page in his Judgment Lord Goddard C.J. refers to the order that a second indictment is not to beprosecuted without leave as quite"common practice". This case falls far short of an authority for the view that a vexatious use of process by the prosecution (which the court was not considering) can be dealt with only by means of a nolle prosequi.

But if the statement is treated as a comprehensive statement of the law for all purposes, I cannot see how otherwise even a flagrant abuse of process could be dealt with. I do not really understand the argument that maintains that, while the statement must be treated as comprehensive, if there is a grave abuse of process the court can in some way or another protect itself against it. The only way in which the court could act in such circumstances would be by refusing to allow the indictment to go to trial; and that must mean there is a fifth ground to be added to the four given by Lord Goddard, C.J.

I pass now to consider the position in civil suits. The same fundamental doctrines, although they are often expressed differently, govern the rules of pleading and procedure in civil and criminal cases. In Castro v. The Queen Lord Blackburn said:

'I must say at once I totally disagree with what has been repeatedly asserted by both the learned counsel at the bar. I totally disagree that the pleadings at common law in a criminal case and a civil case were in the slightest degree different.

the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr.Wu (cont):

'I am speaking of course of the time before the Judicature Acts passed which swept them all away. Many enactments had from time to time been passed, relieving the strictness of pleadings in civil cases, which did not relieve them in criminal cases; but the rules of pleading at common law were exactly the same in each case.'

When, therefore, four years later in Metropolitan Bank Ltd. v. Pooley Lord Blackburn said (the passage is quoted in full of the opinion of my noble and learned friend, Lord Pearce) that from early times the court had inherently in its power the right to see that its process was not abused by a proceeding without reasonable grounds so as to be vexatious and harassing , there can be no doubt that he would have considered his words as applicable to criminal as to civil proceedings. IT is therefore very relevant to see how in civil cases the power has been used in matters that are akin to res judicata.

The doctrine of res judicata occupies the same place in the civil law as the doctrine of autrefois does in the criminal. Autrefois applies to offences that are charged and not to those that could have been."

I would submit that this one sentence distinguishes between the doctrine of autrefois and the rule against oppressive and prejudicial proceedings: autrefois applies to offences that are charged and not to those that could have been.

"Res judicata, also, if strictly confined, applies only to issues that are raised and not to those that could have been.But From early times it was recognised that some protection must be given to defendants against multiplicity of actions in respect of issues that could have been raised and were not. At first in the civil law (and I shall note later a similar tendency in the criminal law) it was done by trying to extend the doctrine of res judicata.

In the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

"The classic Judgment at this point is by Wigram V.C. in Henderson v. Henderson. He said:

> 'I believe I state the rule of the court correctly, when I say that where a given matter becomes the subject-matter of litigation in, and o adjudication by, a court of competent jurisidction, the court requires the parties to that litigation to bring forward their whole case and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have ben brought forward as part of the subject, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted pa[illegible] of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a Judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.'

It will be observed that this rule is not rigid; the plea of res judicata applies except in special circumstances.

Macdougall v. Knight was a case in which the plaintiff was suing a second time on a different defamatory statement in the same pamphlet. Lord Esher, M.R., said:

> 'Even if the plaintiff could in law split open the defamatory matter in the report into different causes of action, I think such a course would be vexatious, so that either way I am of opinion the appeal must be allowed and the action stayed.'

Actions have been stayed upon the same principle by the Court of Appeal in Greenhalgh v. Mallard and Wright v. Bennett. In the latter case the court did not reach any conclusion as to whether the plea of res judicata would succeed.

I think it is likely that there would have been a

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr.Wu (cont):

"similar development in criminal procedure, had it not been that prosecutions fell largely in the hands of public authorities, who in practice impose restrictions on themselves. Any development would probably have been based on the principle - wider than that of autrefois because it comprehended different offences in relation to the same facts - first cited by Chief Justice Cockburn in Reg. v. Elrington and is as follows:

> 'we must bear in mind the well-established principle of our criminal law that a series of charges shall not be preferred, and whether a party accused of a minor offence is acquitted or convicted, he shall not be charged again on the same facts in a more aggravated form.'

This was applied in Reg. v. Miles and Reg. v. Grimwood. In both cases a conviction of common assault was held to be a bar to subsequent charges of wounding, including wounding with intention to cause grievous bodily harm. For the reasoning that supports the decisions I think it will be sufficient if I refer to the former. The principle enunciated by Chief Justice Cockburn was adopted by Mr. Justice Hawkins and Baron Pollock, Baron Pollock adding:

> 'This is not only the law, but it is consistent with sound sense and the just treatment of the defendants.'

As elaborated by Hawkins J. the principle is that" ---

and I ask you, Sirs, to direct your particular attention to this short passage by Hawkins J. ---

> "the principle is that 'circumstances of aggravation' whether they consist of the offence having been committed with wicked or malicious intent or of it being followed by serious consequences, are not to be treated as differentiating."

I would repeat the key part of the sentence: 'circumstances of aggravation' are not to be treated as differentiating.

"This case expands the doctrine of autrefois" ---

I am emphasing that passage because, in my submission, the

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

element of motive or consideration - whatever terminology is used - is merely a circumstance of aggravation of the offence of concealment, and concealment was precisely the charge levelled against the Respondent in the first Disciplinary proceedings, his failure to report the defalcations earlier.

If I may proceed with the Judgment?

"This case expands the doctrine of autrefois in the same way as Vice Chancellor Wigram expanded the doctrine of res judicata. A man charged with common assault is never in actual peril of conviction or punishment for wounding with intent to cause grievous bodily harm, but where the facts warrant it the prosecution can put him in peril by proceeding on the graver rather than on the lesser charge. But Hawkins J. goes further than Wigram V.C. did. He does not say that the plea of autrefois is to be applied except in special circumstances. He says that wounding is to be treated as the same offence as common assault. This means that the defendant would have an absolute right to a verdict of autrefois.

I cannot accept this part of Hawkins J's reasoning." — I should mention that this reservation of the passage is directed only to the application of the doctrine of autrefois. It is not directed to the application of the doctrine of the rule against oppressive and prejudicial proceedings.——"I cannot accept this part of Justice Hawkins' reasoning. If I did, I should not find great difficulty in bringing the present case to the doctrine of autrefois. To charge the appellant with murder in this case is really only to charge him with robbery in an aggravated form. His guilt consisted in taking part in a robbery in which one of the serious consequences of the threat inherent to the robbery was murder. It is very often only the consequences which differentiate one offence from another. I cannot say that robbery is the same

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

"offence as murder any more than I can say that wounding with intent to cause bodily harm is the same offence as common assault. That would be inconsistent with numerous authorities, of which perhaps the strongest is Reg. v. Kendrick and Smith. The facts in the two cases may be substantially the same, but as offences they are quite distinct: common assault is punishable by imprisonment for one year and wounding with intent by imprisonment for life.

In my opinion, therefore, the principle stated by Cockburn C.J. as applied in Reg. v. Miles necessarily ~~necessarily~~ goes beyond the principle of autrefois.

I consider it very desirable that the two principles should be kept distinct, for one gives the defendant an absolute right to relief and the other a qualified right. I think it is equally desirable that they should be kept distinct in the civil law. Res judicata imposes a rigid bar and Wigram V.C.'s principle a flexible one. I prefer the modern development of this principle which justifies it by the power to stop vexatious process.

This, to my mind, is the true principle that is to be extracted from Cockburn C.J.'s statement of the law and the one that I think should be applied in the criminal case as much as in the civil."

So the essence of this passage is that the proposition that circumstances of aggravation are not to be treated as differentiating is still applicable in the context of the rule against prejudicial and oppressive proceedings, but not applicable in respect of the doctrine of autrefois.

If I may now ask you to proceed to page 108 to the Judgment of Lord Pearce?

I should mention, before leaving Lord Devlin's Judgment,

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

that after citing the principle against oppressive and prejudicial proceedings, the learned Lord finally concluded that in Connelly's case the principle was not applicable because both parties at the first instance proceedings conceded that the rule laid down in Rex v. Jones was applicable, in other words a charge of murder must stand on its own. You cannot indict an accused of other felonies in the same indictment as a charge of murder, and because both sides conceded this position the rule could not apply.

The Judgment of Lord Pearce starts at page "R.B.108":

"My Lords, the court has an inherent power to protect its process from abuse. Lord Blackburn in Metropolitan BankLtd. v. Pooley said:

> 'But from early times the court had inherently in its power the right to see that its process was not abused by a proceeding without reasonable grounds, so as to be vexatious and harassing, - the court had the right to protect itself against such an abuse; but that was not done upon demurrer, or upon the record, or upon the verdict of a jury or evidence taken in that way, but it was done by the court informing its conscience upon affidavits, and by a summary order to stay the action which was brought under such circumstances as to be an abuse of the process of the court; and in a proper case they did stay the action.'

And Lord Selbourne L.C. said:

> 'The power seemed to be inherent in the jurisdiction of everycourt of justice to protect itself from the abuse of its own procedure.'

Although their Lordships were there dealing with a

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

"civil action in the Queen's Bench Division they were clearly not limiting the power to civil jurisdiction.

Just as in civil cases the court has constantly to guard against attempts to relitigate decided matters, so, too, the court's criminal procedure needed a similar protection against the repetition of charges after an acquittal or even after a conviction which was not followed by a punishment severe enough to satisfy the prosecutor. It was, no doubt, to meet those two abuses of criminal procedure that the court from its inherent power evolved the pleas of autrefois acquit and autrefois convict. For obvious convenience these were pleas in bar and, as such, fell to be decided fell to be decided before the evidence in the second case was known. They thus tended to look to form rather than to the substance that lay behind it. Where either of these pleas was made out, the defendant was entitled to an acquittal as of right, and no question of discretion or abuse or injustice could arise.

But there is no reason why these two pleas should exhaust the interent power of the court. So, too, in civil matters the Rules of the Supreme Court as to striking out vexatious pleadings and staying or dismissing the action did not exhaust the inherent jurisdiction of the court to go behind the pleading and look to the substance that lay beneath it.

It is clear from several cases that the court in its criminal jurisdiction retained a power to prevent a repetition of prosecutions, even when it did not fall within the exact limits of the pleas in bar.

In Wemyss v. Hopkins the defendant was convicted under a statotory offence, that being a driver of a carried he had struck a horse driven by the prosecutor causing hurt and damage to the prosecutor. He was then summoned again for what was apparently a different offence, namely, that he did unlawfully assault, strike and otherwise abuse the prosecutor. In spite of their apparent differences the two offences were in

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

"fact founded on the one same incident.

On a case stated the second conviction was quashed. Justice Blackburn said:

> 'The defence does not arise on a plea of autrefois convict, but on the well-established rule at common law, that where a person has been convicted and punished for an offence by a court of competent jurisdiction, transit in rem judicatum, that is the conviction shall be a bar to further proceedings for the same offence, and he shall not be punished again for the same matter; otherwise there might be two different punishments for the same offence.'

He later refers to the defence as a plea 'in the nature of a plea of autrefois convict'. Lush J. there pointed out that the defendant's conduct became an act for which he could be punished under two statutes and that he could not be convicted again for the same act under the other statute'.

The words of Justice Blackburn were approved in Reg. v. Miles where Hawkins J. said:

> 'With regard to the common law defence relied on as an answer to this indictment, it is not strictly a plea of autrefois convict .... because the defendant had never previously been actually convicted of either of the offences in the form in which they are charged .... but it was a defence grounded, as Justice Blackburn said in Wemyss v. Hopkins "on the well-established rule at common law," and he cites the words which I have quoted above. In the same case Pollock B said: "In substance therefore the plea and the evidence established that there was but one offence, and that the acts done by the defendant in respect of which he was convicted, by whatever legal name they might be called, were the same as those to which the indictment referred, and therefore the rule of law
>
> nemo debet bis puniri pro uno delicto
>
> applies, and if the prisoner" ——

That, Sirs, is the Latin maxim that no one should be

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

punished twice for one offence or for one fault ---

"and if the prisoner were guilty of the modified crime only he could not be guilty of the same acts with the addition of malice and design."

This is merely a restatement that circumstances of aggravation are not to be treated as differentiating, but in another form. He continued:

"These are decisions by single judges, but they were cited and approved by the Court of Queen's Bench in Reg. v. Erlington where Cockburn C.J. says,

> 'We must bear in mind the well-established principle of our criminal law that a series of charges shall not be preferred and whether a party accused of an offence is acquitted or convicted he shall not again be charged on the same facts in a more aggravated form.'

This is not only the law, but it is consonant with sound sense and the just treatment of defendants."

And that is all from Connelly's that I wish to cite. I should mention again that Lord Pearce arrived at the same conclusion as Lord Devlin: the parties had in the first instance conceded as common ground that the authority of Rex v. Jones applied, and therefore the rule against oppressive and prejudicial proceedings could not prevail in this instance.

If I may ask you, Sirs, now to turn on to the next

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

case in the volume, which is Yat Tung's case. It is a civil case and there is a very short passage which I wish to refer you to. The report starts in page 116 of the bundle. Yat Tung Investment Co. Ltd. v. Dao Heng Bank Ltd. It is an appeal from the courts in Hong Kong.

Again it may be summarised, the background to this case, without reading the full facts. What happened in this case was that there was a mortgagee sale by the bank and the mortgagor brought an action claiming that the alleged sale was a sham and tried to set aside and have it declared a nullity.

The mortgagor bank, on the other hand, counterclaimed for loss suffered from the (resale), ... the claim proper to be dismissed and the counterclaim be allowed.

And then after that decision the mortgagor brought a fresh action, this time alleging that the transaction was fraudulent, the sale was fraudulent, and the bank pleaded abuse although the issue of fraud was not pleaded in the first proceedings. It was a proper sale by the mortgagors, and it was relevant to the mortgagors' counterclaim for loss arising from resale; and it was not pleaded as a defence to the counterclaim.

And the matter went before the Privy Council, and the Privy Council held that the (extended) principle of res judicata applied, and therefore the second action must be

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

stayed.

The passage I wish to refer to is a very brief passage, and the Judgment of Lord Kilbrandon starts at the foot of page 124 in the bundle, two lines from the bottom:

> "The second question depends on the application of the doctrine of estoppel, namely res judicata. Their Lordships agree with the view expressed by McMullin J. that the true doctrine in its narrower sense cannot be discerned in the present series of actions, since there has not been, in the decision in No.969" ---

that is the earlier suit ---

> "any formal repudiation of the pleas raised by the appellant in No.534" ---

that is the subsequent suit, the subject of the appeal before the Privy Council.

> "Nor was Choi Kee, the party to No.534, a party to No.969. But there is a wider sense in which the doctrine may be appealed to, so that it becomes an abuse of process to raise in subsequent proceedings matters which could and therefore should have been litigated in earlier proceedings. The locus classicus of that aspect of res judicata is the judgment of Wigram V.C. in Henderson v. Henderson."

And this is the same passage that was cited by Lord Devlin in Connelly's case. I do not propose to read it the second time.

> "The shutting out of a 'subject of litigation' - a power which no court should exercise but after a scrupulous examination of all the circumstances - is limited to cases where reasonable diligence would have caused a

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

"matter to be earlier raised; moreover, although negligence, inadvertence or even accident will not suffice to excuse, nevertheless 'special circumstances' are reserved in case justice should be found to require the non-application of the rule. For example, if it had been suggested that when the counterclaim in No.969 came to be answered Mr. Lai was unaware, and could not reasonably have been expected to be aware of the circumstances attending the sale to Choi Kee, it may be that the present plea against him would not have been maintainable. But no such averment has been made."

Applying the same principle, it cannot be suggested that the Law Society at the first Disciplinary Proceedings was unaware of the convictions, the subject of the present proceedings. The convictions had preceded thefirst Disciplinary Proceedings by two years, almost two years - it is one month short of two years.

If I may turn to my submission, Sirs? In the same volume, page 7 of the submission proper, and continue with paragraph 24. I should mention that this paragraph, paragraph 24, is intended to show that the criminal proceedings and the first Disciplinary Proceedings on the "delay" charge arose in respect of the same incident involving a common set of facts:

"An examination of the factual issues relied upon by the Prosecution in the Criminal Proceedings and by the Law Society in the first Disciplinary Proceedings will show that these issues are identical in all respects."

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

Mr. Chairman, are you with me?

CHAIRMAN: Yes.

Mr. Wu:

Yes; thank you.

"At page 6 of his Judgment" ---

if you will make a note, page 6 is "R.B.127" ---

"Mr. Justice Choor Singh identified the ingredients of the eight criminal charges as follows:-

'To bring home the first eight Charges, the prosecution had to prove in respect of each Charge:

(1) that Santhiran had committed criminal breach of trust;

(2) that the appellant had knowledge of Santhiran's criminal breach of trust;

(3) that the appellant demanded restitution;

(4) that restitution was made by Santhiran; and

(5) that the appellant accepted restitution in consideration of his concealing Santhiran's criminal breach of trust.'

The Law Society relied on the same five ingredients plus the added ingredient of 'consequence' in making out its case of 'delay' in the first Disciplinary Proceedings. The first and second ingredients" --- that is the fact of C.B.T. and secondly, Mr.Wee's awareness of the commission --- "The first and second ingredients are

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr.Wu (cont):

pre-requisites to the charge of delay; the third, fourth and fifth ingredients represent the 'motive' aspect which the Law Society introduced to stress the gravity of the "delay" charge."

Pausing there, it is only in respect of these two aspects of the Law society's case, the aspect of "motive" and the aspect of "consequence", that my learned friend's written submission is included in the agreed bundle. That written submission has no other relevance. In fact it should not be considered in the context of the present proceedings unless it is challenged, and I do not think such a challenge will arise that the aspects of "motive" and "consequence" were not made the ingredients for the charge of "delay" in the first Disciplinary Proceedings.

I have no fear that such a challenge would arise because, Mr. Chairman, you were also on the Committee in the first case and you were fully aware that that was in fact the case.

"A comparison of the following passages extracted from the Criminal and the first Disciplinary Proceedings will illustrate the similarity of the factual issues:-

A. On Concealment. Mr. Justice Choor Singh:

'Restitution was accepted by the Appellant. Santhiran's offences were concealed by the Appellant for more than a year (page 23 of his Judgment)."

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

That is in this bundle "R.B.", page 128.

I now come to the first Disciplinary Committee's version of the same finding.

"In March 1976 after Santhiran had admitted the misappropriation and made restitution in the sum of $267,956.12" ---

that is the same amount that is involved in the eight convictions ---

"the Respondent decided to delay making any report of Santhiran's misdeeds to the police or to the Law Society" ---

that is page 18 sub-paragraph (ix) of the Committee's Report - that is in "R.B.129".

And then the second illustration:

"Mr. Justice Choor Singh:

The appellant failed to inform his auditors of Santhiran's defalcations (page 19 of the Judgment)." ---

and that is in "R.B.130". And this, I should explain, was the evidence of concealment that the court found against the Respondent: failed to inform his auditors of Santhiran's defalcations.

Now the first Disciplinary Committee's version of the same findings are as follows:

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

"No report was made to Braddell Brothers' long standing auditors Messrs. Turquand Young (page 19 subparagraph (xi) of the Committee's Report."

That is "R.B." page 131.

"Mr. Grimberg" - in the first Disciplinary Proceedings -

"... it seems to me that it is therefore quite proper for me to deal with this question of not telling Turquand Youngs because it goes to the extent to which the Respondent was prepared to go in order to keep the matter secret in order to get the money from Santhiran."

It is different but coming to the same point -

"(Transcript of the first Disciplinary Proceedings at page 111)."

That is "R.B.132".

On motive:

"Mr. Justice Choor Singh: This (error of d judgment) is not borne out by the evidence which shows that the delay was calculated, purposeful and motivated..."

And I should explain here that the court relied heavily on its findings of motive to arrive at its conclusion as to consideration.

And the version of the first Disciplinary Committee of the same point is expressed as follows:

"The real motive for the delay was the Respondent's anxiety to see himself repaid by Santhiran ... (page 23 sub-paragraph (xi) of the Committee's Report)."

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

That is "R.B.134".

The second illustration: this is a passage from the first instance court's decision by District Judge Chandra Mohan:

> "In my view, he (the Respondent) was not merely concerned with obtaining restitution. He was obsessed with it ... (pages 91 - 92 of Grounds of Judgment)."

That is "R.B."135 and 136.

Mr. Grimberg's version of the same point in the first Disciplinary Proceedings:

> "The Respondent was wholly preoccupied with the matter of recouping to the greatest possibleextent the monies that Santhiran had taken ... (Transcript of Proceedings, page 71)."

"R.B." 137.

And Mr. C.C. Tan, Chairman of the first Disciplinary Committee, gave his version of the same point in these words:

> "... the Committee holds the view that the two matters in question ("motive" and "consequence") need not, and should not form the subject matter of new charges, but are so closely related to the existing charge" - that is the charge of "delay" - that they can be dealt with as being intrinsically bound. (Transcript of first Displinary Proceedings

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

"page 73)."

"R.B." 138.

First Disciplinary Committee's finding:

"We find that the evidence produced before the Committee very clearly lead to the irresistible inference that the motive for the Respondent's elaborate scheme for delaying the report was the intention to recover the misappropriated monies from Santhiran. (page 34 of the Committee's Report)."

"R.B." 139.

I would submit, Sirs, that these quotations from the various hearings show that the findings as to motive by the court in the Criminal Proceedings and by the Disciplinary Committee in the firstDisciplinary Proceedings are identical. The pages from which the above passages are extracted are here attached and marked Annex 3.

I turn to the next page, Sirs:

"The present charge bears directly on the Respondent's respect of convictions in the eight charges brought against him under section 213 of the Penal Code. If the material aspects of the criminal charges are identical to those of the Law Society's "delay" charge investigated by the first Disciplinary Proceedings, it has to follow that the material aspects of

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

the "delay" and "convictions" charges must necessarily also be identical."

The "delay" charge was investigated by the first Disciplinary Committee and ~~xxxxx~~ of course the"convictions" charge is now before this Committee.

"The charge of "delay" forms an intrinsic part of the prosecution's case of "concealment" and in investigating the "delay" charge the first Disciplinary Committee had, at the suggestion of the Law Society, taken cognizance of the Respondent's motive for delay, the issue of"motive" and "consideration" being one and the same, as they both relate to the Respondent's efforts at seeking and obtaining restitution from Santhiran."

Pausing here, Sirs, I would like to elaborate on this paragraph by saying this: the prosecution and the Law Society in the first Disciplinary Proceedings are effectually using different words to describe the same transgressions. As regards the Respondent's failure to report Santhiran's criminal breach of trust, the prosecution in the Criminal Proceedings describes that transgression as Respondent's concealment of the C.B.T. for 13 months; whereas the Law Society in the first Disciplinary Proceedings in the "delay" charge describes it as the Respondent's failure to report the defalcations earlier.

The words are different but substantially they relate to

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

the same transgression.

As regards the restitution aspect, the prosecution claims that the consideration for the concealment was to obtain restitution from Santhiran. The Law Society's claim was that the motive for the delay in reporting was to obtai restitution from Santhiran. Again, the substance of the claims by the prosecution and by the Law Society and the inferential evidence adduced to support these claims are the same; only the terminology is different.

If I may proceed with the submission?

"It is therefore respectfully submitted that the first and second Disciplinary Proceedings instituted by the Council of the Law Society against the Respondent represen a duplication, the charges of "delay" and "convictions" being founded on a common set of facts arising from the sa incident. The result of this duplication has clearly been unjust, prejudicial and oppressive to the Respondent, irrespective of the fact that this could not have been intended by the Council.

It is respectfully submitted that this Disciplinary Committee, being a statutory body appointed under the Legal Profession Act, should not hesitate to exercise its inherent discretion to stay the present charge for reasons of prejudice and oppression based on the authorities cited.

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

"The rule against double jeopardy is fundamental to the proper administration of justice. This rule cannot be any less applicable to"--- I ask that the word be amended from "of" to "to"; that is a typographical error, at page 12, paragraph 30.

"This rule cannot be any less applicable to quasi-judicial proceedings" --- and not "of".

"This rule cannot be any less applicable to quasi-judicial proceedings, as, otherwise, such proceedings may be conducted with impunity and with total disregard to the rule against oppression and prejudice, which is clearly absurd.

The matters referred to in paragraphs 24, 25, 26, 27 and 28" ---

these are the paragraphs dealing with similarity of facts and issues ---

"also bring into issue the doctrine of autrefois convict, which is succinctly summarised in Archbald 39th Edition, paragraph 380 as follows:-" ---

I should mention that that page is reproduced in the bundle"R.B." 142. I do not propose to refer to it; it is there.

> "A man may not be tried for a crime if the crime is in effect the same or substantially the same one in respect of which (a) he has previously been acquitted or convicted or

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

"'(b) he could on some previous indictment have been convicted.'

A copy of this citation is hereto attached and marked 'ANNEX 4'."

Pausing there, in considering the doctrine of autrefois I ask that the Committee should bear in mind the fact that this doctrine is quite distinct from the rule against oppression and prejudice and shold therefore be treated quite separately.

I am of course referring you, Sirs, to the passages I have referred you to in Connelly's case. These are the two principles ---

CHAIRMAN: Would you repeat that again?

Mr. Wu:

Yes; in considering the doctrine of autrefois, I ask that this Committee should bear in mind that this doctrine is distinct from the rule against oppressive and prejudicial proceedings and should therefore be considered separately.

I also ask that the Committee should take into account the aspects of the doctrine enunciated in the passages in Connelly's case that I have read: the distinction between the doctrine of autrefois and the wider doctrine, the principle that enables the court by virtue of its discretion to stay proceedings that are conducted in an

n the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

oppressive and prejudicial manner.

I now come to the final heading of the written submission: the Convictions.

"If, contrary to the submissions made above, the Disciplinary Committee feel that they should nevertheless continue to investigate the present charge, then it is submitted that the admitted convictions do not imply a defect of character making the Respondent unfit for the profession. The Disciplinary Committee is obliged to inquire into the nature of the criminal offences in respect of which the Respondent was convicted to determine whether they are offences that imply such a defect of character as to make him unfit to practise as a Solicitor."

In this ~~respect~~ context may I invite you, Sirs, to section 28, subsection (2) (a) of the Legal Profession Act? I have copies here. You may not have enough copies for your reference - (handing in copies through D.C. Secretary). I have made extracts from this provision.

It is at the bottom of the first page, section 28, and it is under this subsection that the present charge is being preferred against the Respondent:

"84 (2) (a) Such due cause may be shown by proof that such person -

(a) has been convicted of a criminal offence implying a defect of character that makes him unfit for his profession."

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

Well, the fact of a conviction in respect of eight offences we are not disputing; we cannot dispute. The convictions are on record.

It is the second limb of that provision that we are disputing, and it is the second limb of that provision that you, Sirs, will have to determine whether the convictions are in respect of offences which imply a defect of character making the Respondent unfit for his profession. I shall be coming back to this point later when I summarise this submission, but I shall leave this point alone for the moment.

If I may proceed with my written submission?

"It is submitted that the correct test was laid down by Lord Esher in Re Weare, and the report, I should mention, appears in the bundle at page 145; and the passage that is cited appears at page 152. And thepassage reads as follows:

> 'The Court is not bound to strike him off the rolls unless it considers that the criminal offence of which he has been convicted is of such a personally disgraceful character that he ought not to remain a member of that strictly honourable profession... is it or is it not personally dis graceful? Try it this way. Ought any respectable solicitor to be called upon to enter into that intimate intercourse with him that is necessary between

In the Disciplinary Committee

No. 2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

'solicitors even though they are acting for opposite parties?'

A copy of this citation is hereto attached and marked "Annex 5."

Support for the above can also be found in the following extracts from the Judgments delivered in Re A Solicitor (1889) 37 Weekly Reporter," - and I should mention that these extracts appear in the bundle at page 157, the report at page 157.

"Lord Coleridge C.J.: "It is obvious that if it were laid down as a general rule that a conviction must in every case be followed by a striking off the rolls, the rule would break down at once. The court must, it is plain" ---

pausing there, the court must; and this is English procedure where the court determines the gravity of the offence in respect of which the Respondent is convicted. Under the Act, it is you, the Disciplinary Committee, that has to decide the second limb of section 84, subsection(2)(a); not the High Court ---

"The court must, it is plain, look into the circumstances of the conviction. There are felonies which are infinitely disgraceful" ---

the same descriptive word as used by Lord Esher - "disgraceful" ---

"but there are others which a man of honour might commit without suffering any stain. No doubt the law says that such a man must be punished; but it does not follow that he is unfit to associate

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

"with his fellows, or to be trusted with their property or confidence."

Lindley L.J.: "I wish to protest in the strongest manner against the proposition that because a solicitor has been convicted of felony he must, as a matter of course, be struck off the roll. Such a proposition is far too wide."

A copy of this citation is hereto attached and marked "Annex. 6".

The Respondent relies upon the matters stated above, namely -

(1) that the offences involved no dishonesty;

(2) the offences would not have been recognisable as such;

(3) the offences no longer exist in England;

(4) that Mr. Justice Choor Singh has expressed the view that these offences should be abolished in Singapore

in support of his submission that in all the circumstances, the Respondent's convictions do not imply a defect of character making him unfit for the profession within the meaning of section 84 (2) (a) of the Legal Profession Act."

Now before I conclude, I wish to summarise my submission in this way.

My submission raises two primary questions that this Committee will have to answer:

In the sciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

Firstly, on the matters raised in the submission, similarity of facts and issues arising from the same incident, are the second Disciplinary Proceedings oppressive or prejudicial to the Respondent? That is the first question that you will have to answer.

Are these proceedings oppressive or prejudicial to the Respondent? I ask that this question be answered in the affirmative. It must be prejudicial and oppressive when the duplication of proceedings is so obviously unnecessary.

These charges could have been brought, the same charge on "convictions" could have been brought and been investigated at the same time by the first Disciplinary Proceedings. There was nothing to prevent the Law Society from doing that.

And if the Committee is with me that the answer should be in the affirmative, then I would ask the Committee to direct that these proceedings be stayed on the basis of the authorities I have cited and order a stay of these proceedings on the ground of prejudice and oppression. Such an order of a stay would eventually end these proceedings ---

Chairman: Will you repeat it again, Mr. Wu? If the answer is in the affirmative?

Mr. Wu:

Yes; then I would ask this Committee to order that

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

these proceedings be stayed.

Mr. Tan: You are in fact repeating your submission at page 12, Mr. Wu? Paragraph 30.

Mr. Wu:

Yes. And that would eventually end these proceedings.

In determining these questions, I would again repeat the passage from Mr. Justice Hawkins' Judgment that circumstances of aggravation are not to be treated as differentiating. Circumstances of aggravation are not to be treated as differentiating.

And if the Committee applies this principle, then it is my submission that there is no substantive difference between the "delay" charge investigated by the first Disciplinary Committee and the present "convictions" charge before you. And I say that because it is my submission that factors as to "motive" or "consideration" are plainly merely circumstances of aggravation of the offence of concealment. They are merely circumstances of aggravation, not the offence of concealment because concealment of a C.B.T. is not an offence. The charge of concealment, the effect of the charge of concealment, the motive factor is merely a (serious omission). ~~of the charge.~~

And there is no difference between the charge of concealment for 13 months and the charge of failing to report for 13 months.

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr.Wu (cont):

Well, there is a difference in terminology but no difference in substance on the facts of the case. They both mean the same thing.

In the event the Committee should decide to answer the first question in the negative, then and only then will the second question fall to be answered. And the second question is this: whether the Respondent's convictions are in respect of offences that imply a defect of character making him unfit for his profession.

And in answering this question, in determining this question, I would ask the Committee to bear in mind what I have earlier pointed out, that the Respondent's convictions under section 213 consist of only two factual elements: firstly, that of concealing Santhiran's criminal breach of trust for 13 months - that is the first factual element; and the second factual element is the consideration of restitution. And neither of these elements on its own amounts to a criminal offence.

I repeat what I have said just now: on the present facts a lawful omission in consideration of a lawful act amounts to an offence under section 213. That is what the Committee is confronted with as far as the nature of the convictions is concerned.

Chairman: Could you please repeat it again?

Mr. Wu:

A lawful omission in consideration of a lawful act

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

amounts to an offence under section 213. That is of course the res judicata, left to be decided by the court. That is the conviction that has been returned against Mr. Wee: a lawful omission in consideration of a lawful act is what the offence is all about. The lawful omission being the concealment; it is not an offence. The lawful act is the consideration of restitution, which in itself is not an offence.

But together, they form an offence under section 213,

I submit on this basis that the convictions are clearly not in respect of offences of a "personally disgraceful nature" or that should prevent a respetcable solicitor from having to deal professionally with the Respondent. These are the tests, as you will recall, that Lord Esher applied in Re Weare's case: "personally disagraceful character" and "should prevent a respectable solicitor from having to deal professionally"with the Respondent.

Well, Mr. Wee has been in practice for three years, almost three years, since his convictions. Has there been any suggestion that the very dealing with him on a professional basis would cause embarrassment to opposite solicitors? If there is such a suggestion, I am not aware of it.

And I would ask the Members of the Committee to bear that test in mind which is laid down in Re Weare's case.

the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

And the other test in Re A Solicitor, Lord Coleridge's test amounts really to the same thing except that it is worded differently.

Will the convictions render the Respondent unfit to associate with his fellows or to be trusted with their property or confidence? That is the test which Lord Coleridge applied: "unfit to associate with his fellows or be trusted with their property or confidence".

Now the second limb of that test, surely, can only apply to offences that involve dishonesty. But basically the test is the same: should it embarrass the opposite solicitor to deal professionally with the Respondent in the light of the convictions? That really is the 'borderline' test according to these decisions, and I would submit that the answer has to be "No", viewing the nature of convictions in its true form.

And on this second question, I would ask the Committee to be mindful of the fact that the elements of "motive" and "consequence " have already been fully covered by the first Disciplinary Committee in its investigation and that immediately prevents this Committee from giving consideration to the same elements irrespective of their relevance, as to do so would clearly mean that you would be punishing the Respondent the second time in respect of the same fault - the principle of double jeopardy.

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

I appreciate that this situation would ordinarily be irrational and must necessarily give rise to embarrassment to you as Members of the Committee in your deliberations because what I am asking you to do is, in the course of your deliberations, you must mutilate the matters that are relevant before you. The reason is because some of these matters have been dealt with - issues as to gravity, the consequence, motive. These have been covered previously and must not, ought not to be covered again the second time round.

And I submit in closing that this peculiar situation, your having to mutilate your deliberations, merely serves to illustrate how intrinsically the charge of "delay" investigated by the first Disciplinary Committee with the elements of "motive" and "consequence" injected into it, how intrinsically that charge is bound to the present charge of "convictions" because, otherwise, without this binding connection this situation would not arise.

And this merely serves to show how obvious the answer to my first question should be in the affirmative: that these proceedings are necessarily prejudicial and oppressive to my client. We are really rehearing the same issues all over again under a different terminology.

You are being asked to consider the same matters because the issues raised in the "convictions" investigation

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

are on all fours with the elements, the ingredients, that form the convictions.

Mr. Lee: Mr. Wu, my problem here with the points you are raising - is section 93 of the Legal Profession Act.

Mr. Wu:

Yes?

Mr. Lee: "After hearing and investigating any matter referred to it a Disciplinary Committee shall record its findings in relation to the facts of the case and according to those facts shall determine -

(a) that no cause of sufficient gravity for disciplinary action exists under section 84"?

Mr.Wu:

Yes.

Mr. Lee: Now, can we as a Committee say that no cause - I am inclined to agree (with you) on your first point.

Mr. Wu:

Of course; in fact, I have had this case in my bundle I was going to refer to. I have forgotten all about it.

Section 93 of course sets out your duties.

Mr. Lee: These are the duties set by the Legislature.

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu:

Yes. And if you are with me on the second question that I pose, then you should proceed in accordance with section 93 (1) (b).

Mr. Lee: I am making reference to your first submission.

Mr. Wu:

Yes.

Mr. Lee: The duplicity of proceedings or double jeopardy or (that sort of) situation.

Mr. Wu:

Yes, I would submit, Sir, that---

Mr. Lee: How does this fit in?

Mr. Wu:

It does not come squarely within any of the limbs of section 93; it may indirectly come under (1) (a), but not directly because we are dealing here with what, I submit, is an aspect of your having jurisdiction which is not defined in section 93.

Mr. Lee: This is our problem, isn't it, even if we are with you on the first point?

Mr. Wu:

Well, if you are with me ---

Mr. Lee: Then, can we write in our findings to the Chief Justice ---

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu:

But of course, for the reasons stated, you can only return a finding under 93.(1) (a) because any other finding would be oppressive and prejudicial.

Mr. Lee: But here (1) (a) talks of sufficient gravity.

Mr. Wu:

I am sure, Sirs, that if you apply 93 (1) (a) for the reasons that I have stressed, no one is going to be technical about it. The reason for your arriving at the conclusion is crystal clear: the duplication of proceedings renders the second set of proceedings prejudicial and oppressive.

Mr. Grimberg:

Which means inherent jurisdiction?

Mr. Wu:

Yes. And if you should feel disposed to reach a finding under one of these limbs, then (a) is obviously the most appropriate. But my submission is it need not come under either (a), (b) or (c) because it is an order for stay of proceedings that I am seeking from you , which, I submit, you are entitled to return.

Mr. Lee: This is something on which we would like to hear from you. I mean, here we are appointed by the Chief Justice to sit on this Committee to hear and to make certain findings, and according to section 93 we can make three findings, and nothing more.

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu:

Yes.

Mr. Lee: The one that you are asking is that no cause of sufficient gravity exists, on your first point.

Mr. Wu:

Yes, the reason being the same issues have been dealt with, investigated for the first time.

Chairman: It should be done by the Court, and not by us.

Mr. Wu:

Which should be?

Chairman: The first one. Now we are here only limited to these three findings; that is the trouble.

Mr. Wu:

Yes. I would not concede that you do not have the discretion. But even if you should be so minded, your finding - that is the second set of proceedings - that is a finding of fact based on the submissions and on the facts bearing on the two sets of Disciplinary Proceedings. Your finding that the second Disciplinary Proceedings would be an apparent - is apparently a transgression of this principle, this rule against prejudicial and oppressive proceedings, would be clearly most pertinent as part of your findings under whichever limb you wish to approach, you wish to base your findings; under whichever limb.

If you are with me, I ask you to state your finding as you see it.

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Lee: Well, perhaps, maybe Mr. Grimberg may have something to say on this?

Mr. Wu:

Yes; but on the second question of course if you are with me ---

Mr. Lee: That poses no problem.

Mr.Wu:

Yes.

Chairman: That is all right.

Shall we adjourn till ---

Mr. Grimberg:

Yes,I am entirely in your hands. I think when we start, it may make all the difference whether we can finish today or whether we go on.

So if you have no objection to our starting fairly earlier, I am fairly confident we can finish today.

Chairman: How long will you take?

Mr.Grimberg:

I may not be more than an hour and a half; perhaps two hours.

Chairman: 2.15 - will it be all right?

Mr. Grimberg:

Yes, by all means.

(Hearing is adjourned at 12.55 p.m., 3/8/81)

DISCIPLINARY COMMITTEE PROCEEDINGS.

Mr. Eric Choa (Chairman).
Mr. Lee Kim Yew.
Mr. Tan Woo Kian.

(Counsel/Parties,same as before)

(2.20 p.m.) 3rd August 1981.

(HEARING RESUMES).

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu:

May it please you, Sirs, before my learned friend, Mr. Grimberg, commences with his reply, may I seek your indulgence and deal with a point that Mr. Lee had earlier raised in respect of section 93 of the Act, as to whether a finding, if reached by this Committee, that the present proceedings are prejudicial and oppressive to the Respondent, whether such a finding can have any place under either (a), (b) or (c) of section 93.

10 I have given thought to this query during the luncheon break, and I wish to deal with this point.

Now I would submit that assuming that this Committee answers my first question in the affirmative - that is, that the present proceedings are indeed prejudicial and oppressive to the Respondent - it can mean one of two things: the most obvious, in my submission, course the

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

Committee would take is to proceed under section 91 of the Act as I am sure the Members are aware this Committee was appointed by the Chief Justice pursuant to section 91 (1) of the Legal Profession Act.

And under section 91 subsection (3) of the Act, the Chief Justice - you read from subsection (3):

> "The Chief Justice may at any time revoke the appointment of any Disciplinary Committee" -

and I suggest, with respect, that if you answer my first question in the affirmative, the most obvious course to take is to state your finding on my question to the Chief Justice and invite the Chief Justice, pursuant to section 91 (3), to revoke your appointment because the same issues have been dealt with in an earlier Disciplinary Proceedings according to your finding on the submissions heard in these proceedings.

Alternatively, it is my submission that you can, nevertheless, opt to proceed under 93 (1) (a) of the Act.

93 (1) - the recital reads:

> "After hearing and investigating any matter referred to it a Disciplinary Committee shall record its findings in relation to the facts of the case and according to those facts shall determine -
>
> (a) that no cause of sufficient gravity for disciplinary action exists under section 84 of this Act."

I would submit that in recording your findings in

In the Disciplinary Committee

No.2

Appellant's Counsel's Submissions In Reply

Mr. Wu (cont):

relation to the facts of this case, you are perfectly entitled to deal with my first question, and if you should be disposed to answer it in the affirmative, it has to follow from that answer that since the issues before you have already been investigated in full by a previous Disciplinary Committee there is no new cause of sufficient gravity for disciplinary action existing under section 84 of the Act because the cause before you is old cause; there is no new cause. This cause has been investigated by a previous Committee.

It is my submission that either of these courses is open to this Committee.

I personally would feel it is moreappropriate to opt for the first course I have mentioned - that is, to invite the Chief Justice to revoke the appointment pursuant to section 91, subsection (3).

Mr. Grimberg:

May it please you, Sir, members of the Committee.

What is common ground between Mr. Wu and me is that the Respondent was convicted in a District Court of eight offences under section 213 of the Penal Code, that he appealed against these convictions to the High Court, that his appeal was dismissed, but he then applied to the

In the Disciplinary Committee

No.2

Respondent's Counsel's Submissions In Reply

Mr. Grimberg (cont):

Court of Criminal Appeal for leave toappeal to the Privy Council, that that application was dismissed; that he then applied to the Privy Council for leave to appeal to it and that Petition was also dismissed.

So all the avenues open to Mr. Wee were explored and all his remedies were exhausted.

Now the Respondent puts his case to you in two ways: the first of these is that a previous Disciplinary Committee has already investigated a complaint of delay in reporting Santhiran's offences, that the charges before you arise out of substantially the same facts, that these proceedings are therefore a duplication of the previous proceedings before the other Disciplinary Committee, that the doctrine of autrefois applies; that further, or in the alternative, the present proceedings are prejudicial and oppressive, and that for all these reasons you should take one of the three courses that my learned friend suggests.

Now can we just examine what your duties and functions are, and this is by the way of developing the point that Mr. Lee took before lunch.

Would you be so kind as to go to section 90 of the Legal Profession Act? Now that section reads:

> "If the Council determines under section 88 of this Act that there shall be a formal investigation the Council shall forthwith apply to the Chief Justice to appoint a Disciplinary Committee,"

In the Disciplinary Committee

No.2

Respondent's Counsel's Submissions In Reply

Mr. Grimberg (cont):

And then the next words are significant:

"which shall hear and investigate the matter."

"Which shall hear and investigate the matter".

The next section I ask you to go to is section 93, to which Mr. Lee referred before the adjournment; and that section talks in these terms about the functions of your Committee. It says:

"After hearing and investigating any matter" -

I repeat those words -

"After hearing and investigating any matter referred to it a Disciplinary Committee shall record its findings" -

and then I stress the next words -

"in relationto the facts of the case and according to those facts shall determine" either under little (a), little (b) or little (c).

And then if you would go, please, to section 94, you will see there that the section says - subsection (1):

"If the determination of the Disciplinary Committee under section 93 of this Act is that cause of sufficient gravity for disciplinary action exists under section 84 of this Act the Society shall or direct proceed to make an application in accordance with the provisions of section 98 of this Act."

So that subsection contemplates a determination. Read together, therefore, those three sections contemplate a hearing and investigating of the matter, a recording

the Disciplinary Committee

No.2

Respondent's Counsel's Submissions In Reply

Mr. Grimberg (cont):

of the Disciplinary Committee's findings in relation to the facts, and a determination as to whether cause of sufficient gravity exists for disciplinary action.

Now my submission to you, Sirs, is that those sections define exhaustively the functions and duties of a Disciplinary Committee. Those functions and duties are exercisable in relation to the facts of the charge before the Disciplinary Committee.

Now what does my learned friend, Mr. Wu, say that you should do? He says that you should do one of three things but he asks you, in so doing, to take into account matters which are wholly extraneous to the facts of the offence that you are investigating. And the extraneous matters he asks you to take into account are of course matters that relate to the proceedings before the other Disciplinary Committee.

Now it is my submission, Sirs, that you are not entitled to take into account extraneous matters, and indeed were you to be persuaded to do so, mandamus would lie against you requiring you to hear and determine the facts.

My authority for that proposition - you have a little bundle of authorities before you - is summarised in Volume XI of Halsbury's Laws, Third Edition, at page 64, after the 121 which reads:

In the Disciplinary Committee

No.2

Respondent's Counsel's Submissions In Reply

Mr. Grimberg (cont):

"Mandamus, where Tribunal is influenced by extraneous considerations.

Similarly, the High Court will not question by mandamus the honest decision of a tribunal even though erroneous in matters of fact or law on matters within its jurisdiction.
Where, however, a tribunal has in substance shut its ears to the application made to it and has determined on an application not to do it, it would be held to have refused to exercise its jurisdiction and a mandamus would issue ordering it to hear and determine.
Thus in a case where certiorari or prohibition may not lie, the proceedings being regular on the face and the tribunal having jurisdiction, mandamus to hear and determine may none the less be issued to the tribunal on this ground if the tribunal had been influenced by extraneous considerations or rejected legal evidence.
In such a case, even though they may have purported to hear and determine the case, they would be deemed not to have exercised their jurisdiction.

Thus mandamus was granted where Magistrates have refused to grant summonses against certain persons to answer a charge of conspiracy to do grievous bodily hurt to certain other persons at a public meeting, the Magistrates having been influenced by the (distaste) to the views of doctors propagated at the hearing.

Similarly, where licensing justices attached illegal consideration to grant a licence, it was held that there had been no legal hearing and that mandamus must go."

In the Disciplinary Committee

No.2

Respondent's Counsel's Submissions In Reply

Mr. Grimberg (cont):

And I ask you to look at one short case which illustrates the point. It is the next case in your bundle, and that is the case of Queen v. Bowman and Others. The Headnote reads:

> "At a general annual licensing meeting an application was made for a licence to sell intoxicating liquor. The justices granted a licence to the applicant (after) paying a sum of money which money they intended to apply to repair of roads or for some other similar public purpose.
> Certain persons who appeared before the justices opposing the application then obtained a writ of certiorari to have the licence quashed and mandamus to hear and determine the application for a licence according to law.
> Held that the writ of mandamus must be absolute on the ground that the objectors had a right to be heard before the justices according to law and that the justices in granting the licence (in relation to) the payment of money showed that they had allowed their decision to be influenced by extraneous considerations and that a hearing under such circumstances was equivalent to no hearing at all and that the writ of certiorari must on the authority of R v. (Shaw) be discharged on the ground that the grant by the licensing justices of a licence to sell intoxicating liquor is not (valid)."

Of course the facts of the case are different from ours,

In the Disciplinary Committee

No.2

Respondent's Counsel's Submissions In Reply

Mr. Grimberg (cont):

but there are two short judgments, and I think perhaps I will just read the Judgment of Mr. Justice Darling on page 667.

He there says he agrees with Mr. Justice Feild, and goes on:

".... in a few/time they may have to be allowed to do it. They .... bear more than their share of the burden.

It has often been suggested that the law to that effect would be a very proper one but in fact it is not the law. So therefore to make the law it must be by authority of Parliament. But Parliament itself did not indicate ... particular public purpose to which the money is to be applied.

The justices ... allowed those theories to influence their decision.

Under those circumstances it is enough to refer to Regina v. (Adams) to show that mandamus must be allowed.

Chief Justice Cockburn there said, 'With reference to the refusal of magistrates to issue summonses against the persons charged with conspiracy to commit a breach of the peace and public duty, I think it is very probable that the magistrates thought they were doing what was right and/that they were influenced by the distaste of the views the doctors propatated at the meeting and thought that the sooner the matter was buried in oblivion the better. But these were considerations which ought not to have influenced them at all and under the circumstances I think they must be taken to have declined jurisdiction.'

And Mr. Justice Feild said:

In the Disciplinary Committee

No.2

Respondent's Counsel's Submissions In Reply

Mr. Grimberg (cont):

'If the justices had said "We do not believe the evidence" or given any other reasonable ground for refusing to grant a licence we should not interfere. But I have come to the conclusion that they acted as they did not because they disapproved the evidence but for a consideration, apart from the facts which they ought not have taken into account.

We may apply the same language to what was done here. The justices acted on considerations which they ought not to have taken into account. That being so, they have never heard and determined the case according to law.'."

I needn't read further than that because I adopt, with respect, those words.

If you consider, if you are persuaded to consider what took place before the other Disciplinary Committee and, in so doing, adopted one of the three courses that Mr.Wu is suggesting to you, you would - adopting the language of Mr. Justice Darling - be declining jurisdiction and not hearing and determining the case according to the law.

The law in this case, of course, being the Legal Profession Act.

So it is my submission to you that you are obliged to hear and investigate whether the charges, on the face of them, are cause for disciplinary action. The fact that another Disciplinary Committee has considered charges arising out of the same or substantially the same facts cannot be a matter for your consideration.

In the Disciplinary Committee

No.2

Respondent's Counsel's Submissions In Reply

Mr. Grimberg (cont):

Of course that does not mean that those facts cannot be taken into consideration by the court should you consider that cause for disciplinary action exists and so report it. But for you to consider those extraneous matters would be ultra vires your powers under the Act.

That, I think, deals in a nutshell with my learned friend's first proposition and, having said that, I don't think it necessary for me to also say - which I respectfully believe - that some of the suggestions he made to you are very outlandish. Of course I am referring in particular to his suggestion that you should go back to the Chief Justice and suggest to him that your appointment be revoked. I would say no more on that, and I will pass to the second submission of the Respondent.

He says that if you do consider yourself bound to investigate notwithstanding his first proposition, then he submits that the convictions do not imply a defect in character which renders him unfit to practise.

Well now what, in simple language, were the offences? They were: that the Respondent concealed the commission by Santhiran of a criminal breach of trust of substantial sums of money in consideration of obtaining restitution.

It follows from that, does it not, that as a direct consequence of this bargain the Respondent enabled a criminal to continue practising as an Advocate and Solicitor for some 13 months?

the Disciplinary Committee

No. 2

Respondent's Counsel's Submissions In Reply

Mr. Grimberg (cont):

Now what is the test that you apply when considering whether the offence of which a Solicitor has been convicted implies a defect of character? Well, there are certain guidelines to be found in the case of The Law Society of Singapore v. Isaac Paul Patnam, which is reported in (1973) 2 M.L.J. page 54.

That is the next case in your bundle of cases.

Now I am not going to refer you either to the facts or to the body of the Judgment, but I invite you, if you would, to turn to page 56 which is the last page of the report, and to look at the penultimate paragraph of the Judgment:

> "It was lastly submitted on behalf of the Respondent that on the facts and having regard to all the circumstances the conviction could not be said to imply a defect of character which makes him unfit for his profession. We reject the submission. In our judgment it is the nature of the offence which is the sole criterion in determining whether or not an Advocate and Solicitor comes within the provisions of section 84 (2) (a) of the Legal Profession Act."

That is the subsection we are adopting.

> In our judgment the offence of which the Respondent is convicted is one which clearly implies a defect of character which makes him unfit for his profession as an Advocate and Solicitor."

In the Disciplinary Committee

No.2

Respondent's Counsel's Submissions In Reply

Mr. Grimberg (cont):

And then if you go to the next case in your bundle, that is the report of the hearing before the Privy Council in which the Judgment of the Chief Justice, to which I have just referred, was considered; that is, Isaac Paul Ratnam v. the Law Society of Singapore, (1976) 1 Malayan Law Journal, at page 195.

And I ask you, if you would ---

Chairman: Where are you reading from?

Mr. Grimberg:

I am reading from Isaac Paul Ratnam v. The Law Society.

Mr. Lee: You are reading from page 201?

Mr. Grimberg:

Yes, page 201.

Mr. Wu:

Page 12 on my page.

Chairman: Oh, yes.

Mr. Grimberg:

If you go to the second complete paragraph on that page, beginning with 'there is only one other matter':

> "There is only one other matter that Their Lordships need notice in this case. The appellant had asked before the High Court that having regard to all the circumstances his conviction could not be said to imply a defect of character making him unfit for his profession within section 84 (2) (a) of the

In the Disciplinary Committee

No.2

Respondent's Counsel's Submissions In Reply

Mr.Grimberg (cont):

"Legal Profession Act.
The High Court held that the nature of the offence is the sole criterion in determining whether or not an Advocate and Solicitor comes within the provisions and that the offence in question was one which clearly implied such a defect of character in the appellant.
This construction of the statutory provision by the High Court and the conclusion therefrom were barely controverted before Their Lordships.
On the view their Lordships had taken the appellant's conviction , or,more importantly, the admitted conduct which led to such conviction had relevance under the circumstances to section 84 (2) (b) rather than (a).

Had Their Lordships thought it necessary to decide, Their Lordships would be in no way disposed to disagree with the construction adopted by the High Court. Of course the mere nature of the offence will have been of little guidance to the moral iniquity actually involved, but it is in the penalty that the court would have regard to the moral iniquity."

And of course that is why in my Opening I referred you to the penalty. The Privy Council is adding a clause to what the Chief Justice said. The Chief Justice said you must look at the nature of the offence; the Privy Council said you must not only look at the nature of the offence because that may not help you very much. You must also look at the penalty which the statute imposes in regard to the offence charged.

In the Disciplinary Committee

No.2

Respondent's Counsel's Submissions In Reply

Mr. Grimberg (cont):

And we know from my Opening that the maximum penalty was nine months' imprisonment for the offence with which Mr. Wee stood charged and convicted.

Now you may well think that those two reported cases don't help you a great deal in terms of deciding whether the offence implied a defect of character, and so let us, if we may, consider whether the convictions did imply a defect of character.

Now it has been said that the Respondent by his bargain with Santhiran was doing no more than taking steps to recover his own money and, with respect, I think that is a perfectly correct statement of the position. But, in my submission, it is against the public interest to conceal the commission of a serious crime. It is in the interest of society that the criminal should be apprehended swiftly and brought to justice.

Therefore the question, it seems to me, for you to decide is whether the Respondent's recklessness or, to put it on a lower plane, his indifference to the public interest amounted to a defect in character within the meaning of section 84 (2) (a).

Now, Sirs, I at once concede that the offence implied no obvious defect in character such as dishonesty, and I agree entirely with the observation of the learned District Judge, but you should have asked yourselves: was Mr.Wee's

the Disciplinary Committee

No.2

Respondent's Counsel's Submissions In Reply

Mr.Grimberg (cont):

conduct moral? Or, to put it in simpler terms: was Mr. Woo's conduct right?

If it was not right, then it was immoral. And if it was immoral, you may well conclude that his immoral conduct amounted to a defect in his character which renders him unfit to practise.

Now my learned friend has referred you to two cases in re Weare and Re A Solicitor as authority for the proposition that the mere fact that a Solicitor has committed a criminal act is no cause for concluding, without more, that he should be struck off the roll.

And that is as it may be, but it seems to me that those cases go to the severity of the sanction which the court should impose, rather than going to the question as to whether you should determine that a cause of sufficient gravity for disciplinary action exists; because after you have determined - if you do so - that cause for disciplinary action exists, it is for the court to decide what sanction to impose, whether Mr.Woo should be censured or suspended or struck off.

And so it is my respectful submission the two cases are really appropriate for the court to consider at a later stage should you determine that cause of sufficient gravity exists.

Now I thought before I started that I was going to

In the Disciplinary Committee

No.2

Respondent's Counsel's Submissions In Reply

Mr. Grimberg (cont):

take up to two hours, but I now find that is all I have to say. But I would like to conclude by saying this: I approach these proceedings with absolutely no enthusiasm and with some disquiet. But I do believe and think that Mr. Woo should not have been brought before two different Committees on complaints arising out of the same facts.

That this has occurred is no doubt due to the fact that the Law Society would be, understandably, reluctant to allow disciplinary proceedings in general to remain in abeyance for a very long time while the criminal proceedings both against Santhiran and Mr. Woo take their course.

But, having said that, of course it is not the same as saying that there is any impropriety in these proceedings, and it seems to me that you have no alternative but to conclude on the facts that cause for disciplinary action does exist. It would be for the court to decide how, in all the circumstances, justice should be done in this case.

In the Disciplinary Committee

No.2

Appellant's Counsel's Further Submissions

Mr. Wu:

I would like, if I may, to reply to three of the points very briefly that my learned friend has raised. The Committee will appreciate my difficulty. I have had no awareness of the points that Mr. Grimberg would be raising.

I have presented him with my written submission before the week-end and it is only now that I realise that Mr. Grimberg will be relying on points such as my first question being an extraneous matter, which I have had no opportunity to deal with, and reference being made to Ratnam's case, which I have again no opportunity to deal with.

So if I may be permitted to be heard very briefly by way of a reply on these points?

Chairman: Yes.

Mr. Wu:

As you please, Sirs.

The first point, that of my learned friend's contention that my first question - the issue of prejudicial and oppressive proceedings - relates to extraneous issues:

Well, I must say that is a very simple way of getting round the issue that I have raised, which is a substative issue, and I would venture to suggest that the reply to it, especially my learned friend's qualifications at the end of his submission, suggests that he has no answer, no reply of

In the Disciplinary Committee

No.2

Appellant's Counsel's Further Submissions

Mr. Wu (cont):

merit to the issue."

And so he has to rely on what he considers to be the formal provisions of the Act. I would respectfully submit that those provisions in the Act do not disqualify this Committee from dealing with issues such as prejudice and oppression. The extraneous matters referred to in Bowman's case are quite different.

Bowman's case was not dealing with an issue of autrefois. It was not dealing with an issue relating to a plea of prejudice and oppression. In Bowman's case those issues are truly extraneous.

If my learned friend is right in his submission on this point, it will mean that in Bowman's case the issue of autrefois could not be entertained even though it falls squarely within the doctrine. That surely cannot be. Or the issue of oppression and prejudice, if it really forms a proper and valid issue, cannot be(examined)because it is an extraneous matter. I submit that clearly cannot be the case.

The facts of that case are wholly different and the principle applicable to this case at this hearing has no bearing on the issues in Bowman's case.

I am not suggesting for a moment that this Committee should not proceed to hear and investigate the charge. That is precisely what you are doing now, and it is in the

the Disciplinary Committee

No.2

Appellant's Counsel's Further Submissions

Mr. Wu (cont):

course of this investigation that I am raising, in my respectful submission I am perfectly entitled to raise - issues of oppression and prejudice in respect of these proceedings, and the issue of autrefois.

Is it being suggested seriously that these are extraneous matters? The fundamental principle of double jeopardy is an extraneous matter?

Well, if that is being suggested, I would say that is the very first time in any court for anyone to suggest that the doctrine of autrefois, when it is applicable to a case, is an extraneous matter, and the High Court can, by mandamus proceedings, prevent the entertainment of such issue. And I would submit that that proposition is going much too far.

Well, it is a simple way of getting round my submission, but I would submit that it is not a good enough answer. This is being used because there is no reply on the merits of the submission.

I cannot - I really cannot believe that just because these are professional disciplinary proceedings, that a Committee such as this can proceed with its hearings with absolute impunity in total disregard to fundamental rules as to how proceedings of all types should be conducted

In the Disciplinary Committee

No.2

Appellant's Counsel's Further Submissions

Mr. Wu (cont):

to theissues of prejudice, injustice and oppression, and to suggest that these issues - for the purposes of these proceedings - are extraneous is, in my submission, carrying the argument much too far.

Now the second point is Ratnam's case, and the passages cited should be taken in the context of Ratnam's case.

This is a case that involves dishonesty. In Ratnam's case the conviction is in relation to an offence that involves an element of dishonesty, and that is disclosed in the Headnotes. I do not have to go beyond that.

And so the passages cited by my learned friend should be taken and read in that context.

The third point I wish to mention is my learned friend's submission that if the decision by the Respondent was not right, then it follows necessarily it must be immoral. Now that, in my submission, is totally devoid of any logic. The two are non sequitur.

The two premises are non sequitur because if that were correct, then it will introduce entirely new law in cases where there is an error of judgment when a Solicitor makes a judgment and the judgment turns out not to be right - in other words, an error of judgment. Then immediately the judgment becomes immoral, according to my learned friend's submission. It is not right, so automatically it becomes immoral.

In the sciplinary ommittee

No.2

Appellant's Counsel's Further Submissions

Mr.Lee: Where is this evidence of error of judgment?

Mr. Wu:

No, no. I am just taking that as an example, because if this proposition is right, that means an error of judgment which is wrong, which is not correct. That is why it is an error. Immediately it means that the judgment was immoral.

It depends on what the wrong is. The error could be a calculating error. Does it make the error immoral?

Chairman: Are you talking of an isolated error of judgment?

Mr. Wu:

No, I am addressing you, Sirs, on this general proposition: if a decision is not right, it becomes automatically immoral.

That is my learned friend's proposition, and I submit that that proposition is basically illogical. It is much too general. If a decision is wrong, whether it becomes immoral depends on the nature and the circumstances of the decision. That is my point.

If I were to make a mistake in a professional respect, I would be loathe to have anyone suggest that my mistake is immoral if it has nothing to do with morality: one does not follow the other.

That is the only point I wish to make. And this general proposition - if it is not right, it is necessarily immoral - is much too wide in the context of professional

In the Disciplinary Committee

No.2

Appellant's Counsel's Further Submissions

Mr. Wu (cont):

decisions and professional judgments.

CHAIRMAN: I think we will go overthe points raised.

Mr. Wu:

Thank you very much.

(Hearing concludes at 3.15 p.m., 3/8/1981)

IN THE MATTER OF HARRY LEE WEE

(An Advocate and Solicitor)

And

IN THE MATTER OF THE LEGAL PROFESSION ACT

(Chapter 217)

.....

R E P O R T

of

DISCIPLINARY COMMITTEE

.....

IN THE MATTER OF HARRY LEE WEE

(An Advocate and Solicitor)

And

IN THE MATTER OF THE LEGAL PROFESSION ACT

(Chapter 217)

1. We, the undersigned, ERIC CHOA WATT CHIANG, LEE KIM YEW and TAN WEE KIAN were on the 6th day of January 1981 appointed by the Chief Justice to be members of a Disciplinary Committee to hear and investigate into the conduct of the abovenamed advocate and solicitor arising out of convictions and sentences by a District Court of Singapore.

2. A preliminary meeting of the Committee was held at the offices of Messrs.Lee & Lee 18th Floor, UIC Building, No.5 Shenton Way, Singapore, on the 22nd of January 1981 and at such meeting Mr.Richard Tan, an advocate and solicitor, was unanimously appointed Secretary of the Committee by a Memorandum in writing dated the 22nd January 1981 pursuant to Section 91(4) of the Legal Profession Act.

3. The second meeting of the Disciplinary Committee was held at the offices of Messrs.Lee & Lee on the 25th day of March 1981 at which procedural matters were discussed and decided upon.

4. The third meeting of the Disciplinary Committee was held at the offices of Messrs.Lee & Lee on the 3rd April 1981 and at this meeting Mr.Joseph Grimberg for the Law Society, Mr.C. S. Wu for Mr. Harry Lee Wee (the Respondent) and the said Mr. Harry Lee Wee himself were present. Mr.C. S. Wu informed the Committee that the Respondent has petitioned to the Privy Council for leave to appeal

against his convictions. Hearing of the Inquiry was fixed on the 3rd, 4th, 5th and 6th August 1981 (inclusive). If before then it is known that the Respondent's petition is unsuccessful the Committee will proceed with the Inquiry, otherwise the Committee will hear arguments as to whether it should proceed with the Inquiry or adjourn same pending the result of the Appeal.

5. By letter dated the 13th day of July 1981 Messrs. Donaldson & Burkinshaw, the solicitors for the Respondent informed the Committee that the Privy Council has refused the Respondent's petition.

6. The Inquiry commenced as scheduled on the 3rd of August 1981 at 10.05 a.m. in Court Room No.23 of the Subordinate Courts Building, Singapore.

7. Mr.Joseph Grimberg represented the Law Society and Mr.C. S. Wu represented the Respondent.

8. At this stage Mr.Grimberg asked the Respondent whether he has any objection to Mr.Eric Choa sitting as Chairman of this Committee in view of the fact that Mr.Choa was a member of the first Disciplinary Committee which inquired into the Respondent's conduct arising out of substantially the same facts. Mr.Wu on behalf of the Respondent informed the Committee that the Respondent has no objection to Mr.Choa sitting on this inquiry.

9. Mr.Grimberg tendered the Agreed Bundle of Correspondence and Documents which is marked as Exhibit "AB" and Mr.C. S. Wu tendered the Written Submission of the Respondent which is marked as Exhibit "RB".

10. The case against the Respondent is set out in the Statement of Case which reads as follows:

STATEMENT OF CASE

1. Harry Lee Wee (hereinafter called "the Respondent"), an Advocate and Solicitor of the Supreme Court of the Republic of Singapore of some thirty years standing, practises, and has at all material times practised, under the name and style of Braddell Brothers. The Respondent was at various times a member of the Council of the Law Society of Singapore, and was the President of the Law Society for the period 1975 to 1977, inclusive.

2. On the 7th November 1978 the Respondent was convicted on eight charges under Section 213 of the Penal Code.

Particulars of Charges

(i) "..... that you on or about the 4th day of March, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $39,181.31¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103."

(ii) "..... that you on or about the 9th day of March, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $79,751.08¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103."

(iii) "..... that you on or about the 10th day of March, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $20,877.68¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing

the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103."

(iv) "..... that you on or about the 11th day of March, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $87,146.05¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103."

(v) "..... that you on or about the 12th day of March, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $41,000.00¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103."

(vi) "..... that you on or about the 10th day of May, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $8,000.00¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103."

(vii) "..... that you on or about the 14th day of May 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $1,000.00¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103."

(viii) "..... that you on or about the 10th day of June, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $21,000.00¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran

in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103."

3. Upon conviction as aforesaid, a fine of $3,000.00 was imposed in respect of each charge.

4. On appeal by the Respondent against conviction and sentence, the convictions were upheld by the High Court on the 12th March 1980, but the fine on each charge was reduced from $3,000.00 to $1,500.00.

5. In the premises, the Respondent has been convicted of criminal offences which imply a defect in the Respondent's character, rendering him unfit to practise as an Advocate and Solicitor.

6. The Council of the Law Society submits that cause of sufficient gravity exists for disciplinary action against the Respondent.

11. On the application of Mr.Grimberg and with the consent of Mr.Wu the figures $3,000.00 in paragraphs 3 and 4 of the Statement of Case were amended to read "$3,500.00."

12. Mr.Grimberg for the Law Society made the following submissions:

(i) That it is the case of the Law Society that the convictions imply a defect in character which renders the Respondent unfit for his profession, and

(ii) That the fact of the earlier investigation before another Disciplinary Committee of the Respondent's delay of thirteen months in reporting Santhiran's offence is not a ground for staying this Inquiry.

13. Mr.C. S. Wu on behalf of the Respondent made the following submissions:-

(A) that this Committee should exercise its inherent discretion to stay this inquiry on ground of duplication of disciplinary proceedings which is prejudicial and oppressive to the Respondent.

(B) that the convictions do not imply a defect of character as to make the Respondent unfit for the profession.

(A) Duplication of Disciplinary Proceedings

The argument on this point put forward by Mr. Wu runs as follows:

A previous Disciplinary Committee comprising Messrs. C. C. Tan, Eric Choa and John Poh had earlier investigated the complaint against the Respondent for failure to report earlier to the Law Society the criminal breach of trust committed by Mr. S. Santhiran when he was a legal assistant in the Respondent's firm. On the 19th of November 1980 the said Committee delivered their written report to show cause. In March 1981 the show cause proceedings were heard before three Judges in the High Court and judgment was reserved.

By letter dated the 3rd January 1981 the Respondent was informed of the appointment of this Committee to investigate into the "convictions" charge.

The Respondent's criminal convictions and the first Disciplinary Proceedings both arose ouf of the same incident involving a common

set of facts, namely, the Respondent's failure to report the said Santhiran's defalcations at an earlier stage, such failure being attributed to his determination to recover the misappropriated moneys from the said Santhiran.

It is contended that the first and second Disciplinary Proceedings instituted by the Council of the Law Society against the Respondent arising out of the same set of facts or incident amounted to a duplication of proceedings which is clearly unjust, prejudicial and oppressive to the Respondent.

In these circumstances, this Committee is asked to exercise its discretion to stay the present proceedings.

14. We have read and considered the judgments of Lord Devlin and Lord Pearce in the leading case of Connelly vs. Director of Public Prosecution reported in 1964 Appeal Cases at page 1254 and also Lord Kilbrandon's judgment in Yat Tung Co. vs. Dao Heng Bank (1975) A.C. 581 cited to us.

15. After considering the authorities aforesaid we are of the view that this Committee does not have the power nor the jurisdiction to stay this inquiry for these reasons:

(a) It is a well established rule at common law that where a person has been convicted and punished for an offence by a court of competent jurisdiction the conviction shall be a bar to all further proceedings for the same offence. In other words, no person should be punished twice for the same offence. In our considered view this point should be taken up in the High Court which has the inherent juris-

diction to stay proceedings on ground of duplication. For this Committee to do so would be to arrogate to itself power or jurisdiction which properly belongs to a Court of Law.

(b) This Committee is appointed to hear and investigate into the conduct of the Respondent arising out of his convictions by the Court. Its function under Section 93 of the Legal Profession Act is to determine whether or not the facts of this case disclose a cause of sufficient gravity for disciplinary action to be taken under Section 84 of the said Act and nothing more. We merely make a report of our finding. We are not concerned with punishment.

16. We would further add that even if we have the power to stay this inquiry we would not exercise it. The onus is on the Respondent to show that the facts on which he has to answer the charges before the two Disciplinary Committees are substantially the same which onus the Respondent has failed to discharge. The first Disciplinary Committee was asked to investigate into the conduct of the Respondent arising out of his delay in reporting Santhiran's defalcations to the Law Society - "the delay in reporting" being the crux of the matter. Whereas this Committee is asked to investigate his conduct arising out of his convictions for accepting restitution of monies in consideration of his concealment of a crime.

17. (B) <u>The Convictions</u>

The Respondent was charged with and convicted of eight (8) offences under Section 213 of the Penal Code for accepting restitution of various sums totalling $297,956.12

in consideration of concerling his legal assistant Mr. S. Santhiran's criminal breach of trust for a period of thirteen (13) months.

18. It is submitted by the learned consel for the Respondent that the aforesaid convictions do not imply a defect of character which makes the Respondent unfit for the profession within the meaning of Section 84(2)(a) of the Legal Profession Act for these reasons:

(i) these offences involved no dishonesty;

(ii) the Respondent did not realise that what he had done would amount to a criminal offence. As most practitioners in Singapore would not at the time have realised any differently he ought to be forgiven;

(iii) According to the test laid down by Lord Esher in Re Weare, the convictions are clearly not in respect of offences of a "personally disgraceful nature" which would prevent a respectable solicitor from having to deal professionally with the Respondent.

19. We disagree with the above submission.

20. We are of the view that in the general interest of the profession and the public, it is highly desirable that a solicitor as an officer of the Court should as soon as possible report to the law enforcement authority any offence committed by another solicitor which has come to his knowledge so that investigation of the case could be carried out without delay.

21. At page 135 of the Respondent's Written Submission (Exhibit R.B.) we find that in his grounds of decision, Mr. S. Chandra Mohan, the District Judge,

has this to say:

> "The accused in this case has sought to suppress the prosecution of a senior legal assistant who had committed what must be regarded as the cardinal sin of an advocate and solicitor; enriching himself illegally with clients' moneys. He also permitted such an offender to continue to practise in his firm as an advocate and solicitor. It must be noted that at the time of the commission of these offences, the accused was not only a senior member of the Bar but was also the President of the Law Society in which capacity he was intimately concerned with the discipline of members of the legal profession.
>
> It has been said that the accused in this case was only concerned with obtaining restitution of all moneys taken by Santhiran. In my view, he was not merely concerned with obtaining restitution. He was obsessed with it, and it was this obsession that led him to run foul of the law."

22. The case of the Law Society is that the convictions of the Respondent imply a defect in character which renders him unfit to practise his profession.

23. By deliberately concealing the said Santhiran's crime for reasons which are entirely selfish the Respondent has shown himself to be a person who is prepared to disregard his duty to his profession and to the public for his own personal benefit. This we think is clearly dishonourable.

24. We are of the view that the very nature of the offence of which he has been convicted imply a defect of character which makes the Respondent unfit for his profession and we therefore find that cause of sufficient gravity for disciplinary action exists under Section 84 of the Legal Profession Act.

25. In exefcise of the power conferred on us by Section 93 (2) of the Act, we order that the costs of the Law Society of and incidental to this inquiry be paid by the Respondent.

26. The two cases cited by the Respondent namely:

(i) in Re Weare (1893) 2 QB page 439;

(ii) in Re A Solicitor (1889) 37 Weekly Reporter at page 598

are authorities for the proposition that where a solicitor has been convicted of a criminal offence it does not necessarily follow that the Court is bound to strike him off the rolls. It must look into the circumstances of the conviction.

These decisions would be relevant when in the show cause proceedings the High Court has to deal with the question of whether the Respondent should be censured, suspended or struck off the Roll with which this Committee is not concerned.

27. The evidence adduced before this Committee consisted of the following documents:

Exhibit A.B. = Agreed Bundle of Correspondence and documents.

Exhibit R.B. = Written Submission of the Respondent.

Dated this [illegible] day of August 1981.

.....
ERIC CHOA WATT CHIANG

.....
LEE KIM YEW

.....
TAN KEE KIAN

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Originating Summons No. 416 of 1982

In the Matter of the Legal Profession Act (Cap. 217)

And

In the Matter of an Advocate and Solicitor

I, Joseph Grimberg of No. 28M, Leonie Towers, Leonie Hill, Singapore, an Advocate and Solicitor of the Supreme Court, do solemnly and sincerely affirm as follows :

1. The question has arisen as to whether an order should be made, in all the circumstances, on this application, having regard to previous disciplinary proceedings ("the first proceeding") against the Respondent. I had conduct of the first proceeding on behalf of the Law Society.

2. The facts which gave rise to the first proceeding were, briefly, that a Legal Assistant of the Respondent, who was the sole proprietor of Braddell Brothers, committed criminal breach of trust of the monies of the firm and of its clients. The Respondent became aware of the offences

in or about March 1976. Notwithstanding his knowledge of his Assistant's offences, the Respondent failed to report them for at least thirteen months. In the interim he accepted restitution of a very substantial part of the monies taken by his Assistant, including all clients' monies. The Disciplinary Committee found as a fact that the Respondent's delay in reporting his Assistant's misconduct was deliberate, and that his motive was to secure restitution from the Assistant. The Disciplinary Committee concluded that the Respondent was guilty of grossly dishonourable conduct. This finding was upheld by the High Court, which suspended the Respondent from practice for a period of two years. His appeal to the Privy Council was dismissed with costs.

3. The Disciplinary Committee involved in the first proceeding was appointed on the 13th December 1978. It issued its report on the 19th November, 1980. Its findings were upheld by judgment of the High Court on the 27th August, 1981.

4. Meanwhile, criminal proceedings had been brought against the Respondent, and on the 7th November, 1978, he was convicted on eight charges of obtaining restitution of various sums of money from his Assistant, in consideration of concealing the latter's criminal breaches of trust. As a consequence of these convictions the Inquiry Committee of

the applicant Society commenced its inquiry into the convictions. In due course a second Disciplinary Committee was appointed arising from the report of the Inquiry Committee. It is the report of this second Disciplinary Committee, which found that cause of sufficient gravity existed for disciplinary action against the Respondent, which gives rise to the present application.

5. The charges before the Disciplinary Committee in the first proceeding, and the criminal charges on which the Respondent was convicted, and which gave rise to the present application, arose substantially out of the same facts - namely the Respondent's failure to report his Assistant's defalcations until well over a year after he discovered them. The ingredient which was crucial to the finding of the Disciplinary Committee in the first proceeding namely the Respondent's dishonourable motive in seeking restitution rather than reporting the offences in the public interest, was also central to the case for the prosecution in the criminal proceedings against him.

6. Notwithstanding the foregoing the Law Society considers itself bound to proceed with this application, having regard to the terms of section 94 of the Legal

Profession Act.

Affirmed at Singapore this 18th day of September, 1982.) Joseph Grinberg

Before me,

A Commissioner for Oaths.

This affidavit is filed on behalf of the Law Society of Singapore.

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Originating Summons No. 456 of 1982

In the matter of the Legal Profession Act (Chapter 217)

and

In the matter of an Advocate and Solicitor

ORDER OF COURT

BEFORE THE HONOURABLE THE CHIEF JUSTICE IN CHAMBERS

MR. JUSTICE WEE CHONG JIN

Upon the adjourned application of the Law Society of Singapore by Originating Summons, dated the 10th August, 1982, AND UPON READING the affidavits of Richard Tan and Joseph Grimberg filed on the 18th August and 1st September, 1982, respectively AND UPON HEARING the Solicitors for the Applicants IT IS ORDERED that Harry Lee Wee, an Advocate and Solicitor of the Supreme Court, do show cause why he should not be dealt with under the provisions of section 84 of the Legal Profession Act (Chapter 217) in such manner as the Court shall deem fit.

Dated the 17th day of September, 1982.

ASSISTANT REGISTRAR

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Originating Summons No. 456 of 1982

In the matter of the Legal Profession Act (Chapter 217)

and

In the matter of an Advocate and Solicitor

==========

ORDER OF COURT

==========

JG 5-81/cl

DREW & NAPIER

SINGAPORE

Filed the 14th day of October, 1982.

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Originating Summons No. 456 of 1982

In the Matter of the Legal Profession Act (Chapter 217)

And

In the Matter of an Advocate and Solicitor

Coram: Wee C.J.
Sinnathuray J.
Chua J.

JUDGMENT

The respondent, Harry Wee, was admitted as an advocate and solicitor of the Supreme Court in 1948. He was the President of the Law Society for three successive years from 1975 to December 1977 and during this period and for many years previously he practised under the name of Braddell Brothers of which he is the sole proprietor.

In February 1976 he discovered that S. Santhiran, a legal assistant, in his firm who had been in his employment since 1971 had misappropriated monies from the firm's Clients Account and on 8th March 1976 he knew that the misappropriations exceeded $200,000/-. He confronted Santhiran who admitted the amount was $298,270.75. After Santhiran's admission he

did not report to the Police and did not inform the Council of the Law Society Santhiran's misdeeds but continued to employ Santhiran as a legal assistant of his firm and to allow Santhiran to appear in court and to handle new matters. The respondent, through an intermediary, also made an offer to Santhiran that if he made total restitution of the misappropriated monies, the respondent would not report the matter to the Police. By June 1976 he had obtained almost total restitution from Santhiran but he kept Santhiran in his employment until December 1976 when Santhiran left and set up a practice of his own. The respondent came to know of this in January 1977.

It was only on 30th April 1977 in a private and confidential letter to the Law Society marked for the attention of the then Vice President of the Law Society that the respondent disclosed that Santhiran had misappropriated Braddell Brothers clients' monies and that he would shortly be presenting a complaint against Santhiran for action to be taken by the Law Society. On 26th May 1977 he reported Santhiran's misappropriations to the police and on 27th May he made a formal

complaint against Santhiran to the Law Society. Throughout the relevant period he continued to hold office as President of the Law Society which office he vacated on 31st December 1977 and throughout the period as President of the Law Society he presided as Chairman of the Council of the Law Society at all meetings of the Council (see Section 58(2) of the Legal Profession Act). No action appeared to have been taken by the Council on the respondent's complaint against Santhiran to the Law Society while he was President of the Law Society.

In March 1978 the new President, who was also the Chairman of the Inquiry Committee appointed by the Council of the Law Society, wrote to the respondent to inform him that the Inquiry Committee had decided of its own motion to enquire into his conduct in delaying reporting Santhiran's admitted defalcations to the Law Society and his offer to Santhiran that he would not report to the police Santhiran's misappropriations as long as Santhiran admitted having committed them and made full restitution.

The respondent gave a written explanation and also appeared before the Inquiry Committee in May 1978. After the Inquiry

Committee had reported its findings to the Council of the Law Society, the Council informed the respondent by a letter dated 20th July 1978 that the Council would apply to the Chief Justice for the appointment of a Disciplinary Committee to investigate into the respondent's "failure to report the criminal breach of trust committed by Santhiran when he was a legal assistant in the firm of Braddell Brothers to the Law Society earlier". The letter also stated that the finding of the Inquiry Committee "in respect of the allegation of accepting restitution of concealing an offence in contravention of section 213 of the Penal Code, the evidence was unconclusive".

Prior to the Council's said letter of 20th July 1978, the respondent had, on 6th June 1978, been brought before a Magistrate's Court on 9 charges under Section 213 of the Penal Code. All these 9 charges were based on allegations that the respondent had obtained or attempted to obtain restitution of monies from Santhiran in consideration of his concealing offences of criminal breach of trust by Santhiran. The respondent was convicted on all 9 charges on 7th November 1978 after a trial

which lasted three weeks. He gave immediate notice of appeal against the convictions.

On 13th December 1978, on the application of the Council of the Law Society pursuant to Section 90 of the Legal Profession Act ("the Act") the Chief Justice appointed a Disciplinary Committee consisting of three senior practising advocates and solicitors to hear and investigate the charge against the respondent for the delay in reporting to the Law Society Santhiran's misappropriations of clients' monies (hereinafter referred to as "the delay charge"). By coincidence, on the same day, 13th December 1978, the Inquiry Committee having earlier decided, as empowered by the Act, to act on its own motion wrote to the respondent informing him of its decision to enquire into the respondent's conduct in relation to his said convictions under Section 213 of the Penal Code (hereinafter referred to as "the convictions charge") and invited him to give his explanation in writing. As there was no response from the respondent, a reminder was sent to him on 30th March 1979. On 12th April 1979 the respondent wrote to the Chairman of the Inquiry Committee requesting a postponement of the inquiry until

after the disposal of his appeal to the High Court against his said convictions. The request was not granted and on 14th May 1979 the respondent appeared before the Inquiry Committee.

Having heard the respondent it would appear that the Inquiry Committee did not report its findings, if any, to the Council. It may be inferred that it decided to await the determination of the respondent's appeal to the High Court against his convictions, a course which the respondent himself had requested. On 4th May 1979 the Legal Profession (Amendment) Act, 1979 was published in the Government Gazette. It repealed Section 85 which vested the power to appoint an Inquiry Committee consisting of five members in the Council and substituted a new Section 85 which vested the power to appoint a Committee known as the Inquiry Committee consisting of not less than five nor more than nine advocates and solicitors in the Chief Justice. The amending Act came into force on 15th October 1979 and in exercise of the power vested in him the Chief Justice appointed nine advocates and solicitors as the members of the new Inquiry Committee.

Consequently, the Inquiry Committee which was inquiring into the convictions matter was functus officio and had no power to continue with the inquiry.

The respondent's appeal against his convictions was heard by the High Court on 25th and 26th February 1980 and on 12th March 1980 the High Court affirmed the convictions in respect of eight of the nine charges. On 19th March 1980 the Secretary of the Law Society laid a complaint against the respondent to the new Inquiry Committee arising out of his criminal convictions and on 27th September 1980 gave notice to the respondent inviting him to give a written explanation and asking whether he wished to be heard.

By a letter dated 27th October 1980 from his solicitors, the respondent offered his explanation to the complaint arising out of his convictions and stated that he wished to be heard by the new Inquiry Committee. Paragraph 3 of that letter also stated that:-

> "We should mention that our client will shortly be filing a motion before the Court of Appeal for a review of and/or appeal from Mr. Justice Choor Singh's decision in Criminal Motion No. 9 of 1980, which bears on his Appeal Judgment. There is every likelihood that the review/appeal proceedings will

> eventually reach the Judicial Committee of the Privy Council".

In response to the respondent's desire to be heard he was informed by the new Inquiry Committee by letter dated 7th November 1980 that the Committee would sit to hear the complaint on 19th November 1980 and to attend the hearing. Coincidentally, that date was the date when the Disciplinary Committee investigating into the delay charge gave its findings and determination. We do not have before us any note of the proceedings before the Inquiry Committee on 19th November 1980 but it is a fair inference that the respondent appeared in person or by his solicitors and was heard at the inquiry.

On 22nd November 1980 the new Inquiry Committee reported to the Council of the Law Society (as it is required to do by Section 87(1)) its findings. It is to be observed that three days earlier, on 19th November 1980, the Disciplinary Committee on the delay charge had made its finding that cause of sufficient gravity for disciplinary action exists for the respondent to show cause why he should not be struck off the roll or suspended or censured. The Council after considering the report of the Inquiry Committee (as it is required to do by

Section 88(1)) decided that there should be a formal investigation by a Disciplinary Committee on the convictions charge and pursuant to Section 90 applied to the Chief Justice on 2nd January 1981 to appoint a Disciplinary Committee to hear and investigate into the matter. Section 90 imposes a mandatory obligation on the Disciplinary Committee so appointed to hear and investigate the matter. On 2nd January 1981 the respondent was duly informed of the Council's application to the Chief Justice. On 6th January 1981 the Chief Justice appointed a Disciplinary Committee to hear and investigate the convictions charge against the respondent.

On 12th January 1981 the Court of Criminal Appeal refused the respondent's application for leave to appeal against his convictions. Three days later, on 15th January 1981, the respondent's solicitors wrote to the President of the Law Society as follows:-

"Dear Sir,

re: 1st Disciplinary Proceedings against Mr. H.L. Wee

We act on behalf of Mr. H.L. Wee, and we request that you put before the Council of the Law Society the following request by our client.

Your Council has determined that a Disciplinary Committee be appointed to investigate into the complaint on the convictions in respect of the various charges brought against our client under Section 213 of the Penal Code. We have now received the Findings of an earlier Disciplinary Committee comprising Messrs. C.C. Tan, Eric Choa and John Poh requiring our client to show cause in respect of the charge of delay in reporting to the Law Society Mr. S. Santhiran's criminal breaches of trust, the subject of our client's convictions under Section 213 of the Penal Code. As your Council is aware, both matters arose from the same set of facts.

In the meantime, Mr. Wee is appealing to the Judicial Committee of the Privy Council against the recent decision of the Court of Criminal Appeal on various points of law arising out of the convictions under Section 213 of the Penal Code.

If the Disciplinary Committee now being formed to investigate into the charge relating to the said convictions should return an adverse finding, our client will have to face yet another show cause hearing before the High Court. Such a hearing is unlikely to come on before the High Court before the second half of this year at the earliest.

We respectfully submit that it is not only unfair but also prejudicial to our client to have to contend with two separate show cause hearings on separate dates and in relation to matters that are directly connected, and arising out of one set of facts. If such a situation should arise in a criminal case, it is very likely that the Court will view the separate hearings as an abuse of process, as they subject the accused to double jeopardy for obvious reasons. The delay in making the report

was one of the basis on which the convictions are founded.

Our client requests that your Council give the matter their consideration, with a view to deferring the show cause hearing on the delay charge until the findings of the Disciplinary Committee investigating into the convictions charge are returned. In this way, if the findings should also result in a show cause hearing, then both hearings can be dealt with by the High Court at the same time. We invite your Council to consider obtaining the views of the Law Society in England on the matter if they should feel that such a course is appropriate.

Meanwhile, we would appreciate an early reply as to the Council's intentions, in order that the views and/or intentions of the Council may be disclosed to the High Court at the show cause proceedings on delay, in the event these proceedings are not deferred.

Yours faithfully,
Sgd."

The request was refused in a letter dated 21st January 1981 which reads:-

"Dear Sir,

Re: 1st Disciplinary Proceedings against H.L. Wee

I refer to your letter of the 15th January addressed to the President of the Law Society of Singapore and copied to my firm.

I am instructed to say that under the Legal Profession Act, the Council of the Law Society is obliged to proceed with an application requiring the solicitor concerned to show cause, on receipt of the findings of the Disciplinary Committee. The Council

cannot see any reason in this case for deferring an application to court requiring your client to show cause until the Disciplinary Committee investigating the conviction has issued its report.

Yours faithfully,
Sgd. J.Grimberg"

On 31st January 1981 the Law Society applied by way of Originating Summons No. 55 of 1981 to the High Court for an order that the respondent do show cause why he should not be dealt with under Section 84 of the Legal Profession Act in relation to the delay charge. On 13th February 1981 a show cause order was made by the High Court. On 16th March 1981 the Supreme Court comprising of three judges heard the show cause matter and on 27th August 1981 delivered judgment suspending the respondent from practice for two years. The respondent appealed to the Judicial Committee of the Privy Council which dismissed the appeal on 13th July 1982.

The respondent's application for special leave to appeal against his convictions was refused by the Judicial Committee of the Privy Council on 20th May 1981. On 26th August 1981 the Disciplinary Committee made its report on the convictions charge which contained its

finding "that cause of sufficient gravity for disciplinary action exists under Section 84 of the Legal Profession Act."

In August 1982 the Law Society made an application to the High Court for an order that the respondent show cause on the convictions charge why he should not be dealt with under Section 84 of of the Act and a show cause order was made on 17th September 1982. The respondent now appears in answer to the show cause order on the convictions charge.

We have set out at some length the material facts because of the respondent's submission that he is entitled to have the show cause order discharged on the grounds:- (1) of autrefois convict; or (2) of a doctrine of estoppel, namely issue estoppel or res judicata in its wider sense and (3) of the court's inherent jurisdiction to stay proceedings on the ground that they are oppressive and an abuse of its process. We now consider these grounds separately.

(1) Autrefois convict

It is a well established principle of the common law that a man cannot be tried for a crime in respect of which he has previously been

acquitted or convicted. In Connelly v. D.P.P. (1964) A.C. 1254 Lord Morris said at page 1307-8:-

> "The principle seems clearly to have been recognised that if someone had been either convicted or acquitted of an offence he could not later be charged with the same offence or with what was in effect the same offence. In determining whether or not he was being so charged the court was not confined to an examination of the record. The reality of the matter was to be ascertained. That, however, did not mean that if two separate offences were committed at the same time a conviction or an acquittal in respect of one would be any bar to a subsequent prosecution in respect of the other. It was the offence or offences that had to be considered. Was there in substance one offence - or had someone committed two or more offences?"

Later on at page 1309-1310 Lord Morris said:-

> "It matters not that incidents and occasions being examined on the trial of the second indictment are precisely the same as those which were examined on the trial of the first. The court is concerned with charges of offences or crimes. The test is, therefore, whether such proof as is necessary to convict of the second offence would establish guilt of the first offence or of an offence for which on the first charge there could be a conviction ... That the facts in the two trials have much in common is not a true test of the availability of the plea of autrefois acquit. Nor is it of itself relevant that two separate crimes were committed at the same time so that in recounting the one there may be mention of the other."

Lord Devlin at page 1339 et seq. dealt with the doctrine of autrefois in these words:-

> "My Lords, in my opinion, Stephenson and Nield JJ. were right in directing the jury to reject the plea of autrefois acquit. I have had the advantage of reading the speech of my noble and learned friend, Lord Morris of Borth-y-Gest, and he has dealt so fully with this point that I need state only briefly my conclusion on it. For the doctrine of autrefois to apply, it is necessary that the accused should have been put in peril of conviction for the same offence as that with which he is then charged. The word 'offence' embraces both the facts which constitute the crime and the legal characteristics which make it an offence. For the doctrine to apply it must be the same offence both in fact and in law. Robbery is not in law the same offence as murder (or as manslaughter, of which the accused could also have been convicted on the first indictment) and so the doctrine does not apply in the present case.
>
> I would add one further comment. My noble and learned friend in his statement of the law, accepting what is suggested in some dicta in the authorities, extends the doctrine to cover offences which are in effect the same or substantially the same. I entirely agree with my noble and learned friend that these dicta refer to the legal characteristic of an offence and not to the facts on which it is based: see Rex v. Kendrick and Smith (144 L.T. 748). I have no difficulty about the idea that one set of facts may be substantially but not exactly the same as another. I have more difficulty with the idea that an offence may be substantially the same as another in its legal characteristics; legal characteristics are precise things and are either the same or not. If I had

> felt that the doctrine of autrefois was the only form of relief available to an accused who has been prosecuted on substantially the same facts, I should be tempted to stretch the doctrine as far as it would go. But, as that is not my view, I am inclined to favour keeping it within limits that are precise."

In the present case, on the assumption that the doctrine of autrefois is available in disciplinary proceedings against an advocate and solicitor the respondent's plea of autrefois convict must fail. In the first disciplinary proceedings the complaint was that the respondent had delayed for 13 months in reporting to the Law Society the conduct of a legal assistant employed by him who had confessed to him that he had misappropriated clients' monies in the Clients' Account of the respondent's firm in circumstances amounting to grossly improper conduct in the discharge of his professional duty (see Section 84(2)(b) of the Legal Profession Act). In the present disciplinary proceedings the complaint is that the respondent has been convicted of criminal offences implying a defect of character which makes him unfit for his profession (see Section 84(1) and (2)(a) of the Legal Profession Act).

It is clear that one essential ingredient which is necessary to prove in the

present disciplinary proceedings is the respondent's conviction of one or more criminal offences. This ingredient is unnecessary to support a complaint in the first disciplinary proceedings and it follows that the respondent has not been put to peril of disciplinary punishment for the same complaint or "offence" as that which he is charged. The legal characteristics, to use Lord Devlin's expression, are not the same in the case of the first disciplinary proceedings as in the present one and, to use Lord Morris' expression, the "offence" alleged in the first disciplinary proceedings is not substantially the same as in the present one.

(2) Issue Estoppel or Res judicata in its wider sense

The principle relied on is that it is an abuse of process to raise in subsequent proceedings matters which could and should have been raised in the earlier proceedings. In Yat Tung Investment Co. Ltd. v. Dao Hung Bank Ltd. and Another (1975) A.C. 581 Lord Kilbrandon who delivered the judgment of the Judicial Committee of the Privy Council at page 590 said of the doctrine of estoppel namely, res judicata:-

"But there is a wider sense in which the doctrine may be appealed to, so that it becomes an abuse of process to raise in subsequent proceedings matters which could and therefore should have been litigated in earlier proceedings. The locus classicus of that aspect of res judicata is the judgment of Wigram V.C. in Henderson v. Henderson (1843) 3 Hare 100, 115, where the judge says:-

> '... where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.'

The shutting out of a 'subject of litigation' - a power which no court should exercise but after a scrupulous examination of all the circumstances - is limited to cases where reasonable diligence would have caused a matter to be earlier raised moreover, although negligence, inadvertence or even accident will not suffice to excuse, nevertheless 'special circumstances' are reserved in case justice should be found to require the non-application of the rule."

In our opinion, on the facts before us, the plea of issue estoppel or res judicata in its wider sense, even if this plea is available in the present disciplinary proceedings, has not been successfully made out by the respondent. It is true that the first Inquiry Committee inquiring into the convictions charge, after hearing the respondent, did not report its finding, if any, to the Council. But it is to be observed that the respondent himself was keen and indeed anxious to delay the completion of the inquiry until all legal avenues open to him in respect of his criminal convictions had been exhausted. The respondent's appeal to the High Court was not disposed of until after that Inquiry Committee had become functus officio. When the new Inquiry Committee constituted under the amended Section 87 of the Act commenced its inquiry into the convictions charge, the respondent again indicated that he intended to challenge the decision of the High Court dismissing his appeal. By the time the new Inquiry Committee reported its finding to the Council, the Disciplinary Committee investigating into the delay charge had made its report. Thereafter, the respondent made no

application to the Law Society or to the High Court to adjourn the hearing of the show cause order in respect of the delay charge until the Disciplinary Comittee appointed by the Chief Justice to investigate into the convictions charge had completed its investigation and made its report.

(3) The Court's inherent jurisdiction to stay the present proceedings on the ground that they are oppressive and an abuse of its process

It is submitted that this court has a right in its discretion to decline to hear the present proceedings on the ground that they are oppressive and an abuse of the process of the Court and in support the House of Lords cases of Connelly v. Director of Public Prosecutions (Supra) and R. v. Humphreys (1977) A.C. 1 are relied on. In Humphrey's case, Lord Salmon said at page 45:

> "... I entirely agree with everything said by my noble and learned friends, Lord Devlin and Lord Pearce in Connelly v. Director of Public Prosecutions affirming that it is an important part of the court's duty to protect their process from abuse and those who are brought before them from oppression".

It is the respondent's submission that he has suffered oppression and real injustice because:

(a) the Law Society could and should have brought the convictions charge to be heard by the Disciplinary Committee investigating into the delay charge;

(b) the Law Society could and should have made sure that both show cause orders be heard together by the Court.

(c) as both charges are founded on substantially the same facts and should generally be tried together, prima facie, the failure to try them together amounts to oppression and injustice to the respondent;

(d) the convictions charge could have been heard in September 1980 and thus disposed of finally by the Court's judgment in August 1981, instead of which the respondent had the convictions charge outstanding till now, and if a separate penalty was imposed, it would have been imposed in August 1981; and

(e) the respondent has to incur additional costs in meeting these two proceedings when only one set of costs is necessary.

In our opinion, it is unnecessary in the present case to decide whether or not the Court in disciplinary proceedings under the Act has an inherent jurisdiction to stay the proceedings on the ground that they are oppressive and an abuse of its process. If there is such a power it is in our opinion a power that should be exercised only in the most exceptional cases and the circumstances of this case does not warrant the exercise of our discretion. On all the facts and circumstances we are not persuaded that a

case has been made out by the respondent that the present disciplinary proceedings amount to an abuse of the process of the court or to injustice and oppression to the respondent.

With regard to submission (a) it is clear on the facts that the convictions charge could not have been heard by the Disciplinary Committee investigating into the delay charge. That Disciplinary Committee had completed its investigation before the Inquiry Committee investigating into the convictions charge had heard the complainant.

With regard to submission (b), it was incumbent on the Law Society to proceed to make an application for a show cause order (see Sections 94(1) and 98(1)). In any event, it is plain on the facts, which show that the respondent was determined to exhaust all possible avenues in relation to these criminal convictions, that it would be against the interests of the public for the Law Society to withhold applying to the High Court for a show cause order on the delay charge until the Disciplinary Committee which had only recently been appointed had heard the convictions charge and had reported its findings.

With regard to submission (c) the delay charge and the convictions charge although both arise from substantially the same facts have different legal characteristics and the failure to hear together the two show cause orders, one made on 13th January 1981 and the other on 17th September 1982, does not, in our opinion, amount to oppression and injustice to the respondent.

With regard to submission (d) it is evident from the facts that the convictions charge could not have been heard in September 1980, and with regard to submission (e) the question of costs is a matter entirely in the discretion of the court.

The next main submission is that the respondent's convictions under Section 213 of the Penal Code could not be said to imply a defect of character, which makes him unfit for his profession within the meaning of Section 84(2)(a) of the Act. Section 213 of the Penal Code reads:-

> "Whoever accepts, or agrees to accept, or attempts to obtain any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence, or of his screening any person from legal

> punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both."

It is to be observed that it was the respondent who offered to conceal the criminal misappropriations from the Police if Santhiran made full restitution to his firm. In our judgment, on the facts and having regard to all the circumstances and the nature of the offence, the respondent's convictions clearly imply a defect of character which makes him unfit for his profession. The fact that in England the equivalent of our Section 213 of the Penal Code, has now been abolished by statute is not, in our opinion, a relevant consideration. Another argument advanced on behalf of the respondent is that, according to Choor Singh J. no dishonesty

on the part of the respondent was involved. In our opinion, dishonesty is not the only defect of character which makes an advocate and solicitor unfit for his profession. Whether or not an advocate and solicitor's conviction of a criminal offence implies a defect of character which makes him unfit for his profession depends on the facts and circumstances of that particular case and the nature of that criminal offence. For these reasons we reject this submission.

We come now to the question of sentence. It is submitted on behalf of the respondent that his misconduct is substantially the same as his misconduct on the delay charge for which he has been punished by two years' suspension from practice and it would not be right to inflict an additional punishment. In addition, it is urged on his behalf that, having regard to his impeccable record, the anxiety, the publicity and the humiliation of criminal proceedings and the anxiety, publicity, humiliation and punishment in respect of the delay charge proceedings, he has been adequately punished for his transgressions arising out of

Santhiran's criminal misappropriation and has paid his debt to society and the profession.

In our judgment, it would not be in the public interest or in the interest of the profession, on all the facts and the circumstances of the present case that no penalty is imposed. However, taking into consideration all the factors advanced on the respondent's behalf, we order that the respondent be suspended from practice for a period of two years and that he pays the costs of the present proceedings.

Sd. WEE CHONG JIN
CHIEF JUSTICE

Sgd: [illegible]
JUDGE

(Sgd: [illegible])
JUDGE

Singapore,
31st January 1984.

Certified true copy

Private Secretary to
the Hon. the Chief Justice
Supreme Court,
Singapore, 6.

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Originating Summons
No. 456 of 1982

In the matter of the Legal Profession Act (Chapter 217)

And

In the matter of an Advocate and Solicitor

ORDER OF COURT

BEFORE THE HONOURABLE THE CHIEF JUSTICE
MR JUSTICE WEE CHONG JIN
MR JUSTICE T.S.SINNATHURAY and
MR JUSTICE F.A. CHUA

IN OPEN COURT

UPON the application of the Law Society of Singapore by Originating Summons dated the 10th August 1982, coming on for hearing on the 21st and 22nd February 1983 AND UPON READING the Order herein dated the 17th September 1982 AND UPON HEARING Counsel for the Law Society of Singapore and for Harry Lee Wee it was ordered that the said application should stand for Judgment and the said application standing for Judgment this day in the presence of Counsel for the parties IT IS ORDERED that:-

1. The said Harry Lee Wee be suspended from practice as an Advocate and Solicitor of the Supreme Court for a period of two(2) years from the date hereof.

2. The costs of the Applicants be taxed and paid by the said Harry Lee Wee.

Dated the 31st day of January 1984

.....
ASST. REGISTRAR

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

Originating Motion)
)
No. 18 of 1984)

In the Matter of the Judicial Committee Act (Cap 8 of 1970 Edn)

In the Matter of Originating Summons No. 456 of 1982

In the Matter of the Legal Profession Act (Cap 217, 1970 Edn)

And

In the Matter of an Advocate & Solicitor

ORDER OF COURT

BEFORE THE HONOURABLE
MR JUSTICE T. KULASEKARAM
MR JUSTICE T.S. SINNATHURAY and
MR JUSTICE A.P.P. PILLAI

IN OPEN COURT

UPON Motion preferred unto the court this day by Mr Wu Chang-Cheng Counsel for Harry Lee Kee, the Applicant herein AND UPON READING the affidavit of the said Applicant filed herein on the 11th day of February 1984 AND UPON HEARING Counsel for the Applicant as aforesaid and Mr Raja Singham Counsel for the Law Society of Singapore the Respondent herein IT IS ORDERED:-

1. That the said Applicant do have leave to appeal to the Judicial Committee of Her Britannic Majesty's Privy Council against the whole of the Judgment of the High Court made under section 98(6) of the Legal Profession Act (Cap.217, 1970 Edition)

2/..

delivered herein At Singapore on the 31st January 1984; and

2. That the Applicant's application for stay of execution is refused.

Dated this 12th day of March 1984

.....
ASST. REGISTRAR

6

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL No 14 of 1984

ON APPEAL

FROM THE HIGH COURT IN THE REPUBLIC OF SINGAPORE

BETWEEN :-

H. L. WEE — Appellant

— and —

THE LAW SOCIETY OF SINGAPORE — Respondents

In the matter of Originating Summons No. 456 of 1982

In the matter of the Legal Profession Act (Cap 217, 1970 Edn)

— and —

In the matter of an Advocate and Solicitor

Part II

18. Every District Judge is a Magistrate by this Code provided to exercise jurisdiction to hear a case and commit a fugitive to prison to await his return under the Extradition Act.

District Judge to hear cases under Extradition Act. Cap. 76.

Am. 14 of 1969.

GENERAL PROVISIONS

CHAPTER III — AID AND INFORMATION TO MAGISTRATES AND POLICE AND PERSONS MAKING ARRESTS

19. Every person is bound to assist a Magistrate, Justice of the Peace or police officer reasonably demanding his aid —

Public, when to assist Magistrates, Justices of the Peace and police.

(*a*) in the taking of any other person whom such Magistrate, Justice of the Peace or police officer is authorized to arrest;

(*b*) in the prevention of a breach of the peace or of any injury attempted to be committed to any railway, airport, dock, wharf, canal, telegraph or public property; or

(*c*) in the suppression of a riot or an affray.

20. When a warrant is directed to a person other than a police officer any other person may aid in the execution of such warrant if the person to whom the warrant is directed is near at hand and acting in the execution of his warrant.

Aid to person other than police officer executing warrant.

21.—(1) Every person aware —

Public to give information of certain matters.

(*a*) of the commission of or the intention of any other person to commit any seizable offence punishable under Chapters VI, VII, VIII (except section 160), XII and XVI of the Penal Code or under any of the following sections of the Penal Code:— Cap. 103.

161, 162, 163, 164, 170, 171, 211, 212, 216, 216A, 226, 270, 281, 285, 286, 382, 384, 385, 386, 387, 388, 389, 392, 393, 394, 395, 396, 397, 399, 400, 401, 402, 430A, 435, 436, 437, 438, 440, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 489A, 489B, 489C, 489D and 506; or

(*b*) of any sudden or unnatural death or death by violence or of any death under suspicious

circumstances or of the body of any person being found dead without its being known how such person came by death,

shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the officer in charge of the nearest police station or to a police officer or the nearest penghulu of such commission or intention or of such sudden, unnatural or violent death or death under suspicious circumstances or of the finding of such dead body, as the case may be.

(2) If any person discovers any dead body and he has reason to believe that the deceased met with his death through an unlawful act or omission he shall not remove or in any manner alter the position of the body except so far as is necessary for its safety.

Police officer bound to report certain matters.

22. Every police officer and every penghulu shall forthwith communicate to the nearest inspector of police any information which he may have or obtain respecting —

(*a*) the occurrence of any sudden or unnatural death or of any death under suspicious circumstances; or

(*b*) the finding of the dead body of any person without its being known how such person came by death.

CHAPTER IV — ARREST, ESCAPE AND RETAKING

Arrest Generally

Arrest how made.

23.—(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested unless there is a submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him or attempts to evade the arrest, such officer or other person may use all means necessary to effect the arrest.

Search of place entered by person sought to be arrested.

24.—(1) If any person acting under a warrant of arrest or any police officer having authority to arrest has reason to believe that any person to be arrested has entered into or is within any place, the person residing in or in charge of the place shall, on demand of the person so acting or the police officer, allow him free ingress to the place and afford all reasonable facilities for search in it.

Illustration

A, knowing that *B* has murdered *Z*, assists *B* to hide the body with the intention of screening *B* from punishment. *A* is liable to imprisonment for seven years, and also to fine.

Intentional omission to give information of an offence, by person bound to inform.

202. Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

Giving false information respecting an offence committed.

203. Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Explanation.—In sections 201 and 202 and in this section the word "offence" includes any act committed at any place out of Singapore which if committed in Singapore would be punishable under any of the following sections, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.

Destruction of document to prevent its production as evidence.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence before a court of justice, or in any proceeding lawfully held before a public servant as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such court or public servant as aforesaid, or after he has been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

False personation for the purpose of any act or proceeding in a suit.

205. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Fraudulent removal or concealment of property to prevent its seizure as a forfeiture or in execution of a decree.

206. Whoever fraudulently removes, conceals, transfers, or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a court of justice

Illustration

A, knowing that *B* has committed gang-robbery, knowingly conceals *B* in order to screen him from legal punishment. Here, as *B* is liable to imprisonment for life, *A* is liable to imprisonment for a term not exceeding three years, and is also liable to fine.

Taking gifts, etc., to screen an offender from punishment. If a capital offence.

213. Whoever accepts, or agrees to accept, or attempts to obtain any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

If punishable with imprisonment.

Offering gift or restoration of property in consideration of screening offender. If a capital offence.

214. Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

If punishable with imprisonment.

Exception.—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.

Illustration

Z dies in possession of furniture and money. His servant *A*, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. *A* has committed the offence defined in this section.

Criminal Breach of Trust

Criminal breach of trust.

405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Illustrations

(*a*) *A* being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. *A* has committed criminal breach of trust.

(*b*) *A* is a warehouse-keeper. *Z*, going on a journey, entrusts his furniture to *A*, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. *A* dishonestly sells the goods. *A* has committed breach of trust.

(*c*) *A*, residing in Singapore, is agent for *Z*, residing in Penang. There is an express or implied contract between *A* and *Z* that all sums remitted by *Z* to *A* shall be invested by *A* according to *Z's* direction. *Z* remits five thousand dollars to *A*, with directions to *A* to invest the same in Government securities. *A* dishonestly disobeys the direction, and employs the money in his own business. *A* has committed criminal breach of trust.

(*d*) But if *A*, in the last illustration, not dishonestly, but in good faith, believing that it will be more for *Z's* advantage to hold shares in the Oriental Bank, disobeys *Z's* directions, and buys shares in the Oriental Bank for *Z*, instead of buying Government securities, here, though *Z* should suffer loss and should be entitled to bring a civil action against *A* on account of that loss, yet *A*, not having acted dishonestly has not committed criminal breach of trust.

(*e*) *A*, a collector of Government money, or a clerk in a Government office, is entrusted with public money, and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. *A* dishonestly appropriates the money. *A* has committed criminal breach of trust.

(*f*) *A*, a carrier, is entrusted by *Z* with property to be carried by land or by water. *A* dishonestly misappropriates the property. *A* has committed criminal breach of trust.

Any other person. This includes the wife of the offender; cf. *R. v. Holley*, [1963] 1 All E.R. 106. See, however, as to defence that the offence was committed in the presence and under the coercion of, the husband, the Criminal Justice Act 1925, s. 47, Vol. 21, title Magistrates.

Knowing. There is authority for saying that, where a person deliberately refrains from making inquiries the results of which he might not care to have, this constitutes in law actual knowledge of the facts in question; see *Knox v. Boyd*, 1941 S.C. (J.) 82, at p. 86, and *Taylor's Central Garages (Exeter), Ltd. v. Roper* (1951), 115 J.P. 445, at pp. 449, 450, *per* Devlin, J.; and see also, in particular, *Mallon v. Allon*, [1964] 1 Q.B. 385; [1963] 3 All E.R. 843, at p. 394 and p. 847, respectively. However, mere neglect to ascertain what would have been found out by making reasonable enquiries is not tantamount to knowledge; *see Taylor's Central Garages (Exeter), Ltd. v. Roper, ubi supra, per* Devlin, J.; and cf. *London Computator, Ltd. v. Seymour*, [1944] 2 All E.R. 11; but see also *Mallon v. Allon, ubi supra*, and *Walluorth v. Balmer*, [1965] 3 All E.R. 721.

Believing. Note that the belief need not be reasonable.

Lawful authority. "Lawful authority" is a narrower term than "lawful excuse"; cf. *Wong Pooh Yin v. Public Prosecutor*, [1955] A.C. 93; [1954] 3 All E.R. 31, P.C. Moreover, the fact that a person acts in good faith does not constitute "lawful authority"; cf. *Winkle v. Wiltshire*, [1951] 1 K.B. 684; [1951] 1 All E.R. 479.

Reasonable excuse. There may be a reasonable excuse for an activity although an offence is committed in the course of it; see *R. v. Jura*, [1954] 1 Q.B. 503; [1954] 1 All E.R. 696.

With intent. See as to the proof of intent, the Criminal Justice Act 1967, s. 8, p. 585, *post*.

Sub-s. (3): Indictment. The offence is triable by quarter sessions; see s. 8 (2), *post*.

Sub-s. (4): Director of Public Prosecutions. Provision for the appointment of the Director of Public Prosecutions and of assistant directors is made by the Prosecution of Offences Act 1908, s. 1, p. 238, *ante*. By sub-s. (5) thereof, an assistant director may do any act or thing which the Director is required or authorised to do. See also as to the duties of the Director, the Prosecution of Offences Act 1879, p. 217, *ante*, in conjunction with s. 2 (1) of the Act of 1908, p. 238, *ante*, and as to evidence of his consent, the Criminal Justice Act 1925, s. 34, Vol. 21, title Magistrates.

Magistrates' Courts Act 1952, Sch. 1. See Vol. 21, title Magistrates. See also s. 5 (4), *post*.

Extradition Acts 1870 to 1935. For the Acts which may be cited by this collective title, see the Introductory Note to the Extradition Act 1870, Vol. 13, title Extradition.

Extradition Act 1870, Sch. 1. See Vol. 13, title Extradition.

---

5. Penalties for concealing offences or giving false information

(1) Where a person has committed an arrestable offence, any other person who, knowing or believing that the offence or some other arrestable offence has been committed, and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury caused by the offence, or the making of reasonable compensation for that loss or injury, shall be liable on conviction on indictment to imprisonment for not more than two years.

(2) Where a person causes any wasteful employment of the police by knowingly making to any person a false report tending to show that an offence has been committed, or to give rise to apprehension for the safety of any persons or property, or tending to show that he has information material to any police inquiry, he shall be liable on summary conviction to imprisonment for not more than six months or to a fine of not more than two hundred pounds or to both.

(3) No proceedings shall be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions.

(4) Offences under subsection (1) above, and incitement to commit them, shall be included in Schedule 1 to the Magistrates' Courts Act 1952 (indictable offences triable summarily with the consent of the accused) where that Schedule

includes, or is under any enactment to be treated as including, the arrestable offence to which they relate.

(5) The compounding of an offence other than treason shall not be an offence otherwise than under this section.

NOTES

General Note. This section deals with questions discussed in the Seventh Report of the Criminal Law Revision Committee (Cmnd. 2659) (see paras. 37 *et seq.* thereof) and is, with some modifications, identical with cl. 5 of the draft Bill annexed to that Report.

The section enacts new provisions as to compounding offences, which also supersede the law relating to misprision of felony, and creates a specific offence of causing wasteful employment of the police by knowingly making a false report.

Arrestable offence. For meaning, see s. 2 (1), *ante*.

Knowing; believing. See the notes to s. 4, *ante*.

Material assistance. Information may, it is thought, be of material assistance within the meaning of sub-s. (1) on the mere ground that it corroborates other information; cf. *R.* v. *Tyson* (1867), L.R. 1 C.C.R. 107.

Accepts or agrees to accept. The effect of these words may well be to cut down the meaning of "consideration", as to which, see the note "Consideration" below.

Consideration. This would seem to mean the same as valuable consideration, which, according to the well-known definition given in *Currie* v. *Misa* (1875), L.R. 10 Exch. 153, at p. 162, "in the sense of the law, may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered or undertaken by the other"; see also *Carlill* v. *Carbolic Smoke Ball Co., Ltd.*, [1893] 1 Q.B. 256; [1891–4] All E.R. Rep. 127, C.A.; *Dunlop Pneumatic Tyre Co., Ltd.* v. *Selfridge & Co., Ltd.*, [1915] A.C. 847; [1914–15] All E.R. Rep. 333; and *Chappell & Co., Ltd.* v. *Nestlé Co., Ltd.*, [1960] A.C. 87; [1959] 2 All E.R. 701; and see the note "Accepts or agrees to accept" above.

Indictment. The offence is triable by quarter sessions; see s. 8 (2), *post*.

Where a person causes, etc. There is authority for saying that the making of a false report to the police that a crime had been committed is indictable as effecting a public mischief; see *R.* v. *Manley*, [1933] 1 K.B. 529. But this decision was criticised in *R.* v. *Newland*, [1954] 1 Q.B. 158; [1953] 2 All E.R. 1067, at p. 168 and p. 1073, respectively, where it was said that "the right approach to . . . public mischief cases is to regard them as part of the law of conspiracy" and that it would be a useful reform if such conduct as in *R.* v. *Manley* above, were made a summary offence. See also *Joshua* v. *R.*, [1955] A.C. 121; [1955] 1 All E.R. 22, P.C., at pp. 129 and 25, respectively.

Knowingly. See the note "Knowing" to s. 4, *ante*.

Summary conviction. Summary jurisdiction and procedure are now mainly governed by the Magistrates' Courts Acts 1952 and 1957, Vol. 21, title Magistrates, and by certain provisions the Criminal Justice Act 1967, Vol. 21, title Magistrates.

Six months. As the maximum term of imprisonment exceeds three months, trial by jury may be claimed under the Magistrates' Courts Act 1952, s. 25, Vol. 21, title Magistrates. Where this right is exercised, however, no greater punishment may be inflicted than on summary conviction; see *R.* v. *Bishop*, [1959] 2 All E.R. 787, and *R.* v. *Furlong*, [1962] 2 Q.B. 161; [1962] 1 All E.R. 656; and contrast *R.* v. *Gibbs*, [1965] 2 Q.B. 281; [1964] 3 All E.R. 776, and *R.* v. *Roe*, [1967] 1 All E.R. 492, C.A.

Director of Public Prosecutions. See the note to s. 4, *ante*.

The compounding, etc. Consequent on sub-s. (5) above, the Metropolitan Police Courts Act 1839, s. 33, and the Pawnbrokers Act 1872, s. 48, are repealed by s. 10 (2) and Sch. 3, Part III, *post*. See also as to compounding offences, 10 Halsbury's Laws (3rd Edn.) 632.

Magistrates' Courts Act 1952, Sch. 1. See Vol. 21, title Magistrates. See also s. 4 (5), *ante*.

6. Trial of offences

(1) Where a person is arraigned on an indictment—

(*a*) he shall in all cases be entitled to make a plea of not guilty in addition to any demurrer or special plea;

(*b*) he may plead not guilty of the offence specifically charged in the indictment but guilty of another offence of which he might be found guilty on that indictment;

Exhibit No. AB 8.

COPY

160

AMENDED 1ST CHARGE

DAC 1819/78

You, Harry Lee Wee,

m/54 years, NRIC No 0290760-G

are charged that you on or about the 4th day of March, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $39,181.31¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103.

sgd:
(ROGER LIM CHER KWAN) ASP
COMMERCIAL CRIME DIVISION
CRIMINAL INVESTIGATION DEPT
SINGAPORE.

SINGAPORE

CERTIFIED TRUE COPY

District Judge/Magistrate

/ct

12 DEC 1978

Exhibit No. AE 9
DAC 1820/78

C
O
P
Y

AMENDED 2ND CHARGE

You, Harry Lee Wee, M/54 years
NRIC No 0290760-G

are charged that you on or about the 9th day of March, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $79,751.08¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103.

sgd :
(ROGER LIM CHER KHAN) ASP
COMMERCIAL CRIME DIVISION
CRIMINAL INVESTIGATION DEPT
SINGAPORE

/ct

CERTIFIED TRUE COPY

District Judge/~~Magistrate~~

Exhibit No. AB.
DAC 1820A/78

162

COPY

3rd CHARGE

You, Harry Lee Wee, M/54 years
NRIC No 0290760-G

are charged that you on or about the 10th day of March, 1976, at Meyer Chambers, Raffles Place, Singapore did accept restitution of property of the sum of $20,877.68¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103.

sgd: ROGER LIM CHER KWAN ASP

COMMERCIAL CRIME DIVISION
CRIMINAL INVESTIGATION DEPT
SINGAPORE.

/ot

SINGAPORE

CERTIFIED TRUE COPY

District Judge/~~Magistrate~~

12 DEC 1978

COPY

Exhibit No. AB. 11

DAC 1820B/78

4TH CHARGE

You, Harry Lee, M/54 years

NRIC No 0290760-G

are charged that you on or about the 11th day of March, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $87,146.05¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103.

sgd:
ROGER LIM CHER KHAN, ASP
COMMERCIAL CRIME DIVISION
CRIMINAL INVESTIGATION DEPT
SINGAPORE

/ct

SUBORDINATE COURTS SINGAPORE

CERTIFIED TRUE COPY

District Judge/Magistrate

COPY

Exhibit No. AB.12

DAC 18203/78

5TH CHARGE

You, Harry Lee Wee,

M/54 years

NRIC No 0290760-G

are charged that you on or about the 12th day of March, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $41,000.00 to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103.

sgd
ROGER LIM CHEE KWAN, ASP
COMMERCIAL CRIME DIVISION
CRIMINAL INVESTIGATION DEPT
SINGAPORE

/ct

SINGAPORE

CERTIFIED TRUE COPY

District Judge/~~Magistrate~~

12 SEP 1978

Exhibit No. AB 13

C
O
P
Y

DAC 1820D/78

6TH CHARGE

You, Harry Lee Lee,

M/54 years

NRIC No 0290760-G

are charged that you on about the 10th day of May, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $8,000.00 to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103.

sgd:
ROC[illegible] LIM CHIN KIAT, ASP
COMM[illegible] CRIME DIVISION
CRIMINAL INVESTIGATION DEPT
SINGAPORE

/ct

CERTIFIED TRUE COPY

District Judge/Magistrate

12 DEC 1978

C C I I

Exhibit No. AB 14

DAC 1820E/78

7TH CHARGE

You, Harry Lee Kee,

M/54 years

NRIC No 0290760-C

are charged that you on or about the 14th day of May, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $1,000.00 to the firm of Braddell Brothers from one Sivagnanam Santhiran in concideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103.

Sgd:
ROGER LIM CHEE KWAN, ASP
COMMERCIAL CRIME DIVISION
CRIMINAL INVESTIGATION DEPT
SINGAPORE

/ci

SINGAPORE

CERTIFIED TRUE COPY

District Judge/Magistrate

12 DEC 1978

 Exhibit No. AB 15

C
O
P
Y

DAC 1820F/78

8TH CHARGE

You, Harry Lee Wee,

M/54 years

NRIC No 0290760-G

are charged that you on about the 10th day of June, 1976, at Meyer Chambers, Raffles Place, Singapore, did accept restitution of property of the sum of $21,000.00 to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103.

sgd
ROGER LIM CHER KIAN, ASP
COMMERCIAL CRIME DIVISION
CRIMINAL INVESTIGATION DEPT
SINGAPORE

SINGAPORE

CERTIFIED TRUE COPY

District Judge/Magistrate

/ct

168

Exhibit No. AB. 1

COPY

DAC 18206/78

9TH CHARGE

You, Harry Lee Wee,

M/54 years

NRIC No 0290760-G

are charged that you between the month of March and May 1977, in Singapore, did attempt to obtain restitution of property of the sum of $26,290.12¢ to the firm of Braddell Brothers from one Sivagnanam Santhiran in consideration of your concealing the offence of Criminal Breach of Trust of money in the client's account of the said firm of Braddell Brothers committed by the said Sivagnanam Santhiran and you have thereby committed an offence punishable under Section 213 of the Penal Code, Chapter 103.

sgd:
ROGER LIM CHER KWAN, ASP
COMMERCIAL CRIME DIVISION
CRIMINAL INVESTIGATION DEPT
SINGAPORE.

/ct

SINGAPORE

CERTIFIED TRUE COPY

District Judge/Magistrate

 Exhibit No. AB 17

URGENT

30th April, 1977.

PRIVATE & CONFIDENTIAL

The Law Society of Singapore
Supreme Court Building
Singapore-6

Attn: Mrs. Quek Bee See

Dear Sirs,

I have to inform you that certain defalcations and misappropriation of moneys from various clients' accounts and costs in my firm appears to have been carried out by S. Santhi a former employee of this firm. Investigations were initially carried out by members of my firm and subsequently undertaken by independent auditors, M/s. Medora Tong & Co. who have produced a report.

They and our usual auditors M/s. Turquand Youngs & Co. have just completed the report under the Solicitors' Accoun Rules. I enclose a copy of their joint report which is a qualified report.

I will shortly be presenting the complaint against S. Santhiran for action to be taken but currently he has since the said report made certain representations or supplied information to M/s. Medora Tong & Co. which will have to be in the form of a supplementary report to M/s. Medora Tong & Co.'s report and which will have to be read with the joint report.

Yours faithfully,

Sd H. L. Wee

enc:

H.L. Wee

Exhibit No. AB 18.

26th May, 1977.

Our ref: W/CLE

The Officer in Charge
Commercial Crime Department
C.I.D.
Robinson Road
Singapore

Dear Sir,

re: S. Santhiran

I have to inform you that on investigation by my Staff and by special auditors appointed for the purpose Santhiran the abovenamed a former legal assistant of Braddell Brothers has unlawfully transferred and dealt with various moneys from various accounts held by or belonging to this firm.

I would appreciate if you will inquire into this matter and cause an investigation to be made.

Yours faithfully,

H.L. Wee

INQUIRY COMMITTEE Exhibit No. AB-19 171

THE LAW SOCIETY OF SINGAPORE

~~SUPREME COURT BUILDING~~, 6th Floor, Colombo Court
SINGAPORE, 6.

X
19

TELEPHONE 88166
OUR REF: IC/17/78
YOUR REF:

13th December, 1978.

H.L. Wee Esq.,
Messrs. Braddell Brothers,
34/41 OUB Chambers,
Raffles Place,
Singapore 1.

Dear Sir,

The Inquiry Committee has decided on its own motion to inquire into your conduct arising out of your conviction on the 7th November, 1978, in the District Court, Singapore, on 9 charges under Section 213 of the Penal Code.

Pursuant to the provisions of Section 87(5) of the Legal Profession Act (Chapter 217), I forward herewith a copy of the charges and Certificate of conviction.

The Inquiry Committee is of the view that the convictions imply a defect of character making you unfit for the profession under Section 84(2)(a) of the Legal Profession Act.

The Inquiry Committee has directed me to invite you within 14 days to give to the Inquiry Committee, in writing, 7 copies of any explanation you may wish to offer and to advise the Inquiry Committee if you wish to be heard by the Committee.

Yours faithfully,

(Miss Phyllis P.L. Tan)
Chairman
Inquiry Committee

/jen

Exhibit No. AB 20

Your Ref: IC/17/78

Harry Lee Wee
c/o Braddell Brothers
OUB Chambers
Singapore 1

12th April 1979

The Chairman
Inquiry Committee
Law Society of Singapore
Singapore

Dear Sir

With reference to your letter of 30th March 1979 I wish to give the following explanation:

1. I do not accept the convictions on any of the nine charges entered by the District Court on 7th November 1978, and I am presently appealing against all the convictions as well as sentence.

2. I respectfully suggest that the convictions are not of a nature that would imply a defect of character making me unfit for the profession under Section 84(2)(a) of the Legal Profession Act, and in this respect, I invite your particular attention to the fact that -

   a) the learned District Judge when delivering sentence declared that the offences did not involve any innate dishonesty on my part;

   b) the convictions are in respect of offences on which I would not have been convicted in England, as no such offences exist in that country and

   c) under section 21 of the Criminal Procedure Code a person is not obliged to make a police report on a criminal breach of trust case.

3. My actions had throughout been guided by my determination to ascertain the true position of the clients moneys that had been misappropriated by Mr Santhiran. I was convinced (rightly or wrongly) that if reports to the proper authorities had preceded an investigation into the matter within the office, this would almost certainly have jeopardised my ability to ascertain the true position of the accounts, which I considered to be an essential duty I owed. At that time, it was my views (rightly or wrongly) that in the situation that prevailed, my first duty lay in protecting the firm's clients' interest. In this connection I have set out the above in detail in my Explanation contained in an Inquiry before your Committee in I C No. 17/78 to which I ask your Committee to be good enough to refer. If my considerations have been misguided, then I would respectfully suggest that my errors had been errors of judgment, but did not imply a defect of character making me unfit for the profession.

Exhibit No.AB 21

Since the subject under inquiry concerns the convictions per se, and as the convictions are presently under appeal, I would invite your Committee to consider postponing the Inquiry until after the disposal of the appeal. I am making this suggestion with a view to facilitating the adjudication of these professional matters, which will be greatly simplified after disposal of the appeal, at which time, your Committee will certainly find it easier and less embarrassing to deal with the matter.

As I am represented by leading Counsel in London in the pending appeal, it is entirely possible that when the District Judge's Grounds of Decision are delivered, I may be advised to enlarge on the explanation given in this letter.

In that event, I would appreciate having an opportunity to supplement my explanation with any additional points that I may be under advice to raise.

May I, with some reluctance, submit that your request is not in accordance with the Legal Profession Act. Subject to that, I would appreciate being given the opportunity to be heard by your Committee on this explanation.

Yours faithfully

H L Wee

Exhibit No. AB2

TELEPHONE 333165
POSTAL ADDRESS
COLOMBO COURT P.O. BOX 341

The Law Society of Singapore

518, 5th Floor, Colombo Court, Singapore 6.

OUR REF. IC/10/80
YOUR REF.

19th March, 1980

The Chairman,
Inquiry Committee,
c/o Messrs. Tan, Rajah & Cheah,
14th Floor,
Straits Trading Building,
Battery Road,
Singapore 0104.

Dear Sir,

Re: Mr. Harry Lee Wee

The abovenamed solicitor was convicted by a District Court of nine (9) charges under section 213 of the Penal Code and fines totalling $30,000-00 were imposed on him. On appeal Mr. Justice Choor Singh affirmed the conviction on eight (8) of the charges but reduced the fine to $12,000-00. Nine copies of the Judgment delivered by Mr. Justice Choor Singh are attached.

The Council of the Law Society is of the view that the conviction implies a defect of character making Mr. Wee unfit for the profession under section 84(2)(a) of the Legal Profession Act, and has directed me to lay a formal complaint against him and to refer the matter to your Committee for investigation under section 87 of the Act.

Yours faithfully,

Secretary,
The Law Society
of Singapore.

/arr.

c/o

---------- 518, 5th Floor,
Colombo Court,
Singapore 0617.
(Colombo Court P.O. Box 341)

------ 3383165
IC/10/80

To

Mr. Harry Lee Wee
Messrs. Braddell Brothers
OUB Chambers
Raffles Place
Singapore 0104

Dear Sir,

N O T I C E

Section 87(5) of the Legal Profession Act (Cap. 217)

Re: Complaint by the Secretary, The Law Society of Singapore

Pursuant to the provisions of Section 87(5) of the above Act, a copy of a letter dated 19th March 1980 from the Secretary, the Law Society of Singapore, to the Chairman, Inquiry Committee, together with the copy of the Judgment of Mr. Justice Choor Singh delivered on the 12th March 1980 in Magistrate's Appeal No. 161 of 1978 in your appeal against The Public Prosecutor mentioned therein is enclosed.

The complaint of the Secretary of the Law Society of Singapore is that your conviction in respect of the 8 charges under Section 213 of the Penal Code as confirmed by Mr. Justice Choor Singh on the 12th March 1980 implies a defect of character making you unfit for the profession under Section 84(2)(a) of the Legal Profession Act.

(Paragraphs omitted by consent)

Exhibit No. AB 24

(Paragraphs omitted by consent)

As we are satisfied that there are grounds for the complaint of the Secretary of the Law Society of Singapore and for our decision to inquire into the additional matters set forth above, you are invited to give the Inquiry Committee an explanation in writing (of which you are to supply eleven (11) copies) within fourteen (14) days from the receipt hereof and to advise the Inquiry Committee whether you wish to be heard by the Committee.

AND TAKE NOTICE THAT if you should fail to supply any written explanation within the required time or to give notice of your intention to be heard, the Committee may at its next meeting proceed to deal with the complaint of the Secretary of the Law Society of Singapore and the above matters raised by us. Your failure to give any written explanation or notice of request to be heard will be taken into account.

Dated this 27th day of September 1980.

Ag. Chairman
Inquiry Committee

ki

Exhibit No.AB 25

DONALDSON & BURKINSHAW

ADVOCATES AND SOLICITORS
NOTARIES PUBLIC
COMMISSIONERS FOR OATHS

6TH FLOOR
CLIFFORD CENTRE
RAFFLES PLACE
SINGAPORE 0104

TELEPHONE: 982121 (6 LINES)
CABLES: DENOTATION TELEX: DONBURK RS 21556

P.O. BOX 3667
SINGAPORE 9056

Your Code Our Reference CSW/RL/ W 26621A
Your Reference

27th October 1980

The Acting Chairman,
Inquiry Committee,
c/o The Law Society of Singapore,
Colombo Court,
Singapore.

Dear Sir,

re: Notice pursuant to Section 87 (5) of the Legal Profession Act - Complaint by the Secretary, The Law Society of Singapore

Further to our letter of 9th October 1980 addressed to your Secretary, we now write to provide on behalf of our client, Mr. Harry Lee Wee, his explanation to the three charges brought against him by the Secretary of the Law Society and by your Inquiry Committee, as set out in your Notice to our client of 27th September 1980.

Convictions under Section 213 of the Penal Code

1. On 13th December 1978, Miss Phyllis P.L. Tan, the then Chairman of your Committee, wrote to our client requesting his explanation in respect of these same convictions. Our client sent in his written explanation by letter dated 12th April 1979. We wish to adopt the explanations previously given. Copies of these letters are enclosed for your ease of reference and collectively marked "ANNEX A".

2. In addition to the learned District Judge's mention when delivering sentence that the offences did not involve any innate dishonesty on the part of our client, Mr. Justice Choor Singh also stated in his Judgment that he was "constrained to observe that the offence of accepting restitution of one's own property

contd..2.

4s

in consideration to conceal an offence should be abolished," and that "it is not dishonest for a person to try and recover his own property from one who has committed criminal breach of trust in respect thereof." We respectfully submit that these passages lend support to our client's contention that the convictions are not of a nature that would imply a defect of character making him unfit for the profession under Section 84 (2) (a) of the Legal Profession Act. In this connection, we invite your Committee's attention to the fact that prior to the criminal proceedings against our client, there had never been a case brought under Section 213 of the Penal Code in Singapore to our awareness. In view of the absence of any local case law on this Section, and the fact that no similar criminal offence exists in England, our client was unable to gauge the legal implications of his actions. Indeed, if he had sought competent legal advice on the matter, we venture to suggest that it is by no means certain that such advice would have accorded with the Court's eventual construction of Section 213.

3. We should mention that our client will shortly be filing a motion before the Court of Appeal for a review of and/or appeal from Mr. Justice Choor Singh's decision in Criminal Motion No. 9 of 1980, which bears on his Appeal Judgment. There is every likelihood that the review/appeal proceedings will eventually reach the Judicial Committee of the Privy Council.

(Paragraphs omitted by consent)

27th October 1980

Exhibit No. AF 27

4. When our client made the proposal in March 1977, it was with a view to determining when the firm's costs recovered from Mr. Santhiran should properly be declared as part of the firm's chargeable income for tax purposes. Our client was uncertain whether such costs should be declared as income for the years when they were actually earned, or for the year ending 31st December 1976, when the monies were recovered from Mr. Santhiran. In the event, the firm's costs recovered from Mr. Santhiran were not appropriated from the Suspense Account until final checks were made with clients concerned by standard letters sent out to them, followed with interviews where necessary.

5. A copy of the Joint Accountants' Report for the accounting year ending 31st December 1976 and dated 25th April 1977 is attached and marked "ANNEX B". Paragraph 3 of the confidential annexure to the Joint Report explains that the balance of $149,745 standing in the Suspense Account was claimed by the firm to be part of the costs earned. This in turn confirms that all sums in the Suspense Account traced to clients had already been transferred out to the respective clients' accounts.

Mr. Santhiran's Practising Certificate for the Year 1976 - 1977

1. The first sentence in the quoted passage of the Judgment is factually correct. We respectfully submit that the second sentence is based on an error of law. As regards the third sentence, our client denies any suggestion of deception on his part.

2. As to the second sentence, the only certificates the Council of the Law Society is empowered to issue are the certificates under Section 29 (1) (b) and (c) of the Act. Both certificates are merely formal certificates, the first to confirm payment of dues, and the second to confirm that the applicant has not during the preceding 12 months practised on his own account (see Forms D and E of The Solicitors Practising Certificate Rules 1970). The error of law in the second sentence is understandable, as we understand that Counsel did not address the learned Judge during the appeal on the relevant sections of the Act, as this aspect of the matter was not raised during the hearing.

3. As your Committee is doubtless aware, Disciplinary Proceedings against our client in respect of the "delay" charge were recently concluded. The Disciplinary Committee comprised Mr. C. C. Tan (Chairman), Mr. Eric Choa and

contd..4.

43

Exhibit No. AP 29
27th October 1980

in consideration to conceal an offence should be ; — abolished," and that "it is not dishonest for a person to try and recover his own property from one who has committed criminal breach of trust in respect thereof." We respectfully submit that these passages lend support to our client's contention that the convictions are not of a nature that would imply a defect of character making him unfit for the profession under Section 84 (2) (a) of the Legal Profession Act. In this connection, we invite your Committee's attention to the fact that prior to the criminal proceedings against our client, there had never been a case brought under Section 213 of the Penal Code in Singapore to our awareness. In view of the absence of any local case law on this Section, and the fact that no similar criminal offence exists in England, our client was unable to gauge the legal implications of his actions. Indeed, if he had sought competent legal advice on the matter, we venture to suggest that it is by no means certain that such advice would have accorded with the Court's eventual construction of Section 213.

3. We should mention that our client will shortly be filing a motion before the Court of Appeal for a review of and/or appeal from Mr. Justice Choor Singh's decision in Criminal Motion No. 9 of 1980, which bears on his Appeal Judgment. There is every likelihood that the review/appeal proceedings will eventually reach the Judicial Committee of the Privy Council.

(Paragraphs omitted by consent)

Our client wishes to appear before your Committee to be heard on this explanation.

Yours faithfully,

Exhibit No.AE 47

IN THE MATTER OF HARRY LEE WEE
AN ADVOCATE AND SOLICITOR

AND

IN THE MATTER OF THE LEGAL
PROFESSION ACT (CHAPTER 217)

* * * *

FINAL SUBMISSION
ON BEHALF OF THE LAW SOCIETY

1. Mr. Chairman, it may be convenient for you to begin by reminding yourselves, for the Nth time, of the charge - which is that the Respondent failed to report Santhiran's criminal breaches of trust earlier.

2. Your task is to determine whether, in failing to report earlier, the Respondent was guilty of grossly improper conduct. You have decided, in my respectful submission, correctly, that in determining this question you are entitled to consider, firstly, the natural and probable consequences of the delay in reporting; and secondly, the merits and truthfulness of the Respondent's explanations for the delay, and the Respondent's motives for allowing a delay of 13 months, which the Respondent admits, to take place.

3. It has been conceded on behalf of the Respondent that he should have reported Santhiran's misconduct earlier. It was suggested that a short letter would have done, although why a short letter and not as long a letter as may have been necessary to place the full facts, as then known, before the Law Society, you may find it difficult to understand. It has been submitted to you that whatever default, error of judgment or

impropriety the Respondent was guilty of, it did not amount to grossly improper conduct justifying disciplinary action.

4. Thus there has been an admission of some degree of default. Indeed, you may think the fact that the absence of a submission of no case to answer at the end of the Law Society's case, no evidence having been called, indicated an acceptance by the Respondent that some explanation was called for from him.

5. Now, what emerged from the Respondent's evidence, and how did he acquit himself? I submit the following emerged :

(i) that, putting it at its lowest, in late February 1976 the Respondent had reason to believe that Santhiran was guilty of criminal breach of trust of a relatively small amount of Clients' monies;

(ii) that, on the 8th March 1976 the Respondent had positive knowledge of defalcations exceeding $200,000.00;

(iii) that no report was made to the Law Society (or the police);

(iv) that by the 18th March 1976, Santhiran had made restitution of approximately $267,000.00;

(v) that no report was then made to the Law Society (or to the police);

(vi) that Santhiran was kept on at Braddell Brothers, without a salary, ostensibly to wind up, but that during the period March to December 1976, he in fact dealt with new matters, went to Court on behalf of Clients and was "supervised", a solicitor of by then some 8 years' standing, by junior assistants, pupils and clerks;

(vii) that between March and November 1976, Santhiran's defalcations were investigated by Miss Liza Chao, who gave as her occupation "office assistant", but who was, I submit, before the defalcation,

no more or less than the Respondent's private secretary, with one or two other administrative responsibilities, but with no accounting responsibilities or qualifications whatever;

(viii) that the Respondent did not tell his Firm's auditors of the defalcation when he discovered it, despite the fact that he knew, or certainly ought to have known, that on the basis of what would thus result in an unqualified report by them he, and therefore Santhiran, would be issued with practising certificates;

(ix) that by the end of June 1976, Santhiran had made restitution of about $297,000.00, and that in the minds of the Respondent and Liza Choo this represented virtually all the ~~Clients~~' money Santhiran had taken;

(x) that no report was made to the Law Society (or to the police);

(xi) that if the Respondent's concern at that stage was that although the money had been recovered, it remained necessary to identify the Clients' accounts from which it had been taken, clients' accounts relating to 50% of the money taken had been identified ~~for~~ by August/September 1976 (see Liza Choo in cross-examination);

(xii) that by a couple of months later the remaining clients' accounts had also been identified (see Liza Choo in cross-examination);

(xiii) that no report was then made to the Law Society (or the police);

(xiv) that in November 1976, by agreement between the Respondent and Santhiran, Medora & Tong were appointed to determine what payments had been made on Santhiran's instructions for which supporting documents did not exist;

(xv) that the firm's auditors were not told of Medora & Tong's appointment;

Exhibit No.AB 50

(xvi) that on the 21st December 1976, Santhiran, a married man with a family, who had received no remuneration for the previous nine months, removed his personal belongings from the offices of Braddell Brothers, and left the firm;

(xvii) that no report was then made to the Law Society (or the police);

(xviii) that on the 25th January 1977, while in London, the Respondent was told that Santhiran had gone into practice on his own account. The Respondent left it to the discretion of an assistant solicitor of some three years' standing, whether to report the matter or not, but at the same time sanctioned the release of certain files to Santhiran - see A2, p. 22;

(xix) that the young assistant, Miss Chan Lai Ming, did not then report to the Law Society (or the police), and that the Respondent on his return to Singapore on February 2, 1977, did not do so either;

(xx) that on the 10th March 1977 the firm's auditors raised with the Respondent the question of a suspense account which they had previously detected (see A4), and the Respondent then told his auditors for the first time of the defalcations which he had discovered just over a year previously;

(xxi) that no report was then made to the Law Society (or the police);

(xxii) that the firm's auditors placed the position on record by a letter dated 17th March 1977 (A.2, p. 177) to which the Respondent replied on the 30th March 1977 (A2, p. 179);

(xxiii) that the Respondent's first formal notification to the Law Society was given on the 30th April 1977 (A1, p.1);

(xxiv) that the Respondent lodged a detailed complaint to the Law Society concerning Santhiran on the 27th May 1977 (A1, pp 2-11).

6. I ask you, against this evidence, to consider the Respondent's root explanation for his delay. He said that to have reported Santhiran earlier would have resulted in a drying up of information from Santhiran, which was crucial to tracing the defalcations to specific clients' accounts, and the delay was the result of Santhiran's unco-operative attitude. The Respondent asks you to believe that he acted in clients' interests.

7. I suggest to you that this explanation was put paid to by the evidence of Liza Choo. See trans - p.127/128 ; see also p.114 She said that Santhiran could not be said to have been deliberately obstructive, that he was trying to help, and that his inability at times to do so was, in her view, the result of confusion and forgetfulness. There is no evidence, apart from surmise on the Respondent's part, that a prompt report would have resulted in a refusal on Santhiran's part to co-operate. The evidence is that he tried his best to co-operate both in terms of tracing clients' accounts, and in terms of restitution.

8. You may therefore think that the Respondent's excuse, and I use the word advisedly, simply does not wash. Even if there was anything in it, by ~~September/October~~ November 1976, clients' monies had been repaid in full and the sources of the defalcations traced. Still no report was made.

9. If you reject the Respondent's explanation, you are entitled by virtue of your answer to the second of the two preliminary issues, to investigate his real motive for the delay. The Law Society says that it was the result of the Respondent's anxiety to see himself repaid by Santhiran, irrespective of the Respondent's duties to the profession, to his clients and to the public at large. You are entitled to consider the evidence that goes to this motive, and if you consider that the motive is made out, the evidence of the extent to which the Respondent was prepared to go to achieve that motive.

Exhibit No. AB 52

EVIDENCE OF MOTIVE

10. Throughout Bundle A1 there recurs this theme - what Santhiran must do is to admit, and repay the amounts he has taken. Later this requirement is embelished - he must furnish a satisfactory guarantee for the repayment. The references are to be found at A1, as follows :

page 33 - first half of page;
page 47 - 5th paragraph;
page 49 - from 3 sentences above items (1) to (4) up to end of page;
pages 62/63 - bottom of p. 62 and first two paras. of p. 63.

Remember, Mr. Chairman, that these passages occur in the Respondent's explanations for his delay. Therefore, the insistence on restitution was occurring during the delay, and I submit was the reason for it. You have, too, this curious insistence that Santhiran should admit his guilt and apply to get himself struck off. The Respondent explains this by saying that this procedure would have resulted in Santhiran getting struck off sooner. I have difficulty in understanding why it would have been any quicker this way than if the Respondent had reported him, and then Santhiran had admitted his guilt. I am therefore bound to submit that the procedure stipulated for by the Respondent was so stipulated because the Respondent considered that, what would in those circumstances have been his failure to report, would have been less likely to surface. Clearly, the Respondent knew that he had failed in his duty by not reporting - so, when he finally does report on April 30th, 1977 (see A1, p.1), he is still talking (13 months after the event) about defalcations which "appear to have been carried out", and he omits to say when he discovered them.

11. Still on the subject of motive, although the Respondent explained his failure to inform Turquand Youngs of the defalcation when it was discovered by saying that he considered them negligent for failing

to detect it, nothing passed between the Respondent and Turquand Youngs after the Respondent's letter dated 30th March 1977 (see A2, p. 179). This was, I submit, a defensive letter. The Respondent never ever threatened these auditors with a claim for negligence, still less did he cause a writ to be issued. Clearly, the need for secrecy prevailed over all else.

12. Finally, on the subject of motive, I must make reference to the appointment of Medora & Tong - an appointment that was made after, to all intents and purposes, all clients' monies had been recovered and the accounts from which the monies had been taken, identified. The appointment was concealed from the Firm's auditors, but most curiously of all, made with Santhiran's consent. In fact, as a consequence of the agreement to appoint Medora and Tong, it was Santhiran who first sought Medora out. What a strange course to take, when only firm's monies remained unaccounted for, unless securing Santhiran's consent was intended to facilitate recovery from him when the amount still to be recovered had been ascertained by the auditors to whose appointment he had consented.

THE EXTENT TO WHICH THE RESPONDENT WAS PREPARED TO GO TO ACHIEVE HIS MOTIVE

13. Under this head, I repeat the items which I have referred to as emerging from the evidence of the Respondent and his witness - the concealment from the auditors; the acceptance that as a result of the concealment, Santhiran would obtain a practising certificate for 1976/1977; the delegation of the investigation for a period of 6 months to an unqualified person, who received no assistance from the Respondent; the appointment of independent auditors without reference to the firm's auditors; the exposure to the public of the risk arising from Santhiran setting up in practice on his own account, all this at a time when the Respondent was the incumbent President of the Law Society, when he met his colleagues

several times each month in the course of their business, and when he concealed from them what had transpired at the hands of Santhiran in his own firm.

14. That is the extent to which the Respondent was prepared to go to achieve what I submit was his motive, and I say that you are entitled to consider these factors in determining whether the admitted default amounted to grossly improper conduct.

15. As a result of your determination of the first of the preliminary issues, you are entitled to consider the natural and probable consequences of the delay in reporting. The one consequence, and the only one I ask you to consider, is the fact that Santhiran was able to continue holding himself out to his colleagues, his clients and the public at large as an Advocate and Solicitor of unblemished reputation and standing.

16. Now, it is suggested to you, that upon a proper interpretation of sections 29 and 30 of the Legal profession Act, read with the Solicitors' Practising Certificate Rules 1970, even if Santhiran had been reported promptly, he could not have been deprived of a practising certificate, since he will not have made the application as the proprietor or partner of his own firm. I agree that the Act, and the Rules could have dealt with the position with greater felicity and clarity, but I apprehend that if the Respondent had reported Santhiran's defalcations to his auditors, the following would have resulted.

17. Turquand Youngs would have declined to submit an unqualified report in March 1976 if they had been told of Santhiran's misappropriations. ~~As a result, the Respondent's own practising certificate would have been~~ withheld, as a direct consequence of which Santhiran, whose entitlement to a practising certificate derived from the Respondent's, would not have ~~been issued with a certificate.~~ they would have given a certificate like C

18. ~~That is the practical effect of the Act and the Rules.~~ Santhiran, as an employee, had no accounting responsibilities, and would thus have applied for a

Report was not necessary. In that application, he would have stated that he was employed for the twelve months preceding his application by Braddell Brothers.

19. The Registrar would then have considered whether the sole proprietor of Braddell Brothers had obtained an unqualified accountants' report, since as the Respondent himself put it, his assistants came under his umbrella. Turquand Youngs would have issued a qualified report, clients' monies having been misappropriated, and the Respondent would not have been granted a ~~practising certificate.~~ subject to s 29(1)(c). Thus Santhiran's application for a certificate that an accountants' report ~~was unnecessary would have failed,~~ being failed, and the Registrar would not have been obliged to issue Santhiran with a practising certificate under s. 29.

20. It has also been suggested to you that both the Law Society and the police moved so slowly after the report was eventually made, that even if Santhiran had been reported promptly, he would not have been effectively dealt with for a long time. I have two things to say to that submission : Firstly, it is no part of a solicitor's duty to consider, when circumstances occur which place upon him the duty to make a report, that the Law Society might or would take a long time to deal with it. That, even if true, takes nothing away from his duty, which he must perform at once. Nor is he entitled to assume that there will be a delay. Secondly, even if a prompt report would have resulted in delay you are, I suggest, entitled to assume that, whatever delay had occurred, it would nevertheless have resulted in a conclusion 13 months earlier than the conclusion in this case took to be reached.

21. As regards the law, there is little in contention between Mr. Ross-Munro and me. I accept that the onus of proof is on the Law Society to satisfy you beyond reasonable doubt that the Respondent was guilty of grossly improper conduct. We both agree that grossly improper conduct means conduct which is dishonourable to the solicitor as a man,

and dishonourable in the context of the profession. I have suggested that an alternative test could be whether the conduct was such that it would reasonably be regarded as disgraceful or dishonourable by lawyers of good repute and competency - see Rajasooria v. Disciplinary Committee (1955) MLJ 65, per Lord Cohen at pp. 69/71. I accept, too, that there is some authority for the proposition that an error of judgment, even a grave error of judgment, does not necessarily amount to grossly improper conduct justifying disciplinary action. For the reasons I have advanced, it is the case for the Law Society that the Respondent's conduct was not the result of an error of judgment, but the result of selfish motive, regardless of the interests of others; that it was therefore dishonourable to him as a man and as a member of the profession; alternatively, that the conduct was such as you would reasonably regard it as disgraceful and dishonourable.

22. The Court in Re An Advocate and Solicitor (1978) 2 MLJ 7, appears to have accepted as correct, the proposition that for a Disciplinary Committee to draw an inference from the evidence, such inference must be irresistible. If that is the law, then I respectfully submit that you would be fully entitled to draw the inference of selfish motive from the evidence. Once you reject the Respondent's explanation for the delay, you will ask yourselves : "What other possible explanation could there have been?" and you will draw the irresistible inference that there was none, other than that the Respondent wished to see himself repaid, and that there was little that he allowed to stand in the way of this objective, whatever the consequences.

23. You may well conclude that a case of grossly improper conduct is fully made out, and that this Committee should determine that a cause of sufficient gravity for disciplinary action exists.

J. GRUMBERG
Counsel for the Law Society

Exhibit No. AB 57

INQUIRY COMMITTEE
THE LAW SOCIETY OF SINGAPORE

~~SUPREME COURT BUILDING~~
SINGAPORE, 6.

518, 5th Floor, Colombo Court,
Singapore 0617.
(Colombo Court P.O. Box 341)

TELEPHONE ~~33165~~ 3383165

OUR REF: IC/10/80

YOUR REF: CSW/RL/ W 26621A

7th November 1980

Messrs. Donaldson & Burkinshaw,
6th Floor, Clifford Centre,
Raffles Place,
Singapore 0104.

Dear Sirs,

Re: Complaint by the Secretary,
The Law Society of Singapore,
against Mr. Harry Lee Wee

With reference to your letter of 27th October 1980, with enclosures, the Inquiry Committee has decided to hold a hearing of the complaint on Wednesday, 19th November 1980, at 4.30 p.m. at the Law Society's office, Suite 518, 5th Floor, Colombo Court, Singapore 0617.

AND TAKE NOTICE THAT your client is required to attend at the aforesaid hearing and that if he should fail to do so, the Committee will nevertheless proceed with the hearing and make its finding having regard only to the acceptable evidence before it.

Yours faithfully,

Acting Chairman,
Inquiry Committee

ki

Exhibit No. AB 58

DC/1/81, IC/10/80

2nd January, 1981

The Honourable
The Chief Justice,
Chief Justice's Chambers,
Supreme Court,
Singapore 0617.

Dear Chief Justice,

I have to inform your Lordship that a complaint has been made against Mr. Harry Lee Wee which has been investigated by the Inquiry Committee. On the report of the Inquiry Committee, the Council has determined that there should be a formal investigation by a Disciplinary Committee into Mr. Wee's conduct. Mr. Wee is practising on his own account under the firm name of Braddell Brothers. The charge against him is that his conviction in respect of 8 charges under section 213 of the Penal Code as confirmed by Mr. Justice Choor Singh on the 12th March, 1980, implies a defect of character which makes him unfit for his profession under Section 84(2)(a) of the Legal Profession Act.

Accordingly, I am applying to your Lordship under Section 90 of the Legal Profession Act for the appointment of a Disciplinary Committee to hear and investigate the matter.

Yours sincerely,

(T.P.B. MENON)

/a.rahim

 Exhibit No. AB 59

DC/1/81, IC/10/80

2nd January, 1981

Mr. Harry L. Wee,
Messrs. Braddell Brothers,
34/41 OUB Chambers,
Raffles Place,
Singapore 0104.

Dear Sir,

I am directed to inform you pursuant to the provisions of Section 88(1)(c) of the Legal Profession Act (Cap. 217) that the Council has determined that there should be a formal investigation by a Disciplinary Committee into the following complaint against you namely that your conviction in respect of 8 charges made under Section 213 of the Penal Code as confirmed by Mr. Justice Choor Singh on the 12th March 1980 implies a defect of character which makes you unfit for the profession under Section 84(2)(a) of the Legal Profession Act.

I have written to the Honourable The Chief Justice for the appointment of a Disciplinary Committee.

Yours faithfully,

Secretary,
The Law Society
of Singapore.

/a.rahim

Exhibit No.AB 60

CSW/RL/W 26621A

DC/1/79

15th January 1981

The President,
Law Society of Singapore,
Colombo Court,
Singapore.

Dear Sir,

re: 1st Disciplinary Proceedings
against Mr. H.L. Wee'

We act on behalf of Mr. H.L. Wee, and we request that you put before the Council of the Law Society the following request by our client.

Your Council has determined that a Disciplinary Committee be appointed to investigate into the complaint on the convictions in respect of the various charges brought against our client under Section 213 of the Penal Code. We have now received the Findings of an earlier Disciplinary Committee comprising Messrs. C. C. Tan, Eric Choa and John Poh requiring our client to show cause in respect of the charge of delay in reporting to the Law Society Mr. S. Santhiran's criminal breaches of trust, the subject of our client's convictions under Section 213 of the Penal Code. As your Council is aware, both matters arose from the same set of facts.

In the meantime, Mr. Wee is appealing to the Judicial Committee of the Privy Council against the recent decision of the Court of Criminal Appeal on various points of law arising out of the convictions under Section 213 of the Penal Code.

contd..2.

Exhibit No.AB 61

15th January 1981

If the Disciplinary Committee now being formed to investigate into the charge relating to the said convictions should return an adverse finding, our client will have to face yet another show cause hearing before the High Court. Such a hearing is unlikely to come on before the High Court before the second half of this year at the earliest.

We respectfully submit that it is not only unfair but also prejudicial to our client to have to contend with two separate show cause hearings on separate dates and in relation to matters that are directly connected , and arising out of one set of facts. If such a situation should arise in a criminal case, it is very likely that the Court will view the separate hearings as an abuse of process,, as they subject the accused to double jeopardy for obvious reasons. The delay in making the report was one of the basis on which the convictions was founded.

Our client requests that your Council give the matter their consideration, with a view to deferring the show cause hearing on the delay charge until the findings of the Disciplinary Committee investigating into the convictions charge are returned. In this way, if the findings should also result in a show cause hearing, then both hearings can be dealt with by the High Court at the same time. We invite your Council to consider obtaining the views of the Law Society in England on the matter if they should feel that such a course is appropriate.

Meanwhile, we would appreciate an early reply as to the Council's intentions, in order that the views and/or intentions of the Council may be disclosed to the High Court at the show cause proceedings on delay, in the event these proceedings are not deferred.

Yours faithfully,

c.c. Mr. J. Grimberg.

ADVOCATES AND SOLICITORS,
COMMISSIONERS FOR OATHS
& NOTARIES PUBLIC

J. GRIMBERG
A. C. FERGUSSON
S. C. LIM
S. SAURAJEN
H. ELIAS
G. P. SELVAM
THIO SU MIEN
R. RAJ SINGAM
MUMTAZ HAQ
TAN LOY JIN
TAN BEE LIAN
SUSAN JACOB
JUDITH PRAKASH

ASSOCIATED WITH
SHEARN DELAMORE & CO.
AND DREW & NAPIER,
KUALA LUMPUR

CABLE: JURES
TELEPHONE: 918733
(PRIVATE EXCHANGE)

196

Maxwell Road P. O. Box 32
Singapore 9003.
22nd Floor, Clifford Centre,
Raffles Place,
Singapore 0104.

Exhibit No. AB 62

YOUR REF: CSW/RL/W 26621A
OUR REF: JG/sl/1-81

21st January 1981

22 JAN 81 BH

CSW

Messrs Donaldson & Burkinshaw,
6th Floor, Clifford Centre,
Singapore.

Dear Sirs,

Re: 1st Disciplinary Proceedings against
H. L. Wee

I refer to your letter of the 15th January addressed to the President of the Law Society of Singapore and copied to my firm.

I am instructed to say that under the Legal Profession Act, the Council of the Law Society is obliged to proceed with an application requiring the solicitor concerned to show cause, on receipt of the findings of the Disciplinary Committee. The Council cannot see any reason in this case for deferring an application to court requiring your client to show cause until the Disciplinary Committee investigating the conviction has issued its report.

Yours faithfully,

J. Grimberg

IN THE MATTER OF HARRY LEE WEE

AN ADVOCATE AND SOLICITOR

AND

IN THE MATTER OF THE LEGAL PROFESSION ACT

SUBMISSION ON BEHALF OF THE RESPONDENT

Statement of Case

1. The Respondent admits paragraphs 1 and 2 of the Statement of Case.

2. Save that a fine of $3,500 (as opposed to $3,000) was imposed in respect of each charge, the Respondent admits paragraphs 3 and 4 of the Statement of Case.

3. The Respondent denies paragraphs 5 and 6 of the Statement of Case.

The Facts

4. In early March 1976, the Respondent discovered that his senior Legal Assistant, Sivanagnan Santhiran, whom he had hitherto trusted completely, had committed criminal breach of trust of money in the client's account of the Respondent's firm, Messrs. Braddell Brothers.

5. By 10th June 1976 or thereabouts, the Respondent had obtained from the said Santhiran a total restitution of $297,956.72. However, without the said Santhiran's continued assistance, the Respondent was unable to identify

the clients whose money the said Santhiran had stolen, or the amount reimbursible to each of their accounts.

6. On 30th April 1977, the Respondent first reported in writing the said Santhiran's defalcations to the Law Society, and on 26th May 1977, the Respondent made a report to the Police.

7. The Respondent had throughout maintained that he had at all times intended to report the said Santhiran's defalcations to the authorities once he had obtained from the said Santhiran the maximum information possible, in particular, the identities of the clients whose accounts had been affected.

8. The said Santhiran was arrested on 9th April 1978 and on 10th May 1978 he pleaded guilty to certain offences of criminal breach of trust, and asked for others to be taken into account.

9. On 23rd April 1979, the said Santhiran was struck off the rolls.

The Offences

Although the Respondent was charged with and convicted of eight offences under S. 213 of the Penal Code, the prosecution if they had so wished could have brought just one charge against him, namely, that of accepting restitution of $297,956.12 in consideration of concealing the said Santhiran's offences for 13 months.

10. It is common ground that the money the said Santhiran

had misappropriated belonged to the Respondent, as it had been taken from his firm's client's account. The Respondent had no idea at the time that his actions could amount to a criminal offence, namely, a breach of Section 213 of the Penal Code. As far as can be ascertained, no one had previously been prosecuted in Singapore for an offence under Section 213. There were no reported decisions on such prosecutions in either Singapore or Malaysia.

11. It has since been ascertained that in India there are conflicting authorities as to the necessary ingredients for the offence - see Her Chandra Mukherjee v Emperor AIR (1925) Calcutta 85 and contrast this with Biharilal Kalacharan v Emperor AIR 1949 Bombay 405.

12. Further, there is in Singapore a conflict of penal provisions in that on the one hand, Section 213 of the Penal Code prohibits the concealment of an offence in consideration of obtaining restitution of one's own property, but on the other hand, there is no duty, and it is not an offence, to fail to report a criminal breach of trust (Section 405 of the Penal Code) - see Section 21 of the Criminal Procedure Code and Section 202 of the Penal Code. Lastly, since 1967, the offences of which the Respondent had been convicted are no longer criminal offences in England - see Section 5 (5) of the Criminal Law Act 1967.

13. For these reasons, the Respondent did not realise that what he had done would amount to a criminal offence. It is further respectfully submitted that most practitioners in Singapore would not at that time have realised any differently.

14. On giving Judgment at the Respondent's trial, the learned District Judge said (at page 92 of his Judgment):-

> "These offences do not involve any innate dishonesty....."

15. In delivering Judgment on the Respondent's appeal against the convictions, Mr. Justice Choor Singh said:

> ".....I am constrained to observe that the offence of accepting restitution of one's own property in consideration of concealing an offence should be abolished. It seems to me that it is not dishonest for a person to try and recover his own property from one who has committed criminal breach of trust in respect of it."

Duplication of Disciplinary Proceedings

16. On 20th July 1978, the Respondent was served with notice by the Council of the Law Society that there was to be a formal investigation by the Disciplinary Committee into the following complaint against him: "Failure to report the criminal breach of trust committed by Mr. S. Santhiran when he was a Legal Assistant in the firm of Messrs. Braddell Brothers to the Law Society earlier."

17. The Disciplinary Committee comprising Messrs. C.C. Tan, Eric Choa and John Poh conducted their hearing on 23rd, 24th, 25th, 26th September 1980 and 1st October 1980. On 19th November 1980, they delivered their written report to show cause. In March 1981, the cause proceedings were heard before three Judges in the High Court. Judgment was reserved, and has still to be given.

18. The Respondent's criminal convictions and the first Disciplinary Proceedings both arose out of the same incident involving a common set of facts, namely, the Respondent's failure to report the said Santhiran's defalcations at an earlier stage, such failure being attributed to his determination to seek recovery from the said Santhiran of the monies defalcated.

19. As a result of this common set of facts arising from the same incident, the Respondent has had to face three different sets of proceedings, namely, the criminal prosecution, the first Disciplinary Proceedings, and now, the second Disciplinary Proceedings.

20. There was nothing to prevent the Council of the Law Society from referring the present charge to the first Disciplinary Committee for investigation in conjunction with the "delay" charge. The criminal convictions arose on 7th November 1978, and the hearing of the first Disciplinary Proceedings did not commence until 23rd September 1980. The Council cannot claim that the duplication of Disciplinary Proceedings was due to its

desire to await the outcome of the Respondent's appeals against the criminal convictions before bringing the "convictions" charge, since this charge was brought on 13th December 1978, and the hearing of the "convictions" charge before the second Inquiry Committee was held on 19th November 1980, and the Respondent was informed by letter dated 30th March 1981 of the appointment of the second Disciplinary Committee to investigate into the "convictions" charge, all of which occurred at a time when the Respondent's appeals against the criminal convictions were still in progress.

21. It is a fundamental principle of justice that no proceedings, whether criminal or civil, should be instituted in a manner that is oppressive or prejudicial to an accused or a Defendant. In a criminal case, the Court would stay a prosecution if it is satisfied that the charges are founded on the same facts as charges brought in an earlier prosecution, or form part of a series of offences of the same or similar character as the offences charged in-an earlier prosecution that has been tried, even though the nature of the actual charges brought on the different occasions may technically be different, unless there are just and compelling reasons for separate prosecutions on the different charges. This is because a failure to join such charges under one prosecution is oppressive and prejudicial to the accused.

22. Similarly, in civil proceedings, a claimant is obliged to bring forward his whole case in one action, and the doctrine of res judicata prevents a litigant from raising in subsequent proceedings matters that could and should have been litigated in earlier proceedings between the same parties. Needless multiplicity of proceedings amounts to an abuse of process.

23. The leading authorities in support of the propositions made in paragraphs 22 and 23 above are Connelly vs. Director of Public Prosecution (1964) AC page 1254 (the Judgments of Lords Devlin and Pearce commencing from page 1346) and Yat Tung Co vs Dao Heng Bank (1975) AC page 581 (Lord Kilbradon's Judgment commencing from page 590 line E). Copies of these citations are attached hereto and marked "Annex 1" and "Annex 2" respectively.

24. An examination of the factual issues relied upon by the prosecution in the Criminal Proceedings and by the Law Society in the first Disciplinary Proceedings will show that these issues are identical in all respects. At page 6 of his Judgment, Mr. Justice Choor Singh identified the ingredients of the 8 criminal charges as follows:-

> "To bring home the first eight Charges, the prosecution had to prove in respect of each Charge:
>
> (1) that Santhiran had committed criminal breach of trust;

(2) that the appellant had knowledge of Santhiran's criminal breach of trust;

(3) that the appellant demanded restitution;

(4) that restitution was made by Santhiran; and

(5) that the appellant accepted restitution in consideration of his concealing Santhiran's criminal breach of trust."

25. The Law Society relied on the same five ingredients plus the added ingredient of "consequence" in making out its case of "delay" in the first Disciplinary Proceedings. The first and second ingredients are pre-requisites to the charge of delay; the third, fourth and fifth ingredients represent the "motive" aspect which the Law Society introduced to stress the gravity of the "delay" charge.

26. A comparison of the following passages extracted from the Criminal and the first Disciplinary Proceedings will illustrate the similarity of the factual issues:-

A. On Concealment

1. Choor Singh J: "Restitution was accepted by the Appellant. Santhiran's offences were concealed by the Appellant for more than a year (page 23 of Judgment).

First Disciplinary Committee: "In March 1976 after Santhiran had admitted the misappropriation and made restitution in the sum of $267,956.12, the Respondent decided to delay making any report of Santhiran's

misdeeds to the police or the Law Society....." (page 18 sub-paragraph (ix) of the Committee's Report).

2. Choor Singh J: "The appellant failed to inform his auditors of Santhiran's defalcations....." (page 19 of Judgment).

First Disciplinary Committee: "No report was made to Braddell Brothers' long standing auditors Messrs. Turquand Young" (page 19 sub-paragraph (xi) of the Committee's Report).

Mr Grimberg: ".....it seems to me that it is therefore quite porper for me to deal with this question of not telling Turquand Youngs because it goes to the extent to which the Repondent was prepared to go in order to keep the matter secret in order to get the money from Santhiran" (Transcript of first Disciplinary Proceedings at page 111).

B. On Motive

1. Choor Singh J: "This (error of judgment) is not borne out by the evidence which shows that the delay was calculated, purposeful and motivated....." (page 18 of Judgment).

First Disciplinary Committee: "The real motive for delay was the Respondent's anxiety to see himself repaid by Santhiran....." (page 23 sub-paragraph (xi) of the Committee's Report).

2. Chandran Mohan D.J: "In my view, he (the Respondent) was not merely concerned with obtaining restitution. He was obsessed with it....." (pages 91 - 92 of Grounds of Judgment).

Mr Grimberg: ".....the Respondent was wholly pre-occupied with the recouping to the greatest possible extent the monies that Santhiran had taken....." (Transcript of Proceedings page 71)

Mr. C.C. Tan: "..... the Committee holds the view that the two matters in question ("motive" and "consequence") need not, and should not form the subject matter of new charges, but are so closely related to the existing charge ("delay") that they can be dealt with as being intrinsically bound." (Transcript of first Disciplinary Proceedings page 73).

First Disciplinary Committee: "We find that the evidence produced before the Committee very clearly lead to the irresistible inference that the motive for the Respondent's elaborate scheme for delaying the report was the intention to recover the misappropriated monies from Santhiran." (page 34 of the Committee's Report).

The pages from which the above passage are extracted are hereto attached and collectively marked "ANNEX 3".

27. The present charge bears directly on the Respondent's convictions in respect of the eight charges brought against him under Section 213 of the Penal Code. If the material aspects of the criminal charges are identical to those of the Law Society's "delay" charge investigated by the first Disciplinary Proceedings, it has to follow that the material aspects of the "delay" and "convictions" charges must necessarily also be identical.

28. The charge of "delay" forms an intrinsic part of the prosecution's case of "concealment" and in investigating the "delay" charge, the first Disciplinary Committee had, at the suggestion of the Law Society, taken cognizance of the Respondent's motive for delay, the issues of "motive" and "consideration" being one and the same, as they both relate to the Respondent's efforts at seeking and obtaining restitution from Santhiran.

29. It is therefore respectfully submitted that the first and second Disciplinary Proceedings instituted by the Council of the Law Society against the Respondent represent a duplication, the charges of "delay" and "convictions" being founded on a common set of facts arising from the same incident. The result of this duplication has clearly been unjust, prejudicial and oppressive to the Respondent, irrespective of the fact that this could not have been intended by the Council.

30. It is respectfully submitted that this Disciplinary Committee, being a statutory body appointed under the Legal Profession Act, should not hesitate to exercise its inherent discretion to stay the present charge for reasons of prejudice and oppression based on the authorities cited. The rule against double jeopardy is fundamental to the proper administration of justice. This rule cannot be any less applicable of quasi-judicial proceedings, as otherwise, such proceedings may be conducted with impunity and with total disregard to the rule against oppression and prejudice, which is clearly absurd.

31. The matters referred to in paragraphs 24, 25, 26, 27 and 28 above also bring into issue the doctrine of autrefois convict, which is succinctly summarised in Archbald 39th Edition at paragraph 380 as follows:-

"A man may not be tried for a crime if the crime is in effect the same or substantially the same one in respect of which (a) he has previously been acquitted or convicted or (b) he could on some previous indictment have been convicted." A copy of this citation is hereto attached and marked. "ANNEX 4".

The Convictions

32. If, contrary to the submissions made above, the Disciplinary Committee feel that they should nevertheless continue to investigate the present charge, then it is submitted that the admitted convictions do not imply a

defect of character making the Respondent unfit for the profession. The Disciplinary Committee is obliged to inquire into the nature of the criminal offences in respect of which the Respondent was convicted to determine whether they are offences that imply such a defect of character as to make him unfit to practise as a Solicitor.

33. It is submitted that the correct test was laid down by Lord Esher in Re Weare 1893 2 QB page 439 at page 446:-

> "The Court is not bound to strike him off the rolls unless it considers that the criminal offence of which he has been convicted is of such a personally disgraceful character that he ought not to remain a member of that strictly honourable profession ..... is it or is it not personally disgraceful? Try it this way. Ought any respectable solicitor to be called upon to enter into that intimate intercourse with him which is necessary between two solicitors, even though they are acting for opposite parties?"

A copy of this citation is hereto attached and marked "Annex 5".

34. Support for the above passage can also be found in the following extracts from the Judgments delivered in Re A Solicitor (1889) 37 Weekly Reporter 598:-

> Lord Coleridge C.J.: "It is obvious that if it were laid down as a general rule that a conviction must in every case be followed by a striking off the rolls,

the rule would break down at once. The court must, it is plain, look into the circumstances of the conviction. There are felonies which are infinitely disgraceful; but there are others which a man of honour might commit without suffering any stain. No doubt the law says that such a man must be punished; but it does not follow that he is unfit to associate with his fellows, or to be trusted with their property or confidence."

Lindley L.J.: "I wish to protest in the strongest manner against the proposition that because a solicitor has been convicted of felony he must, as a matter of course, be struck off the roll. Such a proposition is far too wide."

A copy of this citation is hereto attached and marked "ANNEX 6".

35. The Respondent relies upon the matters stated above, namely -

(1) that the offences involved no dishonesty;

(2) that the offences would not have been recognisable as such to most practitioners in Singapore at the time;

(3) that the offences no longer exist in England; and

(4) that Mr. Justice Choor Singh has expressed the view that these offences should be abolished in Singapore

in support of his submission that in all the circumstances, the Respondent's convictions do not imply a defect of character making him unfit for the profession within the meaning of Section 84(2)(a) of the Legal Profession Act.

C.S.L.

31st July 1981

Counsel for the Respondent

Singapore since 1948. He is the sole proprietor of the well-known firm of Braddell Brothers. Since the commencement of the Legal Profession Act in 1966, he has been a member of the Council of the Law Society. He was President of the Law Society in 1975 and 1976.

The Charges against the appellant arose from offences of criminal breach of trust committed in the years 1972 to 1976 by one Sivagnanam Santhiran, a legal assistant employed by the appellant in his firm of Braddell Brothers. In May 1978, Santhiran was convicted in a District Court, on his plea of guilty, on a charge of criminal breach of trust of $147,510.04. He also admitted four other similar charges which were taken into consideration for the purpose of sentence. Santhiran was sentenced to nine months imprisonment.

To bring home the first eight Charges, the prosecution had to prove in respect of each Charge:

(1) that Santhiran had committed criminal breach of trust;

(2) that the appellant had knowledge of Santhiran's criminal breach of trust;

(3) that the appellant demanded restitution;

(4) that restitution was made by Santhiran; and

(5) that the appellant accepted restitution in consideration of his concealing Santhiran's criminal breach of trust.

There was clear evidence in respect of the first four

A is the subject matter of the 9th Charge. Santhiran rejected this offer but it confirms the appellant's very clear intention not to report to the police. When Santhiran rejected this offer, the appellant reported him to the Law Society as well as the police.

B In the light of all this evidence, how can it be said that the restitution was not accepted in consideration of concealing Santhiran's offences.

"Restitution was accepted by the appellant. Santhiran's offences were concealed by the appellant for C more than a year." And Santhiran did not make restitution out of remorse. There is no evidence that he was repentent, sorry or remorseful. He made restitution out of fear of being reported to the Law Society which would have resulted in his being struck off the rolls. This fear in Santhiran D was raised by the appellant at the meeting in the Conference room of Braddell Brothers and again at the meeting in the appellant's house which took place a few days later. At both meetings, only the appellant and Santhiran were present and in the circumstances corroboration of threats E made by the appellant cannot be expected from an eye-witness. Corroboration can come only from inferences from the rest of the evidence in this case. The appellant admitted shouting at Santhiran, scolding him, calling him a liar and being angry, heated and rude to him. Santhiran claimed F that he was abused in no uncertain terms and threatened that if he did not pay up he would be reported to the Law

Exhibit RB No. 129

EXTRACT OF FIRST DISCIPLINARY COMMITTEE REPORT OF 19.11.80

214

December 1975.

(v) In February 1976, the Respondent became aware that Senthiran had misappropriated monies from the Clients' Account of Braddell Brothers.

(vi) On 8th March 1976, the Respondent was informed by Lisa Choo, his stenographer and office assistant that Senthiran had misappropriated sums in excess of $200,000/-.

(vii) On or about 8th or 9th March 1976, Senthiran admitted to the Respondent that he had misappropriated sums totalling $299,270-75 and between the 9th and 18th March 1976, he made restitution amounting to $267,955-12.

(viii) By 10th June 1976, the total restitution made by Senthiran amounted to $297,956-12.

(ix) In March 1976, after Senthiran had admitted the misappropriation and made restitution in the sum of $267,956-12, the Respondent decided to delay making any report of Senthiran's misdeeds to the police or the Law Society and entrusted the investigation of the accounts involving Senthiran to his stenographer and office assistant, Lisa Choo, and his legal assistant, Chan Lai Meng, an advocate and solicitor of 2 years' standing. After the

A concealed the offences committed by Santhiran. The appellant instructed his legal assistant named Thillainathan who was the first person to discover Santhiran's defalcations, to tell all the other legal assistants "to keep the matter within themselves".

The appellant had a Suspense Account opened in the
B firm's ledger and the restitutions made by Santhiran were first entered in this Suspense Account. The appellant was the person who suggested the title of this Suspense Account. When questioned on this Suspense Account by R. Subramaniam, an audit
C clerk from Turquand Youngs & Company who were his firm's auditors, the appellant professed ignorance and stated that Santhiran would be the best person who would know about it.

The appellant failed to inform his auditors of Santhiran's defalcations until he was confronted by Victor Fernandez
D an accountant from Turquand Youngs. Even then he put him off by saying that he would like to discuss it "in greater detail at a more convenient time". He even suggested to Fernandes, quite improperly, that the amount in the Suspense Account could be treated as income for the year ending December 1976.
E In March 1977, when two partners of Turquand Youngs saw him regarding the Suspense Account, he threatened to dismiss Turquand Youngs as his auditors when they insisted on giving publicity to Santhiran's defalcations in their Report to the Law Society

The appellant made exhortations of secrecy in respect
F of Santhiran's offences to various people at various times. For example he heavily stressed to Mr.Jamshed Irdora, a chartered accountant

discovery of the defalcation, the Respondent kept Senthiran in the employment of Braddell Brothers for the purpose of winding up unfinished matters, closing up files and putting notes on those that were on-going. In the course of such duties, Senthiran also appeared in Court and handled new matters as a legal assistant of Braddell Brothers.

[x] At the end of August 1976, Lisa Choo reported to the Respondent that she could not go on with the investigation.

[xi] No report was made to Braddell Brothers' long-standing auditors, Messrs. Turquand Young, and in November 1976, the Respondent with the agreement of Senthiran appointed another firm of Accountants, Medora Tong & Co., to inspect and audit the accounts where Senthiran was involved.

[xii] Senthiran ceased to be employed by the Respondent in December 1976 by which time he had made restitution of all clients' money misappropriated by him and any outstanding shortage consisted of costs belonging to Braddell Brothers.

[xiii] The Respondent learnt that Senthiran was carrying on a legal practice in January 1977.

[xiv] A written report was made by the Respondent to the Law Society by a letter dated 20th April 1977

Mr.Ross-Munro [cont]: charge which is a matter more [for] the Inquiry Committee, as you know.

Chairman: But if anything is said, I would just say that while he is addressing or while we are listening to him we will not accept everything he says, but subject to what you will have to say, and anything that is tantamount to a second charge we shall purge from our minds without making up our minds. We have been fully educated on this particular point.

Mr.Ross-Munro: Yes, simply that I didn't want to waste time leaving witness to give the reasons why he didn't tell the auditors whom he thought negligent.

Mr.Grimberg: Sir, on this question of auditors, I have given some thought to it, whether it was right or wrong for me to say. You have ruled motive is relevant for the purposes of this inquiry, and [it seems to me that it is therefore quite proper for me to deal with this question of not telling Turquand Youngs because it goes to the extent to which the Respondent was prepared to go in order to keep the matter secret in order to get the money from Santhiran.] And so, in my submission, itis wholly relevent for you to consider the fact that Mr. Wee deliberately kept his firm's long-established auditors in the dark as to what happened because he knew whenever they came in they would insist on making a qualified report, insist on reporting to th

A the defalcations. The appellant admitted this fear in cross-examination. The appellant's explanation for the delay in reporting the matter to the police was not a very honest one.

Much has been made of the fact that the appellant B saw the Attorney-General in connection with Santhiran's offences. In the first place, the appellant saw the Attorney-General over a year after the offences were discovered. Secondly, the Attorney-General not having been called, we do not know what the appellant told the C Attorney-General. Solicitors often see the Attorney-General in order to persuade him to drop a charge against their client or to reduce the charge to that of a lesser offence. No one ever sees the Attorney-General to report a crime. The Attorney-General is not a policeman. D Reports of crimes must be made at a police station in compliance with the provisions of section 114 of the Criminal Procedure Code. The fact that the appellant saw the Attorney-General is, in the circumstances of this case, of no help at all to the appellant.

E It is submitted by counsel for the appellant that the delay in reporting the matter to the police was an error of judgment on the part of the appellant. This is not borne out by the evidence which shows that the delay was calculated, purposeful and motivated and therefore it F could not be an innocent error of judgment.

The evidence shows that the appellant consciously

have admitted the defalcations and was practising on his own, the Respondent on 30th March 1977 wrote in reply to Turquand Young & Co. counter-attacking them on their system of auditing.

[ix] The Respondent's first notification to the Law Society was on 30th April 1977 and his detailed complaint was lodged on 27th May 1977.

[x] According to the evidence of Lisa Choo, Santhiran was not deliberately obstructive although he suffered from confusion and forgetfulness. He did his best to cooperate in terms of trecing clients' accounts and restitution. There was no excuse for any delay after October/November 1976 and the alleged motive of the Respondent did not wash.

[xi] The real motive for the delay was the Respondent's anxiety to see himself repaid by Santhiran irrespective of the Respondent's duty to the profession, his clients and the public at large.

[xii] The appointment of Mēdora Tong was made in November 1976 by agreement with Santhiren, a scoundrel and a thief who had stolen about $300,000/-.

[xiii] It was conceded by Counsel for the Respondent that on discovery of the defalcations it would have been better if the Respondent had written a short letter to the Law Society. There was no reason why he

and if the consideration for accepting that restitution is his concealing the offence or screening the person from legal punishment, the offence under section 213 is complete.

I gave the most careful consideration to all the evidence adduced by the defence, but it raised no reasonable doubt, whatsoever, in my mind as to the guilt of the accused. I therefore found him guilty on all nine charges and convicted him accordingly.

The accused in this case has sought to suppress the prosecution of a senior legal assistant who had committed what must be regarded as the cardinal sin of an advocate and solicitor: enriching himself illegally with clients' moneys. He also permitted such an offender to continue to practise in his firm as an advocate and solicitor. It must be noted that at the time of the commission of these offences, the accused was not only a senior member of the Bar but was also the President of the Law Society in which capacity he was intimately concerned with the discipline of members of the legal profession.

It has been said that the accused in this case was only concerned with obtaining restitution of all moneys taken by Santhiran. In my view, he was not

merely concerned with obtaining restitution. He was obsessed with it, and it was this obsession that led him to run foul of the law.

In assessing sentence, however, I had also regard to all the mitigating factors that were urged on behalf of the accused by learned counsel for the defence.

These offences do not involve any innate dishonesty and the fact remains that the accused was able to recover clients' moneys although the manner in which he went about it leaves much to be desired. The maximum punishment prescribed by the legislature for the offences of which the accused has been convicted is a term of imprisonment not exceeding 21 months. I accept that this trial and the attendant publicity that has been generated would have caused the accused much anguish, and these convictions will, no doubt, have a toll on his professional and social standing.

Until the present infringements of the law the accused has had an impeccable record both as a citizen and as an advocate and solicitor. The accused has been in legal practice for 30 years, having been called to the Bar in November 1948, and indeed it cannot be disputed that he is an advocate and solicitor of some repute in this country.

Mr.Ross-Munro (cont): evidence and start preparing to rebut it. Unless I know what affirmative case is put it is rather difficult for me to do so.

Chairman: Well, this is a matter which you could settle between yourselves.

Mr.Ross-Munro: Yes, I wonder if we can have a few minutes? Well, Mr. Grimberg and I have discussed the matter between us and indicated to me it is possible that he would put one particular matter, and I don't know whether there is any other matter that is going to be put or some other. I wonder if we could have, perhaps, five to ten minutes' adjournment?

Mr.Grimberg: I think I could probably clarify now, without really putting it in technical language; what I am going to suggest to you is that the motive was this: that reckless of the interest of clients, of the profession and of the public, the Respondent was wholly preoccupied with the matter of recouping to the greatest possible extent the monies that Santhiran had taken so that he himself need not be answerable to his clients for any loss. You know, I wonder if that gives you ---

Mr.Ross-Munro: Absolutely; that is all I want to know. I am much obliged; thank you.

Exhibit RB No. 138

EXTRACT OF TRANSCRIPT OF FIRST DISCIPLINARY PROCEEDINGS

Chairman [cont]:

as to facilitate the [proceedings].

Now I do not think that any injustice has been done to the Law Society in this case as [the Committee holds the view that the two matters in question need not, and should not form the subject matter of new charges, but are so closely related to the existing charge that they can be dealt with as being intrinsically bound.] So that on that I shall therefore be modifying the grounds of our decision except in that small respect, although it does not affect what we [find].

Mr. Rose-Munro:

In other words, you would have power but it does not really matter from the realistic point of view, if you take the view that they were so closely related that they can be dealt with.

Chairman:

Unless, of course, the Law Society, in view of this section, wants to do otherwise, but I think the Law Society will be informed on the effect of the overstatement.

Mr. Ross-Munro:

Yes.

Sir, might I just mention two very small matters? The first one is that my learned friend, Mr. Wu, who ~~has~~ appears in with me, unfortunately was notified yesterday that the high he had to attend court to give evidence today, and he wants me to send his apologies; and my learned friend Mr. Jansen is here in his place.

And, Sir, the other one was that I understand that, with your permission, the Tribunal Stenographer has very kindly said that my learned friend Mr. Grimberg and I could get the before evidence of Mr. Wee ~~for~~ Tuesday so that we can read through, and so that when I come to my final speech I will have the advantage of ~~having~~ reading through it. I mentioned it to Mr. Grimberg and he certainly would have no objection if you give permission.

EXTRACT OF FIRST DISCIPLINARY COMMITTEE REPORT OF 19.11.80

but also in his conduct and correspondence over this matter. Unfortunately, they are all littered with attempts to either cover up or embellish the facts, and we are obliged to disbelieve his explanation that his delay in reporting was motivated by the lofty objective given in respect of the first eight months and transformed into an entirely new motive after November 1976.

If the Respondent believed in the cause which he had so strongly put forth, namely, the prior interest of his clients, there was no reason why he should find himself in a position where he had to put up conundrums to his colleagues on the Council after the circumstances which might have supported his first alleged motive had dissipated.

43. Having disbelieved the Respondent's story, the Committee is entitled to look at the evidence produced before it to ascertain whether they disclose any other motive. We find that the evidences produced before the Committee very clearly lead to the irresistible inference that the motive for the Respondent's elaborate scheme for delaying the report was the intention to recover the misappropriated monies from Santhiran. In fact, some of the evidence is so clear that it can be regarded as direct evidence and not mere inferences.

44. The Respondent also disclosed his true intentions for the delay in his discussions with Jamshid Hoodaa, as to

Exhibit RB No. 140

EXTRACT OF JUDGMENT OF MR.JUSTICE CHOOR SINGH IN MAGISTRATE'S APPEAL No. 161 of 1978)

A The other matter which also deserves credit is the appellant's services to the University of Singapore, where for the last 18 years he has given his valuable time to teach at the Law Faculty of the University of Singapore. The success of the Faculty especially in the early years B of its formation was in no uncertain terms due to the many practising Advocates and Solicitors like the appellant who volunteered to teach in their spare time or after office hours.

The fines imposed on the eight Charges total C $28,000 and for the reasons already given this sum appears to be manifestly excessive. Had the acceptance of restitution by the appellant been the subject of a single charge, as it could have been by reason of the provisions of section 71 of the Penal Code, the maximum fine that the D District Court could have imposed on that charge would have been $5,000/-. But then the Public Prosecutor may well have asked that the Charge be tried by the High Court. In my opinion justice will be done in this case if the fines on each of the eight Charges are reduced from E $3,500 to $1,500/-. The difference is ordered to be refunded to the appellant.

Before parting with this case, I am constrained to observe that the offence of accepting restitution of one's own property in consideration of concealing an F offence should be abolished. It seems to me that it is not dishonest for a person to try and recover his own

property from one who has committed criminal breach of trust in respect of it.

Dated this 12th day of March 1980

J U D G E

Certified true copy

Private Secretary to Judge
Court No. 6
Supreme Court

relating to specific offences reference should be made to the appropriate part of the text.

The most important general provisions of this nature are to be found in the *Criminal Law Act* 1967. By section 4 (2)—"If on the trial of an indictment for an arrestable offence the jury are satisfied that the offence charged (or some other offence of which the accused might on that charge be found guilty) was committed, but find the accused not guilty of it, they may find him guilty of any offence under subsection (1) [*i.e.* section 4 (1)—acting with intent to impede prosecution or apprehension of another, see § 627] above of which they are satisfied that he is guilty in relation to the offence charged (or that other offence)."

Section 6 (2) [Lists the alternative verdicts available where on an indictment for murder the defendant is found not guilty of murder, see *post*, § 625.]

"(3) Where, on a person's trial on indictment for any offence except treason or murder, the jury find him not guilty of the offence specifically charged in the indictment, but the allegations in the indictment amount to or include (expressly or by implication) an allegation of another offence falling within the jurisdiction of the court of trial, the jury may find him guilty of that other offence or of an offence of which he could be found guilty on an indictment specifically charging that other offence.

"(4) For the purposes of subsection (3) above any allegation of an offence shall be taken as including an allegation of attempting to commit that offence; and where a person is charged on indictment with attempting to commit an offence or with any assault or other act preliminary to an offence, but not with the complete offence, then (subject to the discretion of the court to discharge the jury with a view to the preferment of an indictment for the completed offence) he may be convicted of the offence charged notwithstanding that he is shown to be guilty of the completed offence. [For section 6 (3) and (4) see *post*, § 624].

"(7) Subsections (1) to (3) above shall apply to an indictment containing more than one count as if each count were a separate indictment."

379. Where earlier proceedings were summary. Magistrates' courts are not empowered to substitute a conviction for a lesser offence than the one charged: *Lawrence* v. *Same* [1968] 2 Q.B. 93, D.C., and see *Martin* v. *Pridgeon* (1859) 23 J.P. 630; *R.* v. *Brickill* (1864) 28 J.P. 359.

380. 2 (iii) A man may not be tried for a crime if the crime is in effect the same or substantially the same one in respect of which (a) he has previously been acquitted or convicted or (b) he could on some previous indictment have been convicted

The House of Lords did not unanimously assert that this category of offence strictly falls within the compass of the *autrefois* plea. Lord Morris held that it did (*Connelly* v. *D.P.P.* [1964] A.C. 1254; 48 Cr.App.R. 183, at p. 1305 and p. 212) and that "the test as to whether the new charge is the same as or substantially the same as or in effect the same as the charge contained in the earlier indictment" is whether the evidence necessary to support the second indictment would have been sufficient to procure a legal conviction upon the first (pp. 1310–1311; pp. 218–219). Lord Hodson also recognised, that there had been an extension of the narrow principle of *autrefois*. "Thus, where there is an acquittal of a lesser offence which is in law an essential ingredient in a greater, it is plainly not possible to convict on the greater without in effect reversing the acquittal on the other

and lesser offence" (p. 1832; p. 242): see, too, Cockburn C.J. in *R. v. Elrington* (1861) 1 B. & S. 688 at p. 696. "We must bear in mind the well established principle of our criminal law that a series of charges shall not be preferred and whether a party accused of a minor offence is acquitted or convicted, he shall not be charged again on the same facts in a more aggravated form." Lord Devlin preferred to found the authorities cited by Lord Morris in support of this category, upon the court's inherent discretionary power to stop vexatious process. "The principle stated by Cockburn C.J. as applied in *R. v. Miles* (1890) 24 Q.B.D. 423 and *R. v. Orimwood* (1896) 60 J.P. 809, necessarily goes beyond the principle of *autrefois*. I consider it very desirable that the two principles should be kept distinct, for one gives the defendant an absolute right to relief and the other only a qualified right" (p. 1358; pp. 271–272). "I have no difficulty about the idea that one set of facts may be substantially, but not exactly the same as another. I have more difficulty with the idea that an offence may be substantially the same as another in its legal characteristics; legal characteristics are precise things and are either the same or not. If I had felt that the doctrine of *autrefois* was the only form of relief available to the defendant I should be tempted to stretch the doctrine as far as it would go. But as that is not my view I am inclined to favour keeping it within limits that are precise": *per* Lord Devlin at p. 1340; pp. 251–252. Lord Pearce expressed the same view. "The . . . cases show that a narrow view of the doctrines of *autrefois acquit* and *convict* . . . does not comprehend the whole of the power on which the court acts in considering whether a second trial can properly follow an acquittal or conviction. . . . Instead of attempting to enlarge the pleas beyond their proper scope, it is better that the courts should apply to such cases an avowed judicial discretion based on the broader principles which underlie the pleas. . . . The court has a power to apply, in the exercise of its judicial discretion the broader principles to cases that do not fit the actual pleas and a duty to stop a prosecution which on the facts offends against these principles and creates abuse and injustice" (p. 1364; pp. 279–280).

380a. Cockburn C.J.'s dictum in *R. v. Elrington, ante*, and those of Hawkins J. in *R. v. Miles* (1890) 24 Q.B.D. 423 at pp. 431–432 were considered, *obiter*, in *R. v. Hogan and Tomkins* (1960) 44 Cr.App.R. 255, C.C.A. (defence submission that where there had been a "conviction" for simple escape under the principle there can be no subsequent charge for the aggravated offence of prison breach—escaping by force. The submission was rejected as the earlier tribunal had no jurisdiction, *post*, § 384). "Though not strictly a case of *autrefois convict* it [the principle in *R. v. Miles*] is very much on those lines": *per* Parker C.J. at p. 259.

Most of the authorities within this category are cases where an allegation of serious violence is preferred after the defendant has either been acquitted or convicted of an offence in respect of the identical incident but involving an allegation of less serious violence. Thus an acquittal of manslaughter is a bar to an indictment to murder on the same facts: *Wrote v. Wigges* (1591) 4 Co.Rep. 45b, *Holcroft's Case* (1578) (unreported but referred to in 2 Hale 246); *cf. R. v. Tancock* (1876) 13 Cox 217 (Denman J. directed jury to find a plea of *autrefois acquit* proved where the defendant was arraigned for murder having been acquitted of manslaughter, because he took the view that on the facts no jury would convict. Had the case been stronger he would have directed the trial to proceed). However, where death occurs after the earlier conviction or acquittal there is no bar to a subsequent indictment for murder or manslaughter: *R. v.*

aggravating circumstances, unless coupled with the assault, amounted to no crime, there was nothing to support the indictment." Hawkins J., however, stated *obiter* (at p. 433) that a conviction for common assault could not be pleaded in bar to an indictment for rape.

380c. In *R. v. Kendrick and Smith* (1931) 23 Cr.App.R. 1, at the first trial both defendants were convicted of offences under section 81 of the *Larceny Act* 1916 (*rep.*) (threatening to publish photographic negatives with intent to extort money) but the jury disagreed on further counts laid under section 29 which were more serious (uttering letters demanding money with menaces). Their plea of *autrefois convict* failed and they were convicted after the retrial on the section 29 counts. On appeal it was held that the two offences were not the same or substantially the same. The fact that the evidence was the same or that the facts proved are the same is immaterial: *cf. R. v. King* (1897) 18 Cox 447 where it was held the offences there were "practically the same" (K was convicted of obtaining credit for goods by false pretences, then tried on a second indictment for larceny of the same goods); see Lord Reading C.J.'s observations upon *R. v. King* in *R. v. Barron* (1914) 10 Cr.App.R. 81 at p. 88. In *Welton v. Tanebourne* (1908) 99 L.T. 668; 21 Cox 702; 72 J.P. 419, the Divisional Court held that a conviction for dangerous driving was a bar to a conviction for exceeding the speed limit, the magistrate in his Case Stated having said that "in deciding the first information I took into consideration, besides other circumstances, the question of speed which I considered to be an element of danger." The principle was affirmed by Lord Parker C.J. in *R. v. Burnham JJ., ex p. Ansorge* [1969] 3 All E.R. 505: "Before the magistrates can decide whether to convict or not on the second information they must inquire into the matter to see what are the facts. If, having inquired into the matter they find that the facts are the very facts which have given rise to the conviction on the first information their proper course would be to proceed no further." See also *R. v. Riebold, ante*, § 359a.

381. 3. One test as to whether the rule applies [see particularly 2 (iii), *ante*, § 380] is whether the evidence which is necessary to support the second indictment or whether the facts which constitute the second offence would have been sufficient to procure a legal conviction upon the first indictment either as to the offence charged or as to an offence of which on the indictment the accused could have been found guilty (4th principle). See also Lord Hodson at p. 1333; p. 244; Lord Devlin at pp. 1339–1340; pp. 251–252 and observations by Lord Parker C.J. in *U.S. Government v. Atkinson* [1969] 2 All E.R. 1151 at pp. 1156–1157. (The decision of the Divisional Court to remit the case to the magistrate who had wrongly upheld a plea of *autrefois* was reversed by the House of Lords on the ground that the magistrate had not initially been entitled to state a case for the opinion of the Divisional Court: *Atkinson v. U.S. Government* [1969] 3 All E.R. 1317.)

However, for the rule to apply, the offence charged in the second indictment must have been committed at the time of the first charge, *e.g.* a conviction or acquittal for assault will not bar a charge of murder if the assaulted person later dies: see cases cited *ante*, § 380a (5th principle).

381a. 4. That the facts under examination or the witnesses being called in the later proceedings are the same as those in some earlier proceedings

Exhibit RB No. 145

230

ANNEX 5

[IN THE COURT OF APPEAL.]

C. A.
1893
July 21.

IN RE WEARE, A SOLICITOR. IN RE THE SOLICITORS ACT, 1888.

Solicitor—Striking off the Roll—Offence not in the Character of Solicitor—Solicitors Act, 1888 (51 & 52 *Vict.* c. 65), s. 13.

Reg. v. Incorporated Law Soc. [1895] 2 Q. B. 462.

Upon an application by the Incorporated Law Society to strike the name of a solicitor off the roll, it appeared that he had been summarily convicted of allowing houses, of which he was the landlord, to be used by the tenants as brothels:—

Held, that a solicitor may be struck off the roll for an offence which has no relation to his character as a solicitor, the question being whether it is such an offence as makes a person guilty of it unfit to remain a member of the profession. Conviction for a criminal offence primâ facie makes a solicitor unfit to continue on the roll; but the Court has a discretion, and will inquire into the nature of the crime, and will not as a matter of course strike him off because he has been convicted; and the Court considered that in the present case the nature of the offence was such that the solicitor ought to be struck off the roll:

Held, also, that an application to the Committee of the Incorporated Law Society under the Solicitors Act, 1888, s. 13, was not a condition precedent to the application to strike the solicitor off the roll, the case being one where no report of a Master would have been necessary before the Act, and the old jurisdiction of the High Court being saved by s. 19.

APPEAL from an order of the Divisional Court (Wills and Charles, JJ.) ordering the name of E. Weare, a solicitor, to be struck off the roll.

It appeared that on August 30, 1892, Weare was convicted under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 13, by two justices of Bristol for that he, being the landlord of No. 4, Harford Street, Bristol, was unlawfully and wilfully a party to the continued use of such premises as a brothel, and was sentenced to a term of imprisonment.

It was proved beyond dispute that the above house and some other houses belonging to Weare were let to weekly tenants, and had been used as brothels. The justices considered it also to be established that Weare knew all along that the premises were being so used. Upon appeal to the quarter sessions, the recorder took the same view of the evidence as the justices, and affirmed the conviction, but set aside the sentence of

C. A. 1893

IN RE WEARE. IN RE THE SOLICITORS ACT, 1888.

imprisonment and substituted a fine of 20*l*. Weare was ordered to pay sums of money to the justices and to the informer towards their respective costs of the appeal. These sums were paid.

On December 17, 1892, the Incorporated Law Society served Weare with notice of motion that his name might be struck off the roll of solicitors; and on May 18, 1893, the Divisional Court made an order in accordance with the notice of motion.

Weare, the appellant, in person. First, the evidence was insufficient to warrant the conviction. But supposing the offence proved, it is not an offence by a solicitor in his professional character; and there is no case where a solicitor has been struck off the roll for an offence not in any way connected with his profession: *In re Hill.* (1)

[LORD ESHER, M.R., referred to *Ex parte Brounsall.* (2)]

Secondly, the time for considering the application has not arrived, for there has been no previous investigation by the Incorporated Law Society as provided by the Solicitors Act, 1888, s. 13. Assuming that the offence has been committed, it has been sufficiently expiated by the penalty and costs.

Hollams, for the Incorporated Law Society. The jurisdiction of the Court to strike a solicitor off the roll is not confined to cases of professional misconduct, the only question being whether a person who has committed the offence charged is fit to be a solicitor: *Rex* v. *Southerton* (3); *Ex parte Brounsall.* (2) It is not contended that the conviction is conclusive: *In re Hawdone* (4). The Court will look to the degree of moral delinquency: *In re Wallace* (5); *In re King* (6); *In re Blake* (7); the test being, is the solicitor fit to remain on the roll? Sect. 19 shews that a proceeding before the Incorporated Law Society is not a condition precedent to the jurisdiction of the Court.

Weare, in reply.

LORD ESHER, M.R. I am sorry to say that in this case I cannot have any real doubt as to the facts. I think that the

(1) Law Rep. 3 Q. B. 543.
(2) 2 Cowp. 829.
(3) 6 East, 126.
(4) 9 Dowl. 970.
(5) Law Rep. 1 P. C. 263.
(6) 8 Q. B. 129.
(7) 3 E. & E. 34.

Lord Esher, M.R.

only inference to be drawn from the evidence (to the mind of any person who will look at it calmly) is that this person has allowed himself to be the landlord of brothels, and that he has let his houses to tenants when he knew that those tenants were using them as brothels. Nor can I doubt that his doing so is a criminal offence within the statute which has been read to us. [His Lordship then shortly reviewed the evidence, and stated his opinion that it established beyond doubt that the appellant had rightly been convicted of knowingly allowing his houses to be used as brothels.]

Now, is that a criminal offence? To keep a brothel was a common law offence and indictable. The Criminal Law Amendment Act, 1885, has added a new offence, that is, where the owner of a house, not keeping a brothel himself, allows the house to be used as a brothel by his tenants. That is made an offence; and what sort of an offence is it? It is put into the same category as keeping a brothel, and is now a criminal offence. In the same statute which creates the offence there is a particular remedy given instead of the remedy by indictment before a grand jury and a common jury. As we held the other day in the Court of Appeal, where an offence is created by Act of Parliament it is a misdemeanour to commit that offence. Although doing the act is not a common law misdemeanour, it is a misdemeanour for disobedience to an Act of Parliament. But where the Act of Parliament which creates that offence enacts a particular remedy, that is the only remedy or process which can be used for the purpose of punishing that offence. This, then, was a criminal offence, that is, it was a crime, and the appellant was convicted of it, not by the ordinary process by a judge and jury, but he was convicted of it by the process indicated by the Act—by information before a magistrate. He was then convicted of a criminal offence, and has been punished for that offence. Now comes the question whether under those circumstances the Court can entertain an application to strike him off the rolls, and whether, if the Court entertains it, there is any reason to differ from what the Divisional Court has done.

It is argued that if an offence committed by a solicitor is not an offence in his character as a solicitor, or having relation to his

C. A. 1893

IN RE WEARE. IN RE THE SOLICITORS ACT, 1888.

Lord Esher, M.R.

character as a solicitor, then, however monstrous it may be, the Court has not authority to strike him off the rolls because the act is not done by him in his capacity as a solicitor. That would seem to me to be a very strange doctrine if it were true—that a person convicted of a crime, however horrible, must, if it be not connected with his professional character, be allowed by the Court still to be a member of a profession which ought to be free from all suspicion.

But is it a true doctrine? It seems to me that it was decided not to be so as far back as the time of Lord Mansfield in 1778, in *Re Brownsall* (1). I do not say that his decision laid down any new law, but the law is there very authoritatively laid down by him with his usual felicity of expression. It was an application to the Court to strike an attorney off the roll, he having been convicted of stealing a guinea, for which offence he received the sentence to be branded in the hand and to be confined to the House of Correction for nine months. Two things were argued: first of all, that the conviction for the offence was at least four or five years old; secondly, that he had been punished for it, and on both grounds it was said the Court ought not to strike him off the roll. Lord Mansfield says: This "application is not in the nature of a second trial" (i.e., a second trial for the offence of stealing) "or a new punishment" (i.e., for the offence of stealing). "But the question is whether, after the conduct of this man" (i.e., in stealing the guinea—it does not say when, where, or how) "it is proper that he should continue a member of a profession which should stand free from all suspicion. Suppose he had been a justice of the peace, the conviction itself would not remove him from the commission, but could there be a doubt that he ought to be struck out of the commission?" Then Lord Mansfield says: "We have consulted all the judges upon this case, and they are unanimously of opinion that the defendant's having been burnt in the hand is no objection to his being struck off the roll." That would only go to the point whether because he had been punished he could not be struck off; but he goes on to say: "And it is on this principle, that he is an unfit person to practise as an attorney."

(1) 2 Cowp. 829.

That is the ground. "It is not by way of punishment, but the Courts on such cases exercise their discretion whether a man whom they have formerly admitted is a proper person to be continued on the roll or not." That, he says, is the question; and then he goes on to say: "Having been convicted of felony, we think the defendant is not a fit person to be an attorney." There it seems, to me, is the whole law on the matter laid down as distinctly as can be, and in a way the propriety of which nobody, as it appears to me, can doubt.

In the case of *Rex* v. *Southerton* (1) an information had been filed by the Attorney General against the defendant, an attorney, upon which he was tried and convicted at the last assizes on the fourth and subsequent counts. Now, the counts upon which he was convicted were counts alleging threats to proceed against a person before the Exchequer, alleging in fact a conspiracy to extort money by false charges. That is not an offence committed by a man in his capacity of attorney. It is an offence which any man might commit: any common informer who is not an attorney might do so. The defendant was tried for that and a verdict was given against him; but the verdict was set aside for some technical error. Still, although the offence for which he had been tried and of which he was convicted was an attempt to extort money by threats, which is not a case of professional misconduct, and although the conviction was set aside and the judgment was arrested, Lord Ellenborough said that enough appeared to the Court to satisfy them that the defendant was an improper person to remain as an attorney on the roll of the Court, and he directed the master to inquire and report upon nothing more than this, whether the defendant was still upon the roll of the attorneys of the Court; and, when the master reported that he was, the Court struck him off. There the Court seems to me to have proceeded on the very ground on which Lord Mansfield had proceeded in the former case. You have then the case of *In re Hill* (2): "An attorney acting as a clerk to a firm of attorneys, in completing the sale of certain property, received the balance of the purchase-money, which he appropriated to his own use." This was not an act

(1) 6 East, 126. (2) Law Rep. 3 Q. B. 543.

C. A. 1893

IN RE WEARE. IN RE THE SOLICITORS ACT, 1888.

Lord Esher, M.R.

done in his capacity as a solicitor. It was the same offence as would be committed by a merchant's clerk or by a tradesman's clerk who embezzled his master's money. Although he was authorized by his employers to receive it, his retaining it for his own use was embezzlement. He having being convicted for that, then there was a motion to strike him off the rolls, and the head-note says: "Although the misconduct was not committed strictly in his professional character" (I should say myself that the word "strictly" ought to be left out), "yet, as it was misconduct which would have prevented him from being admitted as an attorney, the Court would exercise its summary jurisdiction and punish the misconduct." Cockburn, C.J., puts the case thus: "When an attorney does that which involves dishonesty, it is for the interest of the suitors that the Court should interpose and prevent a man guilty of such misconduct from acting as an attorney of the Court. In this case, if the delinquent had been proceeded against criminally upon the facts admitted by him, it is plain that he would have been convicted of embezzlement, and upon that conviction being brought before us we should have been bound to act. If there had been a conflict of evidence upon the affidavits, that might be a very sufficient reason why the Court should not interfere until the conviction had taken place; but here we have the person against whom this application is made admitting the facts." Blackburn, J., puts it on the same ground. He says: "I may add, in accordance with what the Lord Chief Justice has said, that, in the punishment that it would be necessary to impose upon an offender for the protection of the suitors, it always should be considered whether the particular wrong done is connected with the character of an attorney. The offence morally may not be greater, but still, if done in the character of an attorney, it is more dangerous to the suitors, and should be more severely marked." He says that if the act is done in the character of a solicitor the only difference that makes is that it should be more severely marked; and Mellor, J., says: "It would be extremely dangerous if we were to allow an immunity because the man, when the offence was done, was not acting as an attorney, but as a clerk."

All these cases seem to me to shew that it is not necessary that the offence, at all events, if it be a criminal offence, should be committed by the offending party in his character as an attorney; the question is whether it is such an offence as makes it unfit that he should remain a member of this strictly honourable profession. Where a man has been convicted of a criminal offence, that primâ facie at all events does make him a person unfit to be a member of the honourable profession. That must not be carried to the length of saying that wherever a solicitor has been convicted of a criminal offence the Court is bound to strike him off the roll. That was argued on behalf of the Incorporated Law Society in the case of *In re a Solicitor, Ex parte Incorporated Law Society.* (1) It was there contended that where a solicitor had been convicted of a crime it followed as a matter of course that he must be struck off; but Baron Pollock and Manisty, J., held that, although his being convicted of a crime primâ facie made him liable to be struck off the roll, the Court had a discretion and must inquire into what kind of a crime it is of which he has been convicted, and the Court may punish him to a less extent than if he had not been punished in the criminal proceeding. As to striking off the roll, I have no doubt that the Court might in some cases say, "Under these circumstances we shall do no more than admonish him"; or the Court might say, "We shall do no more than admonish him and make him pay the costs of the application"; or the Court might suspend him, or the Court might strike him off the roll. The discretion of the Court in each particular case is absolute. I think the law as to the power of the Court is quite clear.

Then comes this question, whether, after the passing of the Solicitors Act of 1888, this jurisdiction can be exercised by the High Court without there having been an application to the Incorporated Law Society? That depends upon what is the true construction of the Act. That Act, in ss. 12 and 13, says that an application to strike the name of the solicitor off the roll or an application to require a solicitor to answer any allegations shall be made to and shall be heard by the committee. But then it says: "The committee, after hearing the case, shall

(1) 61 L. T. 812.

C. A. 1893

IN RE WEARE. IN RE THE SOLICITORS ACT, 1888.

Lord Esher, M.R.

embody their finding in the form of a report to the High Court, and then the report shall have the same effect and shall be treated by the Court in the same manner as the report of a master of the Court." That section was intended to put, and has in my opinion in effect put, the inquiry by the Incorporated Law Society in the place of a report by the master, and therefore where the case would have called for a report from the master the inquiry must be made by the Incorporated Law Society. But where no inquiry before the master would be necessary, it is absurd to say that you are to replace an unnecessary inquiry before the master (an inquiry which never would have been ordered) by an inquiry before the Incorporated Law Society, which is to have the same effect as a report by the master, where a report by the master would never have been required at all. But if there is any doubt about the point it seems to me that the 19th section preserves the jurisdiction of the High Court to act on its own motion if it thinks fit. I think therefore that it is not a condition precedent that there should be an inquiry by the Law Society, and that objection fails. Not only we have authority to act, but we are bound to act in this case. The Divisional Court, having heard the case, has come to the conclusion that this solicitor has been convicted of a criminal offence of such a disgraceful kind that he ought to be struck off the rolls. The Court is not bound to strike him off the rolls unless it considers that the criminal offence of which he has been convicted is of such a personally disgraceful character that he ought not to remain a member of that strictly honourable profession. Now, what is the offence? The offence is being a party to the use of a house belonging to him as a brothel. Is it or is it not personally disgraceful? Try it in this way. Ought any respectable solicitor to be called upon to enter into that intimate intercourse with him which is necessary between two solicitors, even though they are acting for opposite parties? In my opinion, no other solicitors ought to be called upon to enter into such relations with a person who has so conducted himself. I think he has been convicted of a personally disgraceful offence. The conviction is primâ facie a reason why the Court should act. The disgracefulness of the crime in this case is such that the

Court was bound to strike him off the roll. I know how terrible that is. It may prevent him from acting as a solicitor for the rest of his life; but it does not necessarily do so. He is struck off the roll; but if he continues a career of honourable life for so long a time as to convince the Court that there has been a complete repentance, and a determination to persevere in honourable conduct, the Court will have the right and the power to restore him to the profession. His case, therefore, is not hopeless; but for the time he must be struck off the roll, and this appeal must be dismissed.

LINDLEY, L.J. I am of the same opinion.

With respect to the facts, I have little to say, but that, as was said by WILLS, J., it would be a stretch of charity which would degenerate into absurd and ridiculous weakness if we allowed ourselves to express a doubt as to the real facts of the case. I have not the slightest doubt whatever that this solicitor went on letting these houses knowing perfectly well for what purpose they were being used. It is idle and childish to expect any one to come to any other conclusion. That being so, the question is, what ought to be done? The appellant says that what he has done has nothing to do with his character as a solicitor—that it is not misconduct in his professional capacity. But what is the function of the Court in considering applications to strike solicitors off the rolls? It is impossible to express that function better than in the language of Lord Mansfield in the case of *Re Brounsall* (1), which was repeated and adopted with little variation in the later case of *Rex* v. *Southerton* (2). The question is, whether a man is a fit and proper person to remain on the roll of solicitors and practise as such. That is the question. Now, asking that question, how can we say that a person who acts as this man is proved to have acted is a fit and proper person to remain on the roll of solicitors? What respectable solicitor could without loss of self-respect, knowing the facts, meet him in business? And what right have we to impose upon respectable solicitors the duty of meeting him in business? I have no

(1) 2 Cowp. 829. (2) 6 East, 126.

C. A. 1893

IN RE WEARE. IN RE THE SOLICITORS ACT, 1888.

Lindley, L.J.

hesitation whatever in saying that the decision of the Divisional Court was correct, and that we cannot alter it.

With respect to the question of procedure, I take it that the conviction is equivalent to the report of a master, and that therefore, there being a conviction of a criminal offence, it is not necessary to adopt the machinery of the Act of 1888 and go before the Incorporated Law Society, and then before the Court.

I quite agree with what the Master of the Rolls has said about restoration to the roll being quite another matter.

LOPES, L.J. I feel compelled to come to the conclusion that the offence with which the solicitor is charged is amply proved, and that his conviction was right. I am also compelled to come to the conclusion that the decision of the Divisional Court was right. I desire, however, to add a few words with regard to the jurisdiction of the Court.

It has been suggested that the power to strike off the roll only exists where there has been some professional misconduct. It appears to me that to hold that the jurisdiction of the Court to strike off the roll extends only to professional misconduct and neglect of duty as a solicitor, would be placing too narrow a limit on that most salutary disciplinary power that the Court exercises over its officers. To my mind the question which the Court in cases like this ought always to put to itself is this, Is the Court, having regard to the circumstances brought before it, any longer justified in holding out the solicitor in question as a fit and proper person to be entrusted with the important duties and grave responsibilities which belong to a solicitor? That appears to me to be the question which the Court always has to answer when a matter of this kind comes before it. That the jurisdiction of the Court is not confined to cases where the misconduct has been connected with the solicitor's profession to my mind is made very clear by the case of *In re Hill* (1). That case has been referred to by my Lord, but he did not read the judgment of Blackburn, J., which seems to me to put the matter as clearly as it can be put. Blackburn, J., says: "I think when we are called upon in exercise of our equitable jurisdiction to order an

(1) Law Rep. 3 Q. B. 543.

C. A. 1893

IN RE WEARE. IN RE THE SOLICITORS ACT, 1888.

Lopes, L.J.

attorney to perform a contract, to pay money, or to fulfil an undertaking, there we have jurisdiction only if the undertaking or the contract is made in his character of attorney, or so connected with his character of attorney as to bring it within the power of the Court to require that their officer should behave well as an officer. But where there is a matter which would subject the person in question to a criminal proceeding, in my opinion a different principle must be applied. We are to see that the officers of the Court are proper persons to be trusted by the Court with regard to the interests of suitors, and we are to look to the character and position of the persons, and judge of the acts committed by them upon the same principle as if we were considering whether or not a person is fit to become an attorney. If he has previously misconducted himself we should consider whether the circumstances were such as to prevent his being admitted, or whether he had condoned his offence by his subsequent good conduct, the principle on which the Court acts being to see that the suitors are not exposed to improper officers of the Court." Lush, J., says: "I think, where the misconduct is of such a character as would prevent a person from being admitted as an attorney, that we are bound to interfere after a person has been admitted as an attorney." Now, that case (to say nothing of the others that have been brought to the notice of the Court) places it beyond doubt that the jurisdiction of the Court extends, not only to the case where the misconduct has been connected with the profession of the solicitor, but also to cases where the conduct, though not so connected, has been such as to make it clear to the Court that that person is no longer fit to be held out as a fit and proper person to exercise the important functions with which the Court intrusts him. Now I am reluctantly compelled to come to the conclusion that the solicitor in question in the present case has brought himself within the terms of that rule, viz., that by his conduct he has shewn himself not to be a fit and proper person to be intrusted with the responsibilities and duties which belong to the profession which he has hitherto followed.

I wish to make only one observation with regard to a point that arose about the conviction. It is perfectly clear that the

C. A. 1893

IN RE WEARE. IN RE THE SOLICITORS ACT, 1888.

Lopes, L.J.

mere fact that the person has been convicted of a criminal offence does not make it imperative on the Court to strike him off the roll. There are criminal offences and criminal offences. For instance, one can imagine a solicitor guilty of an assault of such a disgraceful character that it would be incumbent on the Court to strike him off the roll. On the other hand, one can imagine an assault of a comparatively trifling description, where in all probability the Court would not think it its duty to interfere. The same observation would arise with regard to indictments for libel. There are libels and libels, some of which would compel the Court to act under the plenary power it possesses, others where the Court would hesitate before it so acted.

With regard to the point taken, that it was a condition precedent to the intervention of the Court that an application should be made to the Incorporated Law Society, I can only say that in my opinion that contention entirely fails. The application to the Incorporated Law Society was intended to be in substitution for the master's report. The report of the master was never necessary where the proceedings were taken upon a conviction, and therefore it is not necessary in this case. And again, if there were any doubt about that, s. 19, which preserves the jurisdiction of the Court, would be an ample answer.

Appeal dismissed.

Solicitors: *Ridsdale & Son, for Gregory & Hirst, Bristol; E. W. Williamson.*

H. C. J.

case in which he could be registered with the qualification that he was registered only in a fiduciary character and not as holder of the shares. I have expressed my view on this point lest it should be said hereafter, if it ever has to be decided, that the Court of Appeal threw no doubt on those expressions of the Master of the Rolls when the case was cited before them; but in my opinion his judgment was right on the only point he really had to decide. Then how did the plaintiff get those shares? It appears they were transferred into his name shortly after the death of his father, but the defendants have put in an affidavit that they believe he does not hold them in his own right. What I am struck with is the fact that the plaintiff does not in any way answer that affidavit. North, J., before whom the question came to be decided on an administration summons whether the transfer was rightly made by the executors into the son's name, allowed it. But it is not yet decided on what terms the plaintiff holds the shares, whether only under some family arrangement or whether they were transferred in performance of the father's obligation without the plaintiff being bound by any such family arrangement. Then what ought we to do? If it turns out that the plaintiff holds the shares not in his own right but under a family arrangement for the benefit of other members of the family, he would not have the necessary qualification. In the meantime something ought to be done. Article 102 does give power to remove a managing director if he ceases to hold the necessary qualification, and also for any causes for which an ordinary director can be removed.

I think the proper course will be to leave it to the defendants to call an extraordinary general meeting to decide this question—Whether, if the plaintiff has the necessary qualification, the meeting desires him to act as a managing director? and then we ought to direct the appeal to stand over till after the meeting, suspending the operation of the injunction in the meantime. Of course the meeting will be called as soon as it conveniently can be. I think it right to say that if the meeting decide that, even if the plaintiff has the qualification, they do not wish him to act as one of their managing directors, we should not grant an injunction; because in that state of things it would be contrary to the principles on which this court acts to grant specific performance of this contract by compelling the company to take this gentleman as a managing director against their will. Of course if North, J., decides, before this case comes on again, that this gentleman holds the shares only under a family arrangement, then I think it is clear the injunction ought not to be granted, as the plaintiff will, on that decision, not have the qualification. The only order we make at present is the one I have already indicated.

Lindley, L.J.—I agree with the order which the Lord Justice has stated ought to be made, and I agree in all the observations he has made except one—and that is a very important exception. I am not prepared to dissent from the view taken by the late Master of the Rolls in *Pulbrook's* case. If that case were now before us on appeal for the first time, and we had to consider the meaning of "holding shares in his own right," I am not sure whether I should take his view. But it is one thing to say that and another thing to upset what has been practically acknowledged and acted upon for ten or twelve years—that is, ever since that decision. I think the expression has acquired by usage, upon the strength of that decision, a conventional meaning which I for one am not prepared at present to disturb. I think that conventional meaning is that a person "holding shares in his own right" means holding them as distinguished from holding in the right of somebody else. I do not think the point is brought specifically interested; the point is whether not being on the register, or being on the register without power to vote, and entitled to the shares without a good many of those rights which are incidental to full membership. It means that a person shall hold shares in such a way that the company can safely deal with him whatever the interest may be in the shares. It follows that the plaintiff is not quite right in his contention that he is qualified; but, having regard to the deed, my present opinion is that he is *prima facie* qualified. His father undertook to qualify him, and he has got the shares. At present I do not see what the answer to that is, though I appreciate the observation that he gives no answer to the challenge to say how he holds the shares. Perhaps it may become manifest hereafter that he does not hold in his own right. At all events I wish to reserve that question, and not to say what I really do not think—that the Master of the Rolls was wrong in the grounds of his decision. It forms an extremely convenient, practical working rule, and has been acted upon for so long that I am not prepared to disturb it. I quite agree with the order which it is suggested should be made.

May 9.—*Rigby, Q.C.*—A meeting of the shareholders has been held in accordance with the suggestion of the court, and a resolution was carried by an overwhelming majority against the plaintiff acting as a managing director.

Buckley, Q.C.—It was really a conflict between the Mitchells and Bainbridges, and there ought to be no costs of the appeal.

The Court discharged the order of Stirling, J., and gave the defendants their costs of the appeal, directing that the costs below were to be costs in the action.

Appeal allowed.

Solicitor for the appellants, *Frith Needham*, for *A. Caddick*, West Bromwich.

Solicitor for the respondent, *Joseph Harwood.*

From Q. B. Div. May 29.

In re A Solicitor.
Ex parte Incorporated Law Society. (*a.*)

Solicitor—Misconduct—Conviction of felony—Application to strike off rolls—Previous suspension for same offence.

It is not an inflexible rule that a solicitor who has been convicted of felony will, as a matter of course, be struck off the rolls.

Therefore, where a solicitor, having been employed as clerk by a firm of solicitors, and having embezzled money belonging to them—for which he was suspended by the court from practice for eighteen months—was subsequently convicted, on precisely the same facts, of embezzlement, and sentenced to imprisonment,

Held (*affirming the decision of the* Divisional Court ante, p. 574), *that, as all the facts which were now before the court were before the court when the solicitor was suspended, except the fact of his subsequent conviction for the felony, it would be unfair to punish him again for the same offence by striking him off the rolls.*

Appeal from the decision of a Divisional Court (Pollock, B., and Manisty, J.), reported *ante*, p. 574, where the facts are fully stated.

The solicitor in question, while employed as clerk by a firm of solicitors, had misappropriated certain money which he had received for them. His conduct had been brought before the court by the Incorporated Law Society, Lord Coleridge, C.J., and Manisty, J., sentenced

(*a.*) Reported by A. P. Percival Keep, Esq., Barrister-at-Law.

him to be suspended from practice for eighteen months. He was subsequently prosecuted and convicted of the offence, and was sentenced to six months' imprisonment. The Incorporated Law Society then applied to the court to strike him off the rolls, on the ground that it was an invariable rule that a solicitor who had been convicted of felony should not be allowed to remain on the rolls. The court refused the application, and the Incorporated Law Society appealed. It was admitted that the facts before the court were now precisely the same as those on which he had previously been sentenced to suspension and also on which he had been convicted of embezzlement.

Sir R. E. Webster, A.G., and *Hollams*, for the Incorporated Law Society.

Bigham, Q.C., and *Hon. Bernard Coleridge*, for the solicitor.

The arguments used and cases cited were the same as in the court below.

Lord Coleridge, C.J.—In this case we have to apply an exceedingly difficult part of our jurisdiction. Few of the powers vested in the court are more important to the public than the disciplinary power of keeping a strong hand over the conduct of officers of the court. If I thought that what we are going to do sanctioned any laxity of procedure, or injured in any way the public who are suitors in these courts, I should hesitate long before coming to such a conclusion. This particular case, although, as I have said, it is delicate and difficult, is not, I think, one of importance. The facts are very simple. The attorney in question was the trusted clerk of a country firm of solicitors, being himself a solicitor. There is no doubt that he misconducted himself and defrauded his employers. He volunteered a confession of his guilt, and was himself the author of his own disgrace. This is, I think, of importance, although, no doubt, the defalcations might speedily have been discovered. Still, he stated fully the extent of the wrong he had done, and he offered to make an arrangement by which the money might be repaid. The Law Society then most properly brought his conduct to the attention of the court, and after careful consideration Manisty, J., and I came to the conclusion that, under all the circumstances of the case, a sentence of eighteen months' suspension was sufficient to mark the sense of the court, as a disciplinary tribunal, of the gravity of the offence. We may have been wrong in that conclusion, but there was no appeal from our decision. It is said that there could have been none, but I do not feel clear as to that. That sentence, therefore, still stands; and at the time we imposed it we both said that we hoped no further steps would be taken in the matter. The solicitor's employers, however, acting no doubt within their rights, chose to disregard that intimation, and prosecuted the solicitor to conviction. Under those circumstances the Law Society, acting on an excellent general rule, come before the Queen's Bench Division again and produce the conviction, and say, now that he has been convicted, he must, as a matter of course, be struck off the rolls. It is obvious that if it were laid down as a general rule that a conviction must in every case be followed by a striking off the rolls, the rule would break down at once. The court must, it is plain, look into the circumstances of the conviction. There are felonies which are infinitely disgraceful; but there are others which a man of honour might commit without suffering any stain. No doubt the law says that such a man must be punished; but it does not follow that he is unfit to associate with his fellows, or to be trusted with their property or confidence. In this case there is no single new fact before the court, except the fact of the conviction, which was not before them on the last occasion. The moral guilt of the man is precisely the same. There is no alteration in his position except that a conviction has followed on his confessed misconduct. The Divisional Court have adhered to the view that eighteen months' suspension was an adequate punishment, and have substantially endorsed that sentence. From their decision this appeal is brought. I am far from complaining of the conduct of the Law Society in bringing it. They may well have thought it right to get a decision on the point whether a conviction is in every case to be followed by striking off the rolls as a matter of necessity. Over fifty years ago the practice was first introduced of the court dealing in a disciplinary manner with cases which were in their nature criminal. Prior to that time a conviction had first to be obtained before the court would interfere. No doubt both practices have their difficulties; but, for myself, I cannot help thinking that the earlier practice was the better. The other is, however, now inveterate, and cannot be disturbed. Still, there is this to remember—that if the view put forward by the Attorney-General on behalf of the Law Society were to prevail, then, wherever an angry or hard-hearted employer or client were dissatisfied with the punishment awarded to a solicitor by the Queen's Bench, he would only need to prosecute him and obtain a conviction in order to force the hand of the court, and compel them to strike him off the rolls. That would, I think, be a very great disadvantage, and I cannot agree with the view so put forward.

It is said, and no doubt with great truth, that a public scandal will result if solicitors who have been convicted are allowed to remain on the rolls. Of course it is undesirable that they should do so, but I do not think that point is of great weight here, since for more than half a century such a case as this has never arisen. The censure on this attorney when he was suspended was effectual, because his name was then disclosed, and it is no more effectual because his name was again disclosed on his conviction. It is the disclosure of the name that is supposed to create the scandal, and I cannot see that any greater scandal will result if he is allowed to practice after his conviction than after his eighteen months' suspension. I admit the difficulty, but I doubt the practical importance of the question, and I think it would be wrong to interfere with the decisions of two divisional courts which were pronounced by them in the exercise of their disciplinary power over their own officers, vested in them, not for the benefit of the Law Society, but for the purpose of keeping within due and honourable limits the persons who are clothed with authority by them.

Lindley, L.J.—I wish to protest in the strongest manner against the proposition that because a solicitor has been convicted of felony he must, as a matter of course, be struck off the rolls. Such a proposition is far too wide. If, however, this case had come before me in the first instance, I should not, I think, have allowed this solicitor to remain on the rolls. In my opinion scandal is likely to arise by such persons remaining on the rolls, but that is not the question here, which is, whether an additional sentence must now be pronounced because he has been convicted. I do not wish to differ from my colleagues and from the Divisional Court, though I think it right to express the course which I should have taken had the matter come before me in the first instance.

Lopes, L.J.—I agree both with my lord and with the Divisional Court. I yield to no one in the strong view I take of the disciplinary power of the court over its officers, and I am far from saying that if the matter had come before me in the first instance I should not have struck this attorney off the rolls. But the facts are precisely the same now as they were on the first occasion. He is not morally worse after the conviction than he was

before. The misconduct is the crime for which he has already been punished by the court, and I cannot think would be right to inflict any further punishment. I therefore, that this appeal must be dismissed, with

Appellants, *E. W. Williamson.*
Solicitors for the respondent, *Goldberg & Langdon.*

From Q. B. Div. June 1.

JAMES *v.* JAMES AND BENDALL. (*a.*)

Practice—Arbitration—Revocation of submission—Discretion of court—3 & 4 Will. 4, c. 42, s. 39.

The power which the court possesses under 3 & 4 Will. 4, c. 42, s. 39, of revoking a submission to arbitration is discretionary, and must be exercised according to the circumstances of each particular case.

Decision of the Queen's Bench Division (*ante*, *p.* 495) *affirmed.*

East and West India Dock Co. v. Kirk and Randall, 12 *App. Cas.* 738, 36 *W. R. Dig.* 7, *discussed.*

Appeal from the decision of a Divisional Court (Denman and Stephen, JJ.), reported *ante*, p. 495, where the facts are fully stated.

The plaintiff, who was the widow and executrix of a solicitor, entered into an agreement with the defendants by which they were to carry on the business and to take over the books and furniture at a valuation. The last clause of the agreement was as follows:—"No charge to be made by Mrs. James for the goodwill of her late husband's practice." The plaintiff having afterwards brought this action to recover the books and papers of her late husband, the defendants relied on this agreement, contending that these documents had passed to them under the word "goodwill." The matter was referred to arbitration, and the arbitrator, being requested by the parties to decide this question first, held that the books and papers did not pass to the defendants under the word "goodwill." The defendants then obtained a rule *nisi* to revoke the submission to arbitration, which was discharged by the Divisional Court.

The defendants appealed.

Tindal Atkinson, Q.C., and *Thomas Terrell*, for the appellants.

F. C. Gore, for the respondent.

The arguments used and cases cited were the same as in the court below.

LINDLEY, L.J.—This is an appeal from the order of a Divisional Court refusing leave to revoke a submission to arbitration, and the question is whether, in the exercise of the discretion which the court has, to grant or refuse such an application, the facts are such as to induce them to do so.

The power to revoke a submission to arbitration is given to the court by implication by section 39 of 3 & 4 Will. 4, c. 42. Their power is clear, but it is a discretionary power, and one which they can exercise or not as they think fit. I do not understand the case of *East and West India Docks Co. v. Kirk and Randall*, 12 App. Cas. 738, 36 W. R. Dig. 7, which was relied on in argument as laying down any doctrine opposed to the ordinary practice of the courts. The circumstances in that case were very exceptional. The arbitrator had decided to admit evidence which would entail enormous expense upon the parties, and the House of Lords, under these exceptional circumstances and for the purpose of forcing him to state a case upon the point, allowed the rule to go for the revocation of the submission. In doing so they differed no doubt from the decision of the Court of Appeal, but only on a question of discretion, and no general principle was laid down. Here there is a point which is fatal to the application. The action was brought by an executrix against two partners to recover the papers of a testator. The partners set up an agreement which was entered into by all parties. One of the chief points for decision was as to the true construction of that agreement. It was thought better that all matters should be referred to arbitration, and before evidence was taken the parties pressed the arbitrator to decide this question of construction. Then when he has decided it, the defendants endeavour to revoke the submission on the ground that his decision was wrong. They induced the arbitrator to do what he would otherwise not have done, and that justifies us in dismissing this appeal. As to the question of the meaning of the word "goodwill" I say nothing. I entertain a strong opinion on the point, but it is not necessary that I should express it.

LOPES, L.J.—While desiring to speak with all respect of the case of *East and West India Dock Co. v. Kirk and Randall* in the House of Lords, I must confess that I have always regretted that decision, since I fear it tends to do away with one of the chief advantages of arbitration—namely, its finality. The power, however, to grant a revocation of a submission to arbitration is discretionary, and must be exercised by the court according to the circumstances of each particular case. In this case all doubt as to the manner in which it ought to be exercised has been removed from my mind by the fact that there was an understanding between the parties that the arbitrator should finally dispose of the question of the meaning of the word "goodwill" in this agreement. On that question I, like my brother Lindley, desire to express no opinion, and I agree with him that this appeal should be dismissed.

Appeal dismissed.

Solicitors for the appellants, *Bridges, Sewell, Heywood, Rum, & Dibdin*, for *T. P. Bendall*, Newmarket.

Solicitors for the respondents, *Peacock & Goddard*, for *Eaton, Evans, & Williams*, Haverfordwest.

(*a.*) Reported by A. P. PERCEVAL KEEP, Esq., Barrister-at-Law.

High Court of Justice.

Chan. Div. / Kay, J. } May 30; June 4.

In re BALLANCE.

BALLANCE *v.* LAMPMEN. (*a.*)

Will—Construction—Residue of residue—Direction that share of residue shall sink into residue—"To be settled"—Executory trust.

Testator bequeathed £10,000 on trust for his daughter Eliza for life, and then for her children who, being sons, should attain twenty-one, or, being daughters, should attain twenty-one or marry, and if no such children, one-fifth to Eliza's appointees by will, and in default, and also as to the other four-fifths, subject to her husband's life interest, "to sink into and to form part of my general residuary estate, and be applied and disposed of as hereinafter mentioned." He made similar dispositions in favour of his daughter Mary, and gave

(*a.*) Reported by H. C. ROGER, Esq., Barrister-at-Law.

18 Mar '78	Letter from Law Society's Inquiry Committee to Respondent for explanation for delay in reporting criminal breach of trust and complaint of Mr Roger Lim of Criminal Investigation Department re offence under s.213 of Penal Code. (Supplementary Bundle)
26 May '78	Hearing before 1st Inquiry Committee on delay
6 Jun '78	Respondent arrested and charged in Magistrate Court.
20 Jul '78	Letter from Inquiry Committee for Disciplinary proceedings on charge of delay. (Supplementary Bundle)
7 Nov '78	Respondent convicted on nine charges under s.213 of Penal Code after trial of about 3 weeks.
13 Dec '78	Law Society's Inquiry Committee wrote asking for explanation on the said convictions. (R 152)
14 Mar '79	Statement of Case on charge of delay (served on 4 April 1979). (Supplementary Bundle)
14 May '79	Hearing before Inquiry Committee on the said convictions.
13 Jun '79	Letter from Drew & Napier proposing to amend Statement of Case deleting Paragraph 8.
15 Sep '79	Notice to further amend Paragraph 10 of the Statement of Case to plead the consequences of the delayi.e.to enable Santhiran to continue to practise as an Advocate & Solicitor.
12 Mar '80	Appeal against the said convictions except one of attempt under s.213 of Penal Code were dismissed.
23 Jun '80	Respondent informed Disciplinary Committee hearing the charge of delay of application for special leave to appeal. (Supplementary Bundle)
14 Jul '80	Disciplinary Committee fixed hearing on charge of delay for 23rd September 1980.
29 Jul '80	Amended Statement of Case delivered to Respondent. (Supplementary Bundle)
1 Sep '80	Mr Justice Choor Singh refuse Special leave to appeal to Court of Criminal Appeal.
23 Sep 2 Oct '80	Disciplinary Committee heard charges on delay.
19 Nov '80	Disciplinary Committee delivered its report and for Respondent to show cause on delay. (Supplementary Bundle)

2 Jan '81	Law Society informs Respondent that there is to be formal investigation by a Disciplinary Committee into the convictions (R 172)
12 Jan '81	Court of Criminal Appeal refused leave to Appeal.
15 Jan '81	Request to Law Society for postponement of show cause on delay to await report of disciplinary proceedings (on convictions) so that if report was adverse both show causes could be heard together. (R ~~175~~ 173)
21 Jan '81	Law Society rejected request for postponement of show cause. (R 175)
20 May ' 81	Privy Council refused Special leave to appeal.
26 Aug '81	Disciplinary Committee made report on the said convictions and for Respondent to show cause. (R 10)
27 Aug '81	Order of suspension for 2 years was made against Respondent.
12 Jul '82	Privy Counsel heard and dismissed appeal.
17 Sep '82	Order to show cause made on the said convictions. (R 1)

Your Ref:
Our Ref: IP/A/ic1c/77
D 17 Feb 78

Exhibit SB NO.3

CONFIDENTIAL

The President
Law Society
Supreme Court
St Andrew's Road
Singapore 6

17 FEB 1978

Dear Sir

The Commercial Crime Division commenced investigations on one S. Santhiran for the alleged offence of Criminal Breach of Trust as an agent on 24 Jun 77. S. Santhiran is an advocate and solicitor who was formerly employed by the law firm of Braddell Brothers, 4th floor, OUB Chambers, Raffles Place, Singapore. It was alleged that he from June 72 to Feb 76 had dishonestly misappropriated a sum of approximately $350,000/- from the CLients' Account of Braddell Brothers.

2 In the course of our investigations, the following become apparent :

(1) The defalcation by S. Santhiran was first discovered by Harry Wee, the sole partner of Braddell Brothers in Feb 1976.

(2) Between 9 Mar 76 to 10 Jun 76 S. Santhiran repaid $297,956.12 to Braddell Brothers for the defalcation on the firm's Clients' Account. (For details of the repayments please see attached list E-1). Out of this amount $153,253.13 was credited to the respective clients' account and the balance of $144,702.99 was retained in a Suspense Account.

(3) In Nov 1976 Jamshid K Medora, a partner of Medora & Tong, a firm of public accountants was approached by Harry Wee to carry out investigation regarding S. Santhiran's misappropriation of the money from the Clients' Account of Braddell Brothers.

(4) On 1 Apr 77 Medora & Tong sent their report to Braddell Brothers.

(5) On 26 MaY 77 Harry Wee sent a letter to the Commercial Crime Division alleging that S. Santhiran had unlawfully transferred moneys from various accounts of Braddell Brothers.

(6) On 24 Jun 77 Harry Wee lodged a formal Complaint with the Commercial Crime Division, C.I.D.

3 The events leading up to the police report are described in the police statements of Jamshid K Medora, a partner of Medora & Tong and Wong Siong Poon who is a partner of Turquand, Young & Co., a firm of public accountants. Copies of the statements are enclosed and marked A-3 and A-4. A copy of the statement of Harry Wee is also enclosed and marked A-1.

4 It would appear that when the offence of S. Santhiran was first detected in Feb 76 by Harry Wee, he did not report this matter to anyone but proceeded to accept restitution of property from 9 Mar 76 to 10 Jun 76. The auditor, Medora & Tong was not engaged until November 76, some 9 months after the date of discovery.

5 According to Jamshid K Medora, Harry Wee had on at least two occasions asked him to speak to S. Santhiran that as long as S. Santhiran admitted to some of the breaches, voluntarily allowed his name to be struck off the roll and get someone to give an undertaking to pay the balance, he (Harry Wee) would not report the matter to the police. (See A-3 para 15).

6 Paras 7, 8 and 9 of Wong Siong Poon's statement (A-4) also indicated that as late as March 1977, Harry Wee was still reluctant to allow his auditors to report on the misappropriation of S. Santhiran in the Accountant's report for the year ending 31 Dec 76 as required by S.75 of the Legal Profession Act, Cap 217.

7 It appears that there may be a possible contravention of S.213 of the Penal Code, Cap 103, on the part

 Exhibit SB No. 5
3

of Harry Wee. You may, therefore, wish to investigate into the conduct of Harry Wee in this regard.

8 The exhibits referred to in the enclosed statements are in the custody of the Commercial Crime Division. You can get in touch with me if you require copies of them.

9 I am sending copies of this letter to my superiors, the Commissioner of Police and the Attorney-General.

Yours faithfully

(ROGER LIM CHER KWAN), ASP
for HEAD
COMMERCIAL CRIME DIVISION
CRIMINAL INVESTIGATION DEPT
SINGAPORE

ENCS

cc

Attorney-General

Commissioner of Police.

3

IC/17/78

Harry L. Wee Esq.,
c/o M/s. Braddell Brothers,
Singapore.

18th March, 1978
CONFIDENTIAL

Dear Sir,

The Inquiry Committee has decided of its own motion to inquire into your conduct in the following matters :-

(a) the delay in reporting the defalcations in the account of Messrs. Braddell Brothers of which firm you were at the material time the sole proprietor;

(b) the statement made by Mr. Jamshid Medora to the Police to the effect that you had asked him (in his capacity as your firm's Accountant) on at least two (2) occasions to speak to Mr. Santhiaran (your former Assistant) informing Santhiaran that as long as he admitted the defalcations and applied on his own motion to have his name

Exhibit SB No. 7

struck off the Roll of Advocates & Solicitors and satisfied you of repayment of the balance of the moneys taken by him, that you would not report the matter to the Police and prefer charges against Mr. Santhiaran..

In respect of (a) aforesaid, according to the report made by you to the Law Society dated 27th March 1977, the first defalcations were discovered in February 1976 and Mr. Santhiaran was said to have admitted sometime in March 1976 that he had wrongfully transferred and taken or was unable to support items totalling $298,270-75. Further you say in your report that between 9th March 1976 and 10th June 1976, Mr. Santhiaran repaid sums up to a total of $297,956-12 to Messrs Braddell Brothers for the defalcations on the firm's Clients' Account.

In respect of (b) aforesaid, I enclose herewith xerox copy of a letter dated the 17th February 1978 from ASP Roger Lim Cher Kwan for the Head of the Commercial Crime Division, Criminal Investigation Department, Singapore, addressed to the President of the Law Society, together with xerox copies of the enclosures mentioned

therein, including the statement by Mr. Jamshid Medora made to Det/Insp Wong Chou Wen on the 1st November 1977.

Please be good enough to let me have any explanation you wish to offer in respect of the above within fourteen (14) days in accordance with section 87(5) of the Legal Profession Act and also advise the Inquiry Committee whether you wish to be heard by the Inquiry Committee.

For the convenience of the Inquiry Committee please let me have your explanation in septuplicate.

Yours faithfully,

Sd: Phyllis P.L. Tan

.....

(Miss Phyllis P.L.Tan)

Chairman

3

IC/17/78

W/AL 24th May, 1978

CONFIDENTIAL

Harry L. Wee Esq.

c/o M/s. Braddell Brothers.

Dear Sir,

I acknowledge receipt of your letter dated 15th May contents of which are noted.

This is to confirm the appointment for you to appear before the Inquiry Committee on Friday the 26th instant at 4.30 p.m. at the Law Society premises at Colombo Court.

Yours faithfully,

.....

(Chairman)

Exhibit SB No. 10

IC/17/78

W/AL

20th July, 1978

Mr. H.L. Wee,
Messrs. Braddell Brothers,
34/41 OUB Chambers,
Raffles Place,
Singapore 1.

Dear Sir,

Re: Complaint by the Secretary of the Law Society of Singapore

---

I am directed to inform you that the Council of the Law Society of Singapore has accepted the findings of the Inquiry Committee as follows:-

(1) that there shall be a formal investigation by a Disciplinary Committee into the following complaint against you, viz:-

Failure to report the criminal breach of trust committed by Mr. Santhiran when he was a Legal

Exhibit SB No. 11

Assistant in the firm of Braddell Brothers to the Law Society earlier.

Application will be made to the Chief Justice under Section 90 of the Legal Profession Act (Chapter 217) upon conclusion of criminal proceedings against you.

(2) that in respect of the allegation of accepting restitution of concealing an offence in contravention of section 213 of the Penal Code, the evidence was inconclusive and no recommendation was made by the Committee.

Yours faithfully,

Secretary,
The Law Society
of Singapore.

C

Exhibit SB No. 12

IN THE MATTER OF HARRY LEE WEE
AN ADVOCATE AND SOLICITOR

And

IN THE MATTER OF THE LEGAL PROFESSION ACT

• • • •

AMENDED

STATEMENT OF CASE

1. Harry Lee Wee (hereinafter called "the Respondent an Advocate and Solicitor of the Supreme Court of the Republic of Singapore of some thirty years standing, practises, and has at all material times practised, under the name and style of Braddell Brothers (hereinafter called "the Firm"). The Respondent was at various times a member of the Council of the Law Society of Singapore, and was the President of the Law Society for the period 1975 to 1977, inclusive.

2. In or about 1971, one S. Santhiran, an Advocate and Solicitor (hereinafter called "Santhiran"), entered employment with the Firm as a legal assistant.

3. In or about February 1976, the Respondent had reason to believe that Santhiran had misappropriated, in aggregate, a substantial sum standing to the credit of the Clients account of the Firm.

Exhibit SB No. 13

4. In or about March 1976, Santhiran admitted to the Respondent that he, Santhiran, had misappropriated or otherwise misapplied sums totalling $298,270.75 from the Clients account of the Firm.

5. Between the 9th March 1976 and the 10th June 1976 Santhiran, with the knowledge and encouragement of the Respondent, made restitution to the Firm of $297,956.12 in respect of monies misappropriated or otherwise misapplied by Santhiran as aforesaid.

6. In or about November 1976, the Respondent appointed Nedora and Tong, a firm of public accountants (hereinafter called "the Accountants") to inspect the accounts of the Firm with a view to ascertaining the extent of the misappropriation or misapplication of funds by Santhiran from its Clients account.

7. Notwithstanding the facts referred to in paragraphs 3 to 6 inclusive of this Statement of Case, the Respondent failed to make a report to the Police concerning the conduct of Santhiran, who continued in the employment of the Firm as an Advocate and Solicitor, albeit without salary, until he left the service of the Firm on the 31st December, 1976.

~~8. In or about late April and or early May, 1977, the Respondent asked one Jamshid Nedora, a partner of the~~

Exhibit SB No. 14

~~Accountants having conduct of the inspection referred to~~ in the preceding paragraph, to inform Santhiran that, or to the effect that :

(i) so long as Santhiran made, or caused to be made, full restitution; and

(ii) applied on his (Santhiran's) own motion to have his (Santhiran's) name struck off the Roll of Advocates and Solicitors,

~~the Respondent would not report the matter to the Police.~~

~~9.~~8. The Accountants delivered their report to the Respondent on or about the 25th May 1977. The Respondent first reported the conduct of Santhiran to the Police on or about the 26th May 1977, and wrote to the Law Society with reference thereto on the 27th May, 1977.

~~10.~~9. Santhiran was charged on five charges under section 408 of the Penal Code. One charge was proceeded wi the prosecution asking for the remaining four charges to be taken into consideration. Santhiran was convicted on the 10th May, 1978 and sentenced to 9 months' imprisonment, having admitted the facts pertaining to the charge that was proceeded with, and having consented to the four remaining charges being taken into consideration.

Exhibit SB No. 15

~~11.~~10. ~~By reason of the facts referred to in paragraphs~~ 2 to 7 hereof (inclusive), the Respondent ~~was~~ guilty of grossly improper conduct in ~~the~~ discharge of his professional duty within ~~the~~ meaning of section 84(2)(b) of the Legal ~~Profession Act;~~ By reason of the Respondent's aforesaid delay in reporting Santhiran's aforesaid criminal and professional misconduct to the Police and Law Society respectively, the Respondent caused, permitted or enabled Santhiran to continue in practice as an Advocate and Solicitor, until the 31st December 1976 as a legal assistant with Braddell Brothers, and thereafter for some months on his own account. By reason of his aforesaid delay, the Respondent was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of section 84(2)(b) of the Legal Profession Act; further, or in the alternative, the Respondent was guilty of such conduct as would render him liable to be disbarred, struck off the Roll of the Court, suspended from practice or censured if a barrister or solicitor in England, due regard being had to the fact that the two professions are fused in Singapore.

~~12.~~11. By reason of the facts referred to in paragraph 7 hereof, in conjunction with facts referred to in paragraphs 2 to 7 hereof (inclusive), the Respondent was guilty of such conduct as would render him liable to be disbarred, struck off the Roll of the Court, suspended from practice or censured

Exhibit SB No. 16

if a barrister or solicitor in England, due regard being had to the fact that the two professions are fused in Singapore.

~~13.~~12. It is submitted that the Respondent should be dealt with under section 84(1) of the Legal Profession Act.

Dated the 14th day of March, 1979.

Amended as underlined in red ink
this day of September, 1979

J. GRIMBERG

Solicitor for the Council of the Law Society of Singapore.

 Exhibit SB No. 17

BRADDELL BROTHERS

YOUR REF:

OUR REF: W/DC

Mr. Stephen Chan,
Secretary,
The Disciplinary Committee,
Law Society of Singapore,
c/o Messrs. Boswell, Seah & Lim,
Singapore.

23rd June 1980

Dear Sir,

In response to your phone enquiry I have to inform you that my firm filed on my behalf a Notice of Motion on 3rd April which came before Mr. Justice Choor Singh in his appellate jurisdiction on the 11th April. The learned judge adjourned the matter for a date to be fixed.

I am presently arranging for Queen's Counsel to appear on my behalf.

Yours faithfully,
Sd: H.L. Wee.
(H.L. Wee)

cc. to :-

Mr. Freddy Wu,

Messrs. Donaldson & Burkinshaw,

Advocates & Solicitors,

Singapore.

In the Matter of HARRY LEE WEE,

an Advocate and Solicitor, Exhibit SB No 19

And

263

In the Matter of the Legal Profession

Act (Cap. 217).

1. We, the undersigned, CHYE CHENG TAN and ERIC CHOA WATT CHIANG, Advocates and Solicitors, were with Mr. ANTHONY PURDOM GODWIN appointed on the 13th day of December 1978 by the Chief Justice to be the members of a Disciplinary Committee to hear and investigate a complaint against the abovenamed advocate and solicitor. On the 26th day of December 1978, the Chief Justice by an instrument in writing made under the above Act, removed the said Mr. Anthony Purdom Godwin as a member of the Disciplinary Committee and appointed Mr. RODNEY STEPHEN BOSWELL, an advocate and solicitor, as a member in his place. The Committee on the 17th day of January 1979 appointed Mr. STEVEN CHAN SWEE TECK, an advocate and solicitor, to be the Secretary of the Committee.

2. The Committee met on 18th April 1979 at 11.00 a.m. in the Conference Room of Messrs. Ten, Rajah & Cheah for the purpose of fixing a date for the hearing of the Inquiry and at such date the Law Society was represented by Mr. SACHI SAURAJEN appearing on behalf of Mr. J. GRIMBERG, the Counsel for the Law Society, while Mr. C.S. WU appeared on behalf of the Respondent. At this hearing, Mr. Wu raised certain questions relating to the Statement of the Case and the hearing was adjourned to Tuesday, 8th May 1979, at 5.00 p.m. On the appointed date and time, the Committee met in the presence of Mr. J. Grimberg and Mr. C.S. Wu

to hear the preliminary point intended to be raised by Mr. Wu. At this hearing, Mr. Wu asked for clarification of paragraph 8 of the Statement of the Case. It was agreed that Mr. Wu and Mr. Grimberg should meet for the purpose of settling the issue with regard to paragraph 8 of the Statement of the Case and, in the meantime, the Inquiry was fixed for hearing from 8th October 1979 to 12th October 1979 (inclusive) with liberty to the parties to apply.

3. On 13th July 1979, the dates fixed for the hearing were vacated and the Committee fixed fresh dates for the hearing, namely, 15th October 1979 to 19th October 1979 (inclusive).

4. On 17th September 1979, Messrs. Donaldson & Burkinshaw, the solicitors for the Respondent, applied to the Committee for the hearing to be postponed to a date after 11th February 1980 on the ground that the Respondent was applying for his appeal against conviction to be heard in January 1980. The dates fixed for hearing in October 1979 were consequently vacated.

5. Mr. Rodney Stephen Boswell, the third member of the Disciplinary Committee, died on the 7th day of December 1979, and the Chief Justice by another instrument in writing dated 8th January 1980 appointed the undersigned PO GUAN HOCK, an advocate and solicitor, as a member of the Committee in place of the late Mr. Rodney Stephen Boswell.

6. On 23rd June 1980, the Respondent by a letter of that date informed the Secretary of the Committee that his firm had filed on his behalf a Notice of Motion on 3rd April 1980 which

came before Mr. Justice Choor Singh in his appellate jurisdiction on 11th April 1980 and the learned Judge had adjourned the matter for a date to be fixed.

7. The Committee met on 14th July 1980 at 4.45 p.m. at the abovementioned Conference Room of Messrs. Tan, Rajah & Cheah and fixed 23rd September to 26th September (inclusive) 1980 for the hearing of the Inquiry.

8. The Inquiry commenced as scheduled on 23rd September 1980 at 10.30 a.m. in the Conference Room of the Subordinate Court Building and from 24th September to 26th September 1980 in Court No. 23 of the same building. The Inquiry was adjourned from 26th September 1980 to 1st October 1980 on which date it was concluded at 1.15 p.m. The Respondent was represented throughout the hearing by Mr.C.W.G. ROSS-MUNRO, Q.C., assisted by Mr. C.S. Wu, except on 26th September 1980 when Mr. W.E. JANSEN appeared in place of Mr. Wu. Mr. J. Grimberg represented the Law Society throughout the hearing.

9. The case against the Respondent is set out in the Amended Statement of Case which reads as follows:-

AMENDED

STATEMENT OF CASE

(1) Harry Lee Wee (hereinafter called "the Respondent"), an Advocate and Solicitor of the Supreme Court of the Republic of Singapore of some thirty years standing, practises, and has at all material times

practised, under the name and style of Braddell Brothers [hereinafter called "the Firm"]. The Respondent was at various times a member of the Council of the Law Society of Singapore, and was the President of the Law Society for the period 1975 to 1977, inclusive.

(2) In or about 1971, one S. Santhiran, an Advocate and Solicitor [hereinafter called "Santhiran"], entered employment with the Firm as a legal assistant.

(3) In or about February 1976, the Respondent had reason to believe that Santhiran had misappropriated, in aggregate, a substantial sum standing to the credit of the Clients account of the Firm.

(4) In or about March 1976, Santhiran admitted to the Respondent that he, Santhiran, had misappropriated or otherwise misapplied sums totalling $298,270-75 from the Clients account of the Firm.

(5) Between the 9th March 1976 and the 10th June 1976, Santhiran, with the knowledge and encouragement of the Respondent, made restitution to the Firm of $297,956-12 in respect of monies misappropriated or otherwise misapplied by Santhiran as aforesaid.

(6) In or about November 1976, the Respondent appointed Medore and Tong, a firm of public accountants [hereinafter called "the Accountants"] to inspect the accounts of the Firm with a view to ascertaining

Exhibit SB No. 23

the extent of the misappropriation or misapplication of funds by Santhiran from its Clients account.

(7) Notwithstanding the facts referred to in paragraphs 3 to 6 inclusive of this Statement of Case, the Respondent failed to make a report to the Law Society concerning the conduct of Santhiran, who continued in the employment of the Firm as an Advocate and Solicitor, albeit without salary, until he left the service of the Firm on the 21st December, 1976.

(8) The Accountants delivered their report to the Respondent on or about the 25th May 1977. The Respondent first reported the conduct of Santhiran to the Police on or about the 26th May 1977, and wrote to the Law Society with reference thereto on the 30th April 1977.

(9) Santhiran was charged on five charges under section 408 of the Penal Code. One charge was proceeded with, the prosecution asking for the remaining four charges to be taken into consideration. Santhiran was convicted on the 10th May, 1978 and sentenced to 9 months' imprisonment, having admitted the facts pertaining to the charge that was proceeded with, and having consented to the four remaining charges being taken into consideration.

(10) By reason of the facts referred to in paragraphs 2 to 8 hereof (inclusive), the Respondent was guilty of grossly improper conduct in the discharge of his

professional duty within the meaning of section 84 (2) (b) of the Legal Profession Act.

(ii) It is submitted that the Respondent should be dealt with under section 84 (1) of the Legal Profession Act.

10. At the commencement of the Inquiry, two preliminary questions were submitted to the Committee for decision, viz:-

(1) Whether the Committee was entitled to consider for the purposes of this investigation the natural and probable consequences of the Respondent's admitted delay in reporting to the Law Society.

(2) Whether Counsel for the Law Society was entitled to address the Committee in opening and to cross-examine the Respondent, if he chooses to give evidence, on the merits and truthfulness of the Respondent's explanations for the admitted delay and the Respondent's motive for the delay.

11. Counsel for the Law Society maintained that in the case of question No. (1) the Committee was entitled to consider such consequences and in the case of No. (2) he was entitled to address the Committee and to cross-examine the Respondent on the Respondent's explanations and motives. Counsel for the Respondent took the opposite view.

12. The reports of three cases were referred to by Counsel on both sides as being relevent to the issue before the Committee.

The cases are:-

(1) Lau Liat Meng v. Disciplinary Committee

(1987) 2 M.L.J. 141,

(2) Isaac Paul Retnam v. Law Society of Singapore

(1976) 1 M.L.J. 195, and

(3) In the Matter of an Advocate and Solicitor

(1978) 2 M.L.J. 7 (hereinafter referred to as the "DTC" case).

13. The two questions put to the Committee arose from the contention of Counsel for the Respondent that only one charge had been made against the Respondent and that appeared in the Law Society's letter of 20th July 1978 to the Respondent appearing on page 69 of the agreed bundle marked "A Vol.1", viz:-

" A formal investigation by a Disciplinary Committee into the following complaint against you, viz:-

Failure to report the criminal breach of trust committed by Mr. S. Santhiran when he was a legal assistant in the firm of Braddell Brothers to the Law Society earlier. "

(pp 21/22 of Transcript).

Counsel for the Respondent not only contended that no further charge could be added, but also that the matters referred to in questions (1) and (2) were not matters which related to the charge preferred by the Law Society, namely:- failure to report the defalcations to the Law Society earlier.

14. Counsel for the Law Society, while refraining from contending that he was entitled to raise new charges, maintains that the subject matter of the two questions were related to the charge preferred and did not constitute any new charge.

15. Before dealing with the authorities, we feel that there has been some confusion in the use of the term "charge" and it would be useful to clarify the same. In disciplinary proceedings there are eleven specific charges contained in the eleven paragraphs (a) to (k) inclusive of Section 84 (2) which may be preferred against a respondent. In preferring any of these charges, it is necessary to set out the specific act complained of and on which the charge is founded and these acts are aptly described by Lord Hodson in his judgment in the Lau Liat Meng case as grounds of the charge.

16. In the present case, the charge against the Respondent is contained in paragraph 10 of the amended Statement of the Case, namely,that the Respondent was guilty of grossly improper conduct in the discharge of his professional dutywithin the meening of Section 84 (2) (b) of the Legal Profession Act. The so-called "charge" of failure to report the criminal breach of trust committed by S. Senthiran when he was a legal assistant in the firm of Braddell Brothers to the Law Society earlier is merely a ground of the charge made under Section 84 (2) (b). As a charge such as that prescribed in Section 84 (2) (b) may be supported by more grounds than one, or a solicitor may be

charged with more then one charge under Section 84 (2) (b), each supported by a different ground, there has arisen the loose practice of referring to these grounds as separate charges instead of grounds and in order to avoid confusion, we shall refrain from using the term "charge" except in its strict sense.

17. With regard to the powers of the Disciplinary Committee in respect of allowing new charges to be preferred, although the Privy Council in its judgment in the Lau Liat Meng case appears to have laid down the law very clearly, the decisions in the other two cases cited above appear to have cast some doubts over what was otherwise a clear ruling.

18. In the Lau Liat Meng case, the solicitor appeared before a Disciplinary Committee on two substantive charges of grossly improper conduct. One charge related to the receipt of $700/- in breach of the Motor Vehicles (Third Party Risks and Compensation) Ordinance and the other to a champertous agreement. During the course of the hearing by the Disciplinary Committee, the solicitor admitted that although he had been paid the Solicitor and Client costs, he, nevertheless retained the sum of $500/- recovered from the other party as party and party costs. The receipt of this sum of $500/- was not connected with the two original charges of grossly improper conduct which were founded on different grounds, but the Disciplinary Committee nevertheless made an adverse finding against the solicitor of grossly improper conduct on the ground that he had received thesum of $500/- over and above the Solicitor and Client costs. No amendment was made to the Statement of the Case in order to

incorporate a new charge and as the retention of $500/- was a surprise disclosure while the solicitor was under cross-examination, the Privy Council held that the adverse finding of the Disciplinary Committee could not be upheld. The relevant part of the judgment of Lord Hodson appears on pages 144 and 145 of the Report, viz:-

> " While acknowledging the gravity of the admission made by the appellant as to this $500/- which he put into his own pocket without disclosure to his client and as to which he gave no satisfactory explanation it must be recognised that he was not charged either with having made excessive charges for professional work or having committed any specific fraudulent act. The case against him was contained in the statement quoted above which was made pursuant to rule 2 of the Advocates and Solicitors (Disciplinary Proceedings) Rules 1963. It was once amended but no amendment was made or sought to be made after the appellant had made his admission: (See rule 10 of the same Rules which expressly provide for amendment of or addition to the case). Formal amendment might have been dispensed with provided adequate notice of the charge had been given, but natural justice requires adequate notice of charges and also the provision of opportunity to meet them. This requirement was not met. "

19. According to Lord Hodson's judgment, the Disciplinary

Exhibit SB No. 29

Committee has powers under rule 10 of the Advocates and Solicitors (Disciplinary Proceedings) Rules, 1963, during the course of a hearing to permit a further Statement of the Case containing new charges to be filed provided the solicitor is not taken by surprise and he is given an opportunity to prepare his defence to the new charge so that there will be no denial of natural justice. In fact Lord Hodson went further and ruled that formal amendment might have been dispensed with provided adequate notice of the new charge had been given and the solicitor had an opportunity to meet it.

20. Although the Lau Liat Meng case was dealt with when the Advocates and Solicitors Ordinance (Cap. 188) was still in force, we are unable to see any difference between the provisions of this Ordinance and those of the Legal Profession Act in respect of disciplinary proceedings which could affect the application of the judgment in the Lau Liat Meng case. The provisions of Sections 25 and 26 of the Ordinance are re-enacted in Sections 84, 86, 88 and 90 of the Legal Profession Act. The Judgment of Lord Hodson is quite clear and unequivocal but there appears to be a minor departure from it in the case of Isaac Paul Ratnam. The Inquiry Committee in that case held an Inquiry under Sections 86 (2) and 87 (1) (a) of the Legal Profession Act, to enquire into two charges of grossly improper conduct under Section 84 (2) (b), the first of which related to an instigation to dishonestly remove property and

Exhibit SB No. 30

the second to causing certain evidence of an offence for which his client was charged, to disappear. The solicitor appeared before the Inquiry Committee pursuant to a notice issued under Section 87 (5) and on the Inquiry Committee recommending that there should be a formal investigation, the Council of the Law Society applied to the Chief Justice for the appointment of a Disciplinary Committee.

21. During the course of the hearing by the Disciplinary Committee, the solicitor was convicted in the Magistrate's Court on two counts relating to the two grounds of the charge preferred in the disciplinary proceedings then currently before the Disciplinary Committee. Upon the conviction of the solicitor, the Inquiry Committee decided on its own motion under Section 87 (1) (b) to enquire into the matter of the solicitor's conviction and without giving the solicitor an opportunity to be heard under the provisions of Section 87 (5) in respect of the new charge, proceeded to recommend a formal investigation under Section 88 (1) (a) in respect of both acts for which the solicitor was convicted. The same Disciplinary Committee was appointed and dealt with both charges, namely:-

(a) The charge of grossly improper conduct under Section 84 (2) (b) supported by the grounds mentioned in paragraph 20, and

(b) The charge that the solicitor had been convicted of

a criminal offence, implying defect of his character which made him unfit for his profession within the provision of the Legal Profession Act under Section 84 (2) (a), the ground in support of this charge being the solicitor's conviction in the Magistrate's Court.

22. The Disciplinary Committee made adverse findings against the solicitor on both charges. The High Court upheld the findings of the Disciplinary Committee and ordered that the solicitor be struck off the roll.

23. Upon an appeal to the Privy Council, it was held that the failure of the Inquiry Committee to comply with Section 87 (5) of the Act which contained an imperative provision, rendered the second enquiry by the Inquiry Committee a nullity. The Privy Council, however, upheld the decision of the High Court on the charge made under Section 84 (2) (b) and further held that in considering the first charge, although the grounds of the charge did not refer to the conviction of the solicitor, the Court was nevertheless entitled to take the conviction into consideration and as relevent.

24. According to the report in the Malayan Law Journal, the Leu Liat Meng case was not cited in the report of/Isaac Paul Ratnam case. However, we find that the decision in this case is not entirely a departure from the ruling made in the Leu Liat Meng case. The Privy Council is, in this case, concerned with a defect in the proceedings resulting in

a denial of natural justice which rendered the new proceedings before the Disciplinary Committee a nullity and not with the question of any new charge being added. see p.200 (F) & ff. Apparently the Disciplinary Committee was not in a position to cure the basic defect emanating from the Inquiry Committee enquiry.

25. The third case which we have called the OTC case appears to be the latest one relevant to the issues raised by the two questions put to the Committee. In this case, the Council of the Law Society after receiving the report of the Inquiry Committee wrote to the Respondent Solicitor on 15th September 1976 a letter containing the following:-

> " Re: Complaints by the Director, CPIB.
>
> I am directed to inform you pursuant to the provisions of section 88 (1) (c) of the Legal Profession Act (Chapter 217) that the Council has determined that there should be a formal investigation by a Disciplinary Committee into the following complaints against you, viz:-
>
> Payment of monies to a tout for bringing in accident cases."

26. The matter was referred to a Disciplinary Committee which then heard the following charges:-

> (i) That the Respondent had directly or indirectly procured the employment of himself through or by

Exhibit SB No. 33

the instructions of a tout to whom a remuneration for obtaining such an employment had been given by him through his clerk within the meaning of Section 84 (2) (c) of the Legal Profession Act.

(ii) That the Respondent had done an act or acts which would render him liable to be disbarred or struck off the roll of the Court or suspended from practice or censured as a barrister or solicitor in England due regard being had to the fact that the two professions are fused in Singapore within the meaning of Section 84 (2) (h) of the Legal Profession Act. The grounds for this charge were that the Respondent whilst acting for certain victims in running down cases received payment for so acting other than taxed costs and that in each of the cases a sum of money was paid to a tout by his clerk with his knowledge.

(iii) That the Respondent had been guilty of grossly improper conduct in the discharge of his professional duty within the meaning of Section 84 (2) (b) of the Legal Profession Act. The grounds in support were similar to those of charge No. (ii).

These charges were presumably framed after the Inquiry Committee had made its report and there was no allegation of any failure

to serve notice under Section 87 (5) or any other basic defect in the proceedings before the Inquiry Committee.

27. The Disciplinary Committee recorded adverse findings against the Respondent on all three charges and an application was made to the Court against the Respondent under Section 84 of the Act.

28. At the hearing before the Court, neither the Lau Liat Meng case nor Isaac Paul Retnam case was cited and Counsel for the Respondent submitted that by virtue of the letter of 16th September 1976 written by the Council of the Law Society, the only matters that could properly be heard and investigated by the Disciplinary Committee were matters relating to what had been specifically referred to in the said letter namely, the payment of monies to a tout for bringing in accident cases, and that the acceptance of monies from the two accident victims other than taxed costs could not lawfully be heard and investigated by the Disciplinary Committee. The High Court accepted the submission of Counsel and held that the findings of the Disciplinary Committee relating to the receipt of monies other than taxed costs were vitiated. This would mean that the Disciplinary Committee was not permitted to hear any charge based on the ground relating to the receipt of untaxed costs, but this decision of the High Court completely ignored the ruling of the Privy Council in the Lau Liat Meng case.

29. We found that the subject matter of the two questions put

to us as preliminary issues were matters so closely related to the ground of the charge that we ruled in favour of the Law Society. The consequences flowing out of the Respondent's admitted deliberate delay to report and the motives flowing into his premeditated delay are so intrinsically connected with the ground of the charge that they cannot be said to constitute new grounds. Even if we had considered that they constituted new grounds (which we did not), we would have followed the ruling in the Lau Liat Meng case and permitted the requisite amendments or required an amended Statement of the Case under Rule 10 of the Solicitors (Disciplinary Proceedings) Rules 1963 as communicated by the Chairman to Counsel for both sides at the commencement of the hearing on 26th September 1980. (Pages 72 and 73 of transcript).

30. In the present case, the following facts are admitted or not in dispute, viz:-

(i) The Respondent has been an advocate and solicitor of the Supreme Court for some 30 years.

(ii) The Respondent was at all material times practising under the firm name of Braddell Brothers.

(iii) The Respondent was the President of the Law Society for the period 1975 to 1977 (inclusive).

(iv) S. Santhiran was employed as a legal assistant by the Respondent in Braddell Brothers from November 1971 up to the time when his defalcation was discovered and continued to be so employed until

December 1976.

(v) In February 1976, the Respondent became aware that Senthiren had misappropriated monies from the Clients' Account of Braddell Brothers.

(vi) On 6th March 1976, the Respondent was informed by Lisa Choo, his stenographer and office assistant that Senthiren had misappropriated sums in excess of $200,000/-.

(vii) On or about 8th or 9th March 1976, Senthiren admitte to the Respondent that he had misappropriated sums totalling $298,270-75 and between the 9th and 10th March 1976, he made restitution amounting to $267,956-12.

(viii) By 10th June 1976, the total restitution made by Senthiren amounted to $297,956-12.

(ix) In March 1976, after Senthiren had admitted the misappropriation and made restitution in the sum of $267,956-12, the Respondent decided to delay making any report of Senthiren's misdeeds to the police or the Law Society and entrusted the investigation of the accounts involving Senthiren to his stenographer and office assistant, Lisa Choo, and his legal assistant, Chan Lai Meng, an advocate and solicitor of 2 years' standing. After the

discovery of the defalcation, the Respondent kept Santhiran in the employment of Braddell Brothers for the purpose of winding up unfinished matters, closing up files and putting notes on those that were on-going. In the course of such duties, Santhiran also appeared in Court and handled new matters as a legal assistant of Braddell Brothers.

(x) At the end of August 1976, Lisa Choo reported to the Respondent that she could not go on with the investigation.

(xi) No report was made to Braddell Brothers' long-standing auditors, Messrs. Turquand Young, and in November 1976, the Respondent with the agreement of Santhiran appointed another firm of Accountants, Medora Tong & Co., to inspect and audit the accounts where Santhiran was involved.

(xii) Santhiran ceased to be employed by the Respondent in December 1976 by which time he had made restitution of all clients' money misappropriated by him and any outstanding shortage consisted of costs belonging to Braddell Brothers.

(xiii) The Respondent learnt that Santhiran was carrying on a legal practice in January 1977.

(xiv) A written report was made by the Respondent to the Law Society by a letter dated 30th April 1977

282

stating that: "Certain defalcations and misappropriation of monies from various clients' accounts and costs appear to have been carried out by S. Santhiran, a former employee of this firm."

(xv) A report of the defalcations was made by the Respondent to the police on 26th May 1977 and a formal complaint was made by the Respondent to the Law Society on 27th May 1977.

31. To revert to the charge against the Respondent of being guilty of grossly improper conduct in the discharge of his professional duty, we have to decide, having regard to all the relevant facts and circumstances, whether the act complained of, namely, the failure to report the criminal breach of trust committed by Santhiran earlier, (i.e. until 13 months after its discovery), is of sufficient gravity as to support the charge under Section 84 (2) (b).

32. In support of its case that the act complained of against the Respondent amounted to grossly improper conduct, Counsel for the Law Society, on the admitted facts and documents as well as the evidence given by the Respondent and his sole witness, submitted the following:-

(i) Santhiran was kept on at Braddell Brothers without salary, ostensibly to wind up, but that during the period March to December 1976 he in fact dealt

with new matters, went to Court on behalf of clients and was "supervised" by a junior assistant, pupils and clerks.

(ii) Santhiran's defalcations were investigated by Lisa Choo, who gave as her occupation "Typist and Office Assistant" but who was, before the defalcations were discovered, nothing more than the Respondent's Private Secretary with one or two other administrative responsibilities but with no accounting responsibility or qualifications whatsoever.

(iii) The Respondent did not tell his firm's auditors of the defalcations when he discovered them despite the fact that he knew or certainly ought to have known that on the basis of what would thus result in an unqualified report by them he, and therefore Santhiran, would be issued with practising certificates.

(iv) If the reason for holding up the report to the Law Society based on the need to identify the clients' accounts from which the money was misappropriated was a valid one, the report should have been made as soon as all the clients' accounts had, according to Lisa Choo, been identified by October/November 1976.

(v) Medora Tong & Co. were instructed to keep the matter

away from the knowledge of the firm's regular auditors, Turquand Young.

(vi) When Santhiran, who had been working for the Respondent without receiving remuneration since March 1976, left the Respondent in December 1976 the Respondent again allowed the occasion to pass without making his report.

(vii) When the Respondent learned in January 1977 that Santhiran had gone into practice on his own, the Respondent again failed to make a report and even sanctioned the release of certain files to him; after having asked his own female legal assistant of barely three years' standing to exercise her discretion as to whether a report should be made.

(viii) That on 10th March 1977 when Turquand Young accidentally became aware of the defalcations and on 17th March 1977 wrote to the Respondent a letter placing on record, inter alia, the fact that the Respondent did not advise them of the alleged defalcations as soon as they were discovered, Medora Tong was requested not to communicate with them regarding Medora Tong's appointment, no report had been made by the Respondent to the Law Society having regard to the fact that Santhiran seemed to

have admitted the defalcations and was practising on his own, the Respondent on 30th March 1977 wrote in reply to Turquand Young & Co. counter-attacking them on their system of auditing.

(ix) The Respondent's first notification to the Law Society was on 30th April 1977 and his detailed complaint was lodged on 27th May 1977.

(x) According to the evidence of Lisa Choo, Santhiran was not deliberately obstructive although he suffered from confusion and forgetfulness. He did his best to cooperate in terms of tracing clients' accounts and restitution. There was no excuse for any delay after October/November 1976 and the alleged motive of the Respondent did not wash.

(xi) The real motive for the delay was the Respondent's anxiety to see himself repaid by Santhiran irrespective of the Respondent's duty to the profession, his clients and the public at large.

(xii) The appointment of Medora Tong was made in November 1976 by agreement with Santhiran, a scoundrel and a thief who had stolen about $300,000/-.

(xiii) It was conceded by Counsel for the Respondent that on discovery of the defalcations it would have been better if the Respondent had written a short letter to the Law Society. There was no reason why he

286

should not have written a letter setting out the facts as known to him.

33. In answer to the Law Society's case, the Respondent submitted the following in justification of the act complained of:-

(a) On or about 18th March 1976, after Santhiran had admitted the misappropriation of sums totalling $298,270-75 and made restitution in the sum of $276,956-12 which he felt constituted the bulk of the misappropriated clients' money he became very concerned or even worried with the problem of how the various sums could be identified as belonging to which clients. He gave four examples of problems of how the clients would suffer:-

(i) If Santhiran recovered money on an Order XIV Judgment and took the money out purportedly to pay the clients but in fact pocketed it himself, the client until he came to the office one day in future would be out-of-pocket or would have a long delay before he recovered this money.

(ii) If a client had money with the office and died without anyone applying for representation to his estate, the money would remain in the office indefinitely until the Court investigated it, resulting in the persons entitled to the

money being kept out of it.

(iii) If Santhiran recovered $10,000-- for a client and falsely told the client that he had recovered only $5,000/-, he could draw a bearer cheque for $10,000/- and pay the client only $5,000/-, he would then forge a receipt for $10,000/- or else fail to put the receipt on the file. In such a case, if the client accepted Santhiran's statement, he would never know that he had been deprived of part of his money.

(iv) If Santhiran received $1,500/- for costs and disbursements from the client and credited the client with having paid only $1,000/- after pocketing $500/-, the client would not know about it.

(b) As a result of his worries over cases such as those above quoted, the Respondent decided that he must obtain the cooperation of Santhiran for the purpose of clearing up the clients' accounts. With this object in view, the Respondent decided to delay reporting the defalcations both to the Law Society and the Police.

(c) Pursuant to the decision to delay reporting the defalcatic the Respondent, in the interest of his clients, entrusted the investigation to Lisa Choo and Chan Lai Meng as he felt that Lisa Choo was in a better position then the Police or any other outside agent to obtain the requisite particulars from Santhiran.

(d) The Respondent's reason for not reporting the matter after Santhiran had left him in December 1976 was that he wanted to have such report in hand before he informed the Law Society. When he learned that Santhiran had started his own practice, he still did not make the report because he was still waiting for the results of the investigation by Madora Tong & Co.

(e) On a proper interpretation of the Legal Profession Act and the Solicitors' Practising Certificates Rules, 1970, until an advocate and solicitor is struck off the roll there was nothing to prevent him from obtaining his annual practising certificate.

According to Counsel for the Respondent, even if a report had been made to the Law Society there was nothing which the latter could do to stop Santhiran from applying for and obtaining a practising certificate under Section 29 (1) of the Act. Until Santhiran was struck off the roll, the Registrar of the High Court was, according to him, obliged to issue such a certificate and the Council of the Law Society was also obliged to issue to Santhiran a certificate under Section 29 (1) (c) of the Act.

Furthermore, although a formal report against Santhiran was made by the Respondent to the Law

Society on 27th May 1977, the Respondent was not struck off until 20th April 1979, and the consequences of the delay were not material.

(f) While it would have been advisable for the Respondent to write a short letter to the Law Society when he discovered the defalcations, the Respondent's failure to do so was nothing more than an error of judgment or at the worst a grave error of judgment, and not grossly improper conduct.

(g) In order to find the Respondent guilty of grossly improper conduct, the Law Society was imputing a dishonourable motive to the Respondent's failure to report Senthiran earlier. The burden of proof was on the Law Society and can only be discharged by direct evidence or an irresistible inference that such was the motive.

34. The first question which the Committee has to decide is whether the prior interest of the Respondent's clients justified his delay in reporting the matter to the Law Society.

We find that there was no such prior interest as the clients' money was never at risk. The Respondent admitted that if restitution was not made by Senthiran he would have to make good the defalcations.

35. The Respondent at the time of the discovery of the

defalcations was the current President of the Law Society and an advocate and solicitor of 30 years' standing with very substantial experience not only in the practice of civil law, but also criminal law. He admitted that on discovery of the extent of the defalcations of Santhiren, it did occur to him that this was a matter that he should report to the Law Society but deliberately decided to delay reporting for the following reasons:-

(i) He immediately realised the enormous difficulty which would arise with regard to the clients' accounts if a report was made to the Law Society or the police.

(ii) He described four types of cases (some of them complicated hypothetical ones) where he would not be able to straighten the accounts without the cooperation of Santhiran.

(iii) In his view, neither the Law Society nor the Police would be able to achieve the objective as Santhiran would not cooperate with them and the source of information would dry up.

(iv) The police would follow its usual practice of discontinuing any probe started by them as soon as they had enough evidence on a few counts for the purpose of obtaining a conviction.

36. The Respondent denied that his real motive for delay was to obtain from Santhiran restitution of all monies misappropriated

Exhibit SB No. 47

by Santhiran. Although all clients' money had been recovered by June 1976, a sum of about $50,000/- for misappropriated costs still remains unrecovered, according to the evidence of Lisa Choo.

37. We are asked to believe that at the time when the Respondent was confronted with the shock of what had happened and fully realising the seriousness of the offence committed by Santhiran, the Respondent did, for the complicated reasons above recited, deliberately place the need for identifying his clients' accounts as of greater importance than that of reporting the serious improper conduct of Santhiran to the Law Society.

38. A passage from page 31 of Sir Thomas Lund's Guide to the Professional Conduct and Etiquette of Solicitors on the prior interest of clients as against the duty to report was cited to us by the Respondent's learned Counsel.

39. The case for the Respondent on this point, as on all the others, was very ably argued by his learned Queen's Counsel, but we are unable to accept the explanation offered to the Committee as the Respondent's assertion of the truthfulness and purity of his motive was not matched by his conduct, action and quality of his evidence.

40. The Respondent not only maintained the line as expounded by his learned Counsel that he was all along acting in the prior interest of his clients and there was a conflict between

Exhibit SB No. 48

292

such interest and a duty to report without delay but also asserted that he was convinced that "he was on the right track." Such being the case, and even conceding for the moment that the Respondent's small team of workers would, as alleged by him, be more efficient than the Law Society and the police and they should be given the first opportunity for protecting his client's alleged interest, he should have made his report by October/November '076 when the clients' accounts were all identified. (See page 130 of verbatim report of hearing of 26.9.1980.) He failed to do so, and almost immediately thereafter appointed a new firm of public accountants who were strangers to his office accounts to investigate and make a report. This provided him with a new excuse for delaying the report to the Law Society, but it was an entirely new ground for delay which had nothing to do with his original one on which he maintained that there was a conflict of interest.

After providing himself with a new excuse for the delay in reporting, he betrayed an inconsistency in the stand taken by him when, in January 1977, on learning that Santhiran had started practice on his own, he handed over the responsibility for reporting the matter to his young assistant, Chan Lai Meng, although at that point of time the accountants' final report had not yet been received.

41. Under cross-examination by Counsel for the Law Society,

the Respondent disclosed that after the long delay of over a year he was in a quandery and was not sure how he should act or what he should do. We quote the following three questions and answers [See pages 54 and 55 of the verbatim report of hearing on 25.9.1980]:

Cross-examination by Mr.J. Grimberg:

" Q. How often would you say you met them [Respondent's colleagues on the Council]? Was it once or twice a month? A. Not as such. I don't mean to give any indirect answer. Actually I did put it in conundrums. I didn't disclose my own troubles to them, but I did inquire what one did in such a situation, but never in relation to myself. In other words I was trying to find answers to this problem.

Chairman: You didn't know the answer?

A .I didn't quite know the answer. I thought I was going in the right direction and somehow I was taking a long time and having gone that far, I didn't know how to back out of it without - just like I made a decision to do it, do my own Police work, if I might put it that way. Then having gone that far, and having pushed that much, I didn't know which way to go. As we went on, files were missing, files came back, figures were adjusted, clients confirmed and clients - this is important, am I going too far? Sorry, I had better stop.

Q. Doesn't it make you feel at all uncomfortable to meet your colleagues on the Council knowing what was going on in your office and saying nothing to anybody? Make you feel uncomfortable?

A. Yes, after a while I did. After a while I thought it wasn't [cricket]."

42. It was therefore obvious that towards the end of 1976 when the Respondent's original excuse for not reporting was no longer available, he found himself in a quandary. If he really believed in the correctness of his action, there was no reason for him to temporize any longer and he should have

Exhibit SB No. 50

294

made his report without any hesitation or doubt in his mind by November 1976. His quandary could only have resulted from his realisation that the action taken by him was incorrect or even improper. By trying to sound his colleagues on the Council, he was in search of a case to put before the Council to justify his dilatoriness. His conversations with the Vice-President of the Law Society and the Attorney-General were nothing more than actions of the same category, namely, attempts to ascertain how best he could get out of the fix he found himself in. He has tried to improve or embellish these conversations as reports but they were mere attempts to obtain legal advice as shown in the following passage from page 19 of the verbatim report of the hearing on 25.9.1980, viz:-

> Q. [by Mr.Rose-Munro] Now you had told the members of the Committee that there was nothing to stop you writing a short letter to the Law Society in March 1976, and then say, "I will give the Law Society all the details when I have got to the bottom" - there is nothing to stop you. Looking back with hindsight, do you think you should have done that or not?
>
> A. Yes, I think I should have taken advice. On looking back to it I think I made a mistake in not writing a short letter.
>
> Q. And during the relevant period - by that I mean March 1976 until May 1977 - during those 14 months did you take legal advice from anybody else?
>
> A. Until March, Sir, when I mentioned it to the Vice-President; until March, Sir.
>
> Q. So from March 1976 until the end of March 1977, when you mentioned it to the Vice-President of the Law Society you didn't take legal advice?
>
> A. I did not take legal advice.

Exhibit SB No. 51

Chairman: "I did not take legal advice" - witness said something more until he?

Mr.Rose-Munro: Until he saw the Vice-President in March 1977, who is Mrs.Doo See.

We find that the Respondent has also on other occasions tried to create favourable impressions of his actions by such embellishments. To cite two examples:-

(a) To cover the ugly picture of having kept Santhiran, whom he described as a thief and a scoundrel, in his employment he boldly stated that he had Santhiran "suspended". Under cross-examination by the Chairman, he admitted that "suspended" was not the right word to use. (See page 95 of verbatim report of hearing of 26.9.1980).

(b) Despite all the evidence of the duties which Santhiran had to attend to after March 1976 (albeit without salary), and the admission in item 6 of Exhibit A.3, he tried while under cross-examination by the Chairman to allege that Santhiran was never employed by him. (See page 98 of verbatim report of hearing of 26.9.1980).

We would have expected a person who had attained the position of President of the Law Society for two years and of some years' standing as a member of the Council to maintain a higher standard of forthrightness not only in his oral evidence,

but also in his conduct and correspondence over this matter. Unfortunately, they are all littered with attempts to either cover up or embellish the facts, and we are obliged to disbelieve his explanation that his delay in reporting was motivated by the lofty objective given in respect of the first eight months and transformed into an entirely new motive after November 1976.

If the Respondent believed in the cause which he had so strongly put forth, namely, the prior interest of his clients, there was no reason why he should find himself in a position where he had to put up conundrums to his colleagues on the Council after the circumstances which might have supported his first alleged motive had dissipated.

43. Having disbelieved the Respondent's story, the Committee is entitled to look at the evidence produced before it to ascertain whether they disclose any other motive. We find that the evidence produced before the Committee very clearly lead to the irresistible inference that the motive for the Respondent's elaborate scheme for delaying the report was the intention to recover the misappropriated monies from Senthiran. In fact, some of the evidence is so clear that it can be regarded as direct evidence and not mere inferences.

44. The Respondent also disclosed his true intentions for the delay in his discussions with Jamshid Madora, as to

the terms under which he would treat or deal with Santhiran. The relevant section of his letter of 19th April 1978 addressed to the Chairman of the Inquiry Committee reads as follows:-

> "My conversation with Mr. Medora on this aspect could have taken place in May but not March 1977. His approach was to the same effect as Mr. Ramanujam's and I reiterated my position. The exact terms of my discussions I naturally cannot remember but I know the position I took at all times and one which I sought to make plain was along the following lines:-
>
> (1) That Santhiran should immediately admit his misappropriations.
>
> (2) That Santhiran should himself agree to apply to the Law Society to ask to be struck out for unprofessional conduct arising out of misappropriation of funds.
>
> (3) That he undertake to pay all the money still owing.
>
> (4) That there should be an adequate guarantor of such undertaking of refund.
>
> I informed Mr. Medora that if these conditions were met, the full facts could be placed before the Attorney-General with a view of his considering whether he would prosecute or not in the circumstances."

(See pages 49 and 50 of Exhibit A.1).

It will be seen that as late as May 1977, when all clients' money had been recovered, he was still pursuing Santhiran for "all the money still owing". When a creditor with a right to prosecute lays down four terms such as those above mentioned, no one can believe that there was to be no quid pro quo in return for these four terms. And yet the Respondent, in his usual evasive manner, was not prepared to commit himself as to what the terms were for and was prepared only to describe them as terms under discussion followed by the height of ambiguity, viz:-

"I know the position I took at all times and one which I sought to make plain was along the following lines", etc.

"I informed Mr. Medora that if these conditions were met the full facts could be placed before the Attorney-General with a view to his considering whether he would prosecute or not in the circumstances."

45. As pointed out by Counsel for the Law Society, there were three other occasions when he showed that his main preoccupation was in the recovery of the money misappropriated, all appearing in Exhibit A, Volume I:-

(i) Page 33 - "However, I demanded that he repay back all the moneys that had been taken by him from clients' accounts", etc.

(ii) Page 47 - "I have every respect for the ability of the Police to investigate. In this particular case, however, I felt that I was achieving results to the benefit of my clients, including refund of moneys which the Police investigations would have taken very long to clarify and perhaps even fail to achieve."

(iii) Pages 52/3 -

"I had a few discussions with Mr. Medora complaining of the delay in completing his report and consequently Senthiran was practising for such a long time. I remember it being raised by him whether the matter could not be expedited by being "settled" and as has been my stand throughout I informed him this was not possible.

Senthiran must show complete mitigation by admitting his misappropriations and he apply to the Law Society to be struck out for unprofessional misconduct and also in mitigation if he undertook to pay and give an adequate guarantee for what was still owing."

299 Exhibit SB No. 55

46. With regard to the natural and probable consequences of the delay in reporting, the first consequence was that both the Respondent and Santhiran were able to obtain without any hindrance the practising certificates for the year commencing 1st April 1976.

Secondly, Santhiran, whom he described as a thief , was able to practise and see clients and, despite the so-called surveillance of the Respondent and his subordinates, to accept new business. In addition, he was able to leave the services of the Respondent and set up his own practice and obtain the files of old clients from the Respondent.

Thirdly, by the continued delay which extended to 30th April 1977, when a very bare report was made to the Law Society, Santhiran was again able to obtain a practising certificate for the year commencing 1st April 1977. It is to be noted that the 30th April is the last day by which practising certificates must be issued to cover validity of acts done by solicitors with retroactive effect to 1st April. (See Sec. 29 (3) of the Legal Profession Act).

47. With regard to the issue of the practising certificate for the year commencing 1st April 1976, the Respondent, in order to make use of the services of Santhiran as he had intended, would require Santhiran to hold such a practising certificate.

We set out here below a question and answer on this very point, viz:-

Exhibit SB No. 56

"300 Chairman: Let us put it another way: you expected him [Santhiran] to wind up this matter and go to court? How was he going to do it without a certificate?

A. That is in my mind -- I didn't think about I thought he had already got it, but this is a mistake on my part. I cannot make an excuse."

[See page 96 of the verbatim report of the hearing on 26.9.1980].

48. Counsel for the Respondent maintained that Santhiran would have been able to obtain a practising certificate even if a report had been made promptly by the Respondent until he was actually struck off. He based his argument on the line that the Council of the Law Society had no power to withhold its certificate under the second part of paragraph [c] of subsection [1] of Section 29 of the Legal Profession Act.

We cannot accept his contention and, in our view, we cannot believe that the Council of the Law Society would do such a preposterous thing as to issue such a certificate after having received a report that the applicant had misappropriated nearly $300,000/- of clients' money.

Even if the arguments of Counsel for the Respondent on this highly technical issue were correct, we cannot, in the circumstances, accept them as relevant for reducing the gravity of the offence. In the judgment of Lord Simon of Glaisdale in the Isaac Paul Retnam case, when the Privy Council was asked to consider whether a request made from Singapore to commit an offence in Kuala Lumpur could be regarded as an abetment of the

offence in Singapore, His Lordship remarked on page 201:

> "Before considering these arguments, their Lordships would remark that they are highly technical defences, even if valid, and, as such, would only have marginal significance to the consideration of the appellant's conduct under the Legal Profession Act, Section 84 (2) (b)."

49. In this case, the highly technical defence raised by learned Counsel for the Respondent will have even less significance since it was part of the Respondent's scheme that Santhiran would have to continue to hold a practising certificate for the purpose of carrying out the duties allotted to him.

50. We have no hesitation in finding that the consequence of the prolonged delay of 13 months before a report was made and thereby enabling Santhiran to continue in practice for another 13 months added very seriously to the gravity of the act complained of.

51. We have considered the submission of Counsel for the Respondent that the actions of the Respondent amounted, if at all, only to an error of judgment. We regret that we cannot accept this submission as it was not an isolated error, but a premeditated scheme of delay carried out by the Respondent for over 13 months.

We find the methods adopted by him to achieve his purpose dishonourable. Having decided to delay the reporting, the Respondent took great pains to ensure that the object of his scheme would not be prejudiced by any premature disclosure. His explanation for keeping his long-standing auditors in the

302

Exhibit SB No. 58

clerk when he appointed a new firm only serves to further discredit his evidence.

52. We therefore find that the Law Society has discharged its burden of proof as regards both the motive and consequences of the Respondent's action in delaying the making of the report to the Law Society for 13 months. (amounted to grossly improper conduct)

53. A solicitor who for the purpose of obtaining restitution from his legal assistant guilty of misappropriation of funds deliberately delays making a report of such defalcations to the Law Society for 13 months and in consequence thereof enabled such guilty legal assistant to continue in practice is dishonourable to himself and to his profession.

54. We therefore find that cause of sufficient gravity for disciplinary action exists under Section 84 of the Legal Profession Act and in exercise of the powers conferred on us by Section 93 (2) of the Act, we order that the costs of the Law Society of and incidental to this enquiry be paid by the Respondent, Harry Lee Wee.

55. The evidence adduced before the Committee consisted of the oral evidence of the Respondent and his stenographer Lisa Choo and the following documents:-

(1) Exhibits A.1 and A.2 - two agreed bundle of documents.

(2) Exhibit A.3 - Chronology of Events.

Exhibit SB No. 59

[3] Exhibit A.4 - three Agreed Facts.

[4] Exhibit A.1 - Ledger Book.

[5] Exhibit A.2 - Amended draft Statement of the Case submitted to the U.K. Law Society.

[6] Exhibit A.3 - Accountants' Report.

The above exhibits [except Exhibit A.1 which is in the custody of the Registrar of the Supreme Court] are forwarded herewith, together with copies of:-

[a] Amended Statement of the Case.

[b] Verbatim Report of the proceedings.

Dated this 19th day of November, 1980.

(CHYE CHENG TAN).

(ERIC CHOA WATT CHIANG).

(PO BUAN HOCK).

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Originating Summons No. 55 of 1981

In the matter of the Legal Profession Act (Chapter 217)

and

In the matter of an Advocate and Solicitor

ORDER OF COURT

BEFORE THE HONOURABLE THE CHIEF JUSTICE IN CHAMBERS

Upon the application of the Law Society of Singapore by Originating Summons, dated the 31st day of January, 1981, And Upon Reading the affidavit of Steven Chan Swee Teck filed on the 4th day of February, 1981, And Upon Hearing the Solicitors for the Applicants IT IS ORDERED that Harry Lee Wee, an Advocate and Solicitor of the Supreme Court, do show cause why he should not be dealt with under the provisions of section 84 of the Legal Profession Act (Chapter 217) in such manner as the Court shall deem fit.

Dated the 13th day of February, 1981.

Signed Yap Chee Leong

ASSISTANT REGISTRAR