

IN THE ROYAL COURT IN THE ISLAND OF JERSEY (SAMEDI DIVISION)

HIS MAJESTY'S ATTORNEY GENERAL

-V-

MARTIN JOHN HILL

Expert Report by Ben Keith

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I. Introduction and Terms of Instruction

1. I have been instructed by those representing Mr Martin J Hill to provide an expert opinion on whether a prosecution in Jersey for the acts set out in the Arrest Warrant would constitute double jeopardy given that Mr Hill was prosecuted in 2019 in the UK. I provide the following opinion as an expert in my field and the Court can find my qualifications in this respect set out below. I attach a list of the materials that I have been provided with in Annex 1.

II. Qualifications

2. I am a UK Barrister called to the Bar by Lincoln's Inn in 2004. I am an expert in extradition and international law. I was Chair of the Defence Extradition Lawyers Forum from 2021-2022, a London based forum on extradition with an international membership. I have given evidence to two commissions on extradition law on behalf of the Criminal Bar Association, the first the review of Sir Scott-Baker in 2012 and the second the House of Lords Committee in 2015. I have conducted in excess of 750 extradition cases many of which have involved double jeopardy. I have represented in numerous extradition requests from the United States of America for both individuals and the US Government. Most recently I represented Ismail Sanchez-Sanchez before the Grand Chamber of the European Court of Human Rights on a US extradition case. I also presently represent in two other US extradition cases before the European Court of Human Rights. I attach a copy of my CV for further information in Annex 2.

III. Summary of Findings

3. There is an exceptionally high chance that Mr Hill will be retried for the same conduct that he was punished for in the UK if he is extradited to Jersey. This is double jeopardy.
4. He is at risk of double punishment.
5. If the extradition proceedings before the Spanish court were in UK, Mr Hill would not be extradited.

6. Any detention following a retrial for the same conduct would constitute an unfair and disproportionate interference with Mr Hill's rights under Article 5 of the European Convention on Human Rights and would breach the principle of double jeopardy.
7. Any prosecution brought by Jersey would constitute a violation of Article 14 of the International Covenants on Civil and Political Rights (the "ICCPR"). Spain is a party to this treaty. If it is to respect this treaty it must not extradite Mr Hill.

IV. The Principle of Double Jeopardy

8. Double jeopardy is a mechanism in law that prevents a defendant from being tried on a subsequent occasion following a previous conviction or acquittal for an offence arising out of the same conduct.
9. There must be a risk of double punishment.
10. There are many reasons for the principle, and they broadly focus on avoiding an abuse of process.
11. Some of the key reasons for the double jeopardy principle are:
 - It prevents the state from making repeated attempts to convict an individual for an offence.
 - It mitigates the risk of wrongful conviction, in that an individual worn down by the costs and stresses of the trial process is unlikely to be in the best position to defend himself.
 - There is a need for finality, in that an individual cannot be expected to live in a continuous state of anxiety and insecurity.
 - It encourages efficient and thorough investigation and prosecution.

12. Mr Hill has already served a three-year prison sentence. If Jersey is successful in its prosecution, he faces potentially another six years in prison for the same conduct.
13. The protection of double jeopardy is enshrined in UK extradition law.¹ If these proceedings were in the UK, the UK would not extradite Mr Hill to Jersey.

V. Relevant Law

14. Under UK law², extradition is barred if (i) the requested person has already been prosecuted for the *same offence* for which they are being sought or if the prosecution is founded on the *same or substantially the same* facts.
15. It does not matter whether the first prosecution took place in the requesting state or a different state.
16. What is important is that the requested person should not be extradited if there is a risk of being tried again based on the same or substantially the same facts.
17. In *R v Wangige*,³ the Court of Appeal reaffirmed that absent special circumstances, the pursuit of a subsequent prosecution based on substantially the same facts as resulted in a prior conviction was precluded, and those subsequent proceedings should be stayed as an abuse of process.
18. Most current extradition requests in the UK are made pursuant to the EU-UK Trade and Cooperation Agreement (the “TCA”). This agreement contains a prohibition against extraditing requested persons if the acts for which they are sought have already been “*finally judged*” in another Member State. Article 600 (b) states that:

“the execution of the arrest warrant shall be refused if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that,

¹ *Fofana & Belize v Deputy Prosecutor Thubin* [2006] EWHC 744

² 2003 extradition act article 12 etc, *R v Z, CONNELLY, FOFANO, R v Wangige* [2020] EWCA Crim 1319; *Fofana & Belize v Deputy Prosecutor Thubin*[2006] EWHC 744

³ *R v Wangige* [2020] EWCA Crim 1319

where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State”.

19. All European jurisdictions (apart from the UK) apply the Framework Decision on Extradition (2002) (the “EAW FD”) and have essentially the same law as the UK.

20. Article 3 of the EAW FD is the same as Article 600 (b) of the TCA stating that a ground for mandatory non-execution of an arrest warrant is if:

“the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State”

21. Therefore, UK law and EU law as regards double jeopardy in the context of extradition is the same. It follows that if the UK would not extradite Mr Hill, it would be reasonable to expect Spain not to.

22. Furthermore, Article 54 of the Convention Implementing the Schengen Agreement (“CISA”) and Article 50 of the Charter of Fundamental Rights provide that an individual cannot be prosecuted a second time if they have already been prosecuted before in either the same state or in a different state:

CISA: “A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party”,

and

Article 50 of the Charter of Fundamental Rights: No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union accordance with the law.

23. Therefore although Jersey is not a “Contracting Party” or a member of the “Union” for the purposes of these provisions, it is clear that there are significant efforts made by the UK and the EU to protect individuals from having to undergo multiple prosecutions for the same conduct and if Jersey were to extradite Mr Hill it would show a complete disregard for these efforts and for the rule against double jeopardy.

24. Jersey is party to the International Covenant on Civil and Political Rights which states at Article 14 (7) that:

No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

If Jersey prosecutes Mr Hill, it will breach its obligations under international law. If Spain is to respect this treaty to which it is a party, it should not extradite Mr Hill.

VI. Mr Hill's Case

25. Mr Hill was prosecuted in 2019 in the UK for a VAT fraud and for laundering the proceeds of that fraud. The proceeds were laundered through the UK and Jersey. Jersey is requesting that he is extradited to Jersey so that it can prosecute him for money laundering through Jersey.

26. The questions that I need to address are ((i) is the prosecution in Jersey founded on the *same or substantially the same* facts as the prosecution in the UK and (ii) have the money laundering charges in the UK being dealt with and is the case closed in respect of those money laundering charges.

27. Having considered Mr Hill's case in detail, I can say with certainty that Mr Hill has already been prosecuted and punished for the conduct set out in the Jersey indictment.

28. Any UK extradition court would have to determine whether the subsequent prosecution was founded on the “same or substantially the same facts” as the first prosecution. This test is similar to the EU's of “inseparable whole” or “inextricably linked” tests.

29. I have found that the prosecution is founded on the same or substantially the same facts: the money that passed through the UK was the same money that passed through Jersey; it was the money that originated from the VAT fraud. It was moved around the same time, and it was the same conduct.⁴ Mr Hill was not aware that the accounts he was opening were located in Jersey⁵ and with that in mind it is hard to see how the acts would be separate acts, or how it could be argued that the cases are not based on substantially the same facts. It might be that the facts are different to some extent but there can be no doubt in this case that the cases are inextricably linked and that they are founded on, at least, substantially the same facts if not the same facts.
30. There are 7 charges on the Jersey indictment. There are four charges for the conversion or transfer of criminal property, one charge of possession or control of criminal property, and two charges of taking criminal property out of Jersey.
31. This conduct in relation to Jersey formed part of the evidence in the UK proceedings. The English authorities were aware of Mr Hill's bank accounts in Jersey, and that the proceeds from the VAT fraud passed through these accounts. For example, Mr Hill told them about the Jersey account in his own response to the original restraint order notification⁶. This was on 16 April 2018. Mr Love, the forensic investigator in the case, also referenced money being transferred to a Jersey account in his CPS Restraint Order Progress Report. It is evident from the Report that Mr Love had contacted the bank as he was aware of the amounts in the account.⁷ At paragraph 9.39 in the UK POCA

⁴ Mr Hill's Initial restraint order response (Annex 8 – MJH RO Restraint Order Notification) provides details of the Santander Accounts at paragraph d.vii and he states in his final comment on that document which is dated 2018 that there is a transfer of funds to Spain. Furthermore, in the Court update from Christopher James Love (which is also being relied on in the Jersey prosecution), the bank transfers to Jersey are identified as taking place on 23 June 2017 – 21 May 2018 at paragraph 8 (Annex 11). It is worthy of note that Mr Love in his statement states "account holder unknown" despite Mr Hill having declared the account as his own at paragraph d.vii of the Initial Restraint Order Response. In addition, the POCA Indictment indicates that the CPS was aware of the Jersey transaction in 2017 (Annex 4 at paragraph 5.5)

⁵ Mr Hill needed to open a Euro and USD account for personal use. Therefore, he approached his UK business bankers, Santander, to do this for him. They put forward the products and dealt with the opening procedure. He attended a Santander Branch in Newport Isle of Wight to present his passport and address as this was a requirement because the accounts were for personal use instead of business use. Mr Hill confirms that as part of this opening procedure he did speak with Santander Jersey but did not know this at the time as the contact number was a UK "01534" number. It was not until the accounts were fully opened that he realised that they were in a foreign jurisdiction.

⁶ Annex 8 – MJH RO Restraint Order Notification

⁷ Annex 9 - CPS Restraint Progress Report page 2 and paragraph 10: "10. *Analysis of the Production order material received in respect of Tesco Bank account 15627401 (which had been opened after Mr HILL's*

Indictment it states that the authorities were aware that “*the funds were then dissipated further, outside the UK jurisdiction to a Santander Jersey bank account number 120053268*”. It goes on to say that at paragraph 9.40 “*this Santander jersey account was the source of the 1 years’ rental money for the Calle la Font property in Spain*”. Then at 9.41 it states that one years’ rental of the Spanish Property was paid from this account in November 2017.⁸ Therefore the facts in the UK proceedings are substantially the same facts as the facts in the Jersey prosecution.

32. Furthermore, Mr Hill was punished for the acts that are now being complained of by Jersey. This is evidenced in the POCA indictment: a part of Mr Hill’s sentence on 10 June 2019 he was ordered to repay £550,000. A significant portion of this was calculated based on money being moved “*outside the UK jurisdiction to a Santander Jersey bank account number 120053268*”.⁹ The POCA Indictment notes that funds in this particular account were then used to pay for things in Spain and that Mr Hill explained that funds were removed from the UK jurisdiction because he was moving to Spain.¹⁰ Therefore Mr Hill has been punished for laundering money through Jersey.

33. In order for there to be double jeopardy, the original case in the UK would also have to have been finalised, or, as per the EU case law set out above, the requested person would have to have been “*finally judged*” or the trial “*finally disposed of*”. This is particularly relevant in this case because, as I understand, the Jersey authorities have said that Mr Hill has not been convicted of money laundering offences in the UK and they argue that on that basis the offences in Jersey are different to what he has been prosecuted for in the UK. I also understand that Jersey has said that the UK authorities did not know about the Jersey conduct at the time of the prosecution and I address this below.

34. Having considered this, I can say that there is absolutely no doubt that the case in the UK was dealt with, and it is now closed, and that Mr Hill’s conduct in respect of Jersey was recognised and he was punished for that conduct. He has effectively been

arrest) showed that £84,500.00 of the £100,000.00 transferred into it on 23 June 2017 had once again been transferred to the Santander Bank account held in the States of Jersey. Further sums were transferred out of this account to another account held by Mr HILL with Santander Bank. As of 01 April 2018, this account held a nil balance.”

⁸ Annex 4

⁹ Annex 3 - L566 of UK POCA Full Court Transcript – please see references to “hidden asset” which arises from page 38 and paragraph 9.44 of the UK POCA Indictment as put forward by the Prosecution

¹⁰ Annex 4 - UK POCA Indictment at paragraphs 9.41-9.43

prosecuted for the money laundering charges in the UK in that the Court has recognised the conduct and passed down a sentence reflecting the conduct. He has served three years in Wandsworth prison in London. It is worth noting that laundering money through Jersey would not have increased the length of the sentence. However, that does not mean that his conduct was not recognised and considered as part of the sentence.

35. To any lay person, or perhaps foreign court, Mr Hill's case may seem a strange in that three of the six charges were prosecuted and the other three were left to "lie on file". This could imply that they were left to be dealt with at a different time and or that things were not finished with. That is not the case.

Left to lie on file

36. Mr Hill first appeared before a London court on 22 August 2018 charged with three charges of fraudulent evasion of VAT and three charges of Transferring Criminal Property.
37. By the beginning of April 2019, the Prosecution came to a plea arrangement with Mr Hill which was that Mr Hill would plead guilty to the three charges of VAT fraud and that the remaining charges in respect of the money laundering charges would be dropped.
38. Plea bargaining is common practice in the UK. Having considered Mr Hill's case, the Prosecution would have agreed this deal for the following reasons:
- The charges in respect of the VAT fraud are more serious than the charges for money launderings and consequently carry a heavier sentence. Therefore, there would be little point in pursuing a conviction for the money laundering charges as it would not result in a longer sentence.
 - To ensure convictions in some of the charges and avoid the risk of losing on all six charges.

39. Usual practice is for the prosecution and defence to reach a deal and for the court to subsequently approve the deal. This is what happened in Mr Hill's case, and the Judge ordered that the three Money Laundering charges were "*left to lie on file*".¹¹
40. "*Left to lie on file*" means in most cases that the charges have been dealt with, and a prosecutor would not return to prosecute these charges. It is like the US' "*dismissed with prejudice*" which means that the prosecution will not go ahead but the matter could be resurrected although it would be unlikely. The case of *Connelly* provides a useful and widely accepted legal explanation of "*left to lie on file*".¹²
41. Nothing usually happens with the charges that are left to lie on file. The defendant is convicted of the charges that they have agreed to plead guilty to and the case is then closed. For the charges that have been left to lie on file to be subsequently resurrected, the Court of Appeal must first grant permission. The only real way that a prosecutor might return to pursue a prosecution in respect of those charges would be in circumstances where the defendant decided to appeal their convictions. That is unlikely for obvious reasons.
42. Having considered Mr Hill's case, I can say with certainty that there no chance of these charges being resurrected: Mr Hill would not appeal his convictions for the simple reason that he has already served his sentence, and in any event an appeal would be out of time. The Court of Appeal would have to grant permission to bring a prosecution, and this would not be granted.
43. Furthermore, as is evidenced by the Judge's and Prosecutor's remarks during the sentencing and POCA (proceeds of crime) proceedings, the sentence reflects the conduct relating to the money laundering through Jersey,¹³ and that the money laundering had been dealt with.¹⁴ Mr Hill was ordered to repay £550,000 in respect of the offences and significant portion of this was calculated based on money being moved "*outside the UK*

¹¹ Annex 5 - Full Court Transcript at page L544

¹² Annex 10 at page 22

¹³ Annex 5 at pages L546, L549, L555, L558, L559; Annex 6 - Prosecution Sentencing Note at paragraphs 7, 49-58 and 71; Annex 4 at paragraphs 9.39-9.44.

¹⁴ Annex 5 at L558 - "*to the extent that this has not already been dealt with*"; L549 - "*I don't need to go through this in too much detail*".

jurisdiction to a Santander Jersey bank account number 120053268".¹⁵ The POCA Indictment notes that funds in this particular account were used to pay for things in Spain and that Mr Hill explained that funds were removed from the UK jurisdiction because he was moving to Spain.¹⁶ Mr Hill has now repaid the majority of the £550,000¹⁷ and has served a significant time in prison. Therefore, there can be no doubt that the matter was dealt with, and that the Prosecution and the Court would also consider that it had been dealt with.

44. Furthermore this indicates that the UK authorities did know about the conduct relating to Jersey.
45. It is also important to recognise that the Prosecutor in the UK proceedings chose not to pursue any charges in relation to money laundering. This is for the reasons that I have already explained namely that there would be no benefit in doing so as they were the less serious of the charges (the VAT charges are the more serious because they are offences against the public revenue). Therefore there would be little incentive for a prosecutor to return to prosecute these charges.
46. Furthermore, if it were true that the UK authorities did not know about the money passing through Jersey, and they subsequently became aware, I do not believe that this would make any difference to the way things were dealt with. The money laundering, whether it was through the UK or Jersey would not be deemed as serious as the VAT fraud and I think a prosecutor would have chosen to drop the charges in relation to this conduct as well. If they had charged Mr Hill with money laundering through Jersey, the sentence he got would not have been any longer. The VAT fraud carries the longer sentence. Effectively whether they knew or whether they didn't know, the result would have been the same and he has been punished for the offences that Jersey is now trying to prosecute him for.
47. For the avoidance of doubt, the fact that the money laundering charges were left to "lie on the file" does not suggest that the Prosecutor will at some point in the future return

¹⁵ Annex 3 - L566 of UK POCA Full Court Transcript – please see references to "hidden asset" which arises from page 38 and paragraph 9.44 of the UK POCA Indictment as put forward by the Prosecution

¹⁶ Annex 4 - UK POCA Indictment at paragraphs 9.41-9.43

¹⁷ Mr Hill has repaid £515,000 of the £550,000.

to deal with the matter. It means quite the opposite: that the charges have been dealt with.

48. Under EU law, a matter has been “*finally disposed of*” such as to prohibit repeat proceedings, when the initial decision must be “*such as to preclude the bringing of new proceedings in respect of the same facts against the same person in that Member State*”.¹⁸ And that to “*bring the criminal proceedings to an end and definitely bar further prosecution*” which requires the act to be “*final and binding*”.¹⁹ The principle is engaged by an out-of-court agreement with a prosecutor precluding further prosecution²⁰.
49. The decision to lie the charges on file does preclude the bringing of new proceedings on the same facts because being left to lie on file means they have been dealt with, and it would be virtually impossible for this case to be re-opened for the reasons already provided. Leaving the charges to lie on file also brings the criminal proceedings to an end and definitively bars further prosecution, and the decision to lie those charges on file and proceed with the other three fraud charges only is in effect “*final and binding*” in the sense that there is no way that the case can be opened again. There was also an out-of-court agreement with a prosecutor which resulted in precluding further prosecution: if there was any scope for a later prosecution in respect of the money laundering charges, Mr Hill would never have agreed to the deal; the deal was to plead guilty to some of the charges on the understanding that the other three would be dropped.
50. Therefore I can say with certainty that Mr Hill’s case has been “*finally disposed of*”.
51. The acts in the Arrest Warrant have also already been “*finally judged*”. They were finally judged on 10 June 2019 during sentencing proceedings at the point the Judge ordered that the charges in respect of these acts to “*lie on the file*” and when the sentence passed down reflected the conduct in relation to Jersey.
52. There is no doubt that this case is closed.
53. As regards the question over what the UK knew at the time of the prosecution, it is clear to me that Mr Hill made admissions – explicitly and tacitly - that informed the

¹⁸ Case C-398/12 Criminal proceedings against M

¹⁹ Case C-491/07 Turansky at 34 and 35

²⁰ Joined Cases C-187/01 and C-385/01 Gözütok and Brügge

Prosecution that money was moved through Jersey. The Prosecution therefore had every opportunity to charge him with the acts that Jersey now complains of. The Jersey Prosecutors should now not be permitted to lay new charges arising out of the same – or similar – conduct.²¹

54. Even if I accepted that English authorities did not know about the money laundering through Jersey - which I cannot accept because there was a forensic investigator on the case who uncovered a significant amount of information about accounts in Jersey and proceeds passing through them - they should have known. It follows that Mr Hill cannot be penalised for incomplete or inadequate investigation.
55. It is true that in certain circumstances new evidence coming to light can justify a new prosecution because it might be that there is good reason for the evidence appearing later.²² However, it would be difficult to argue that in the present case because the UK prosecution took place after the money passed through Jersey, there was a qualified and experienced investigator on the case and there is substantial amount of evidence showing that the UK authorities knew a significant amount about the Jersey accounts. There can be no excuse for not knowing about the conduct.

VII. Conclusion

56. The prosecution in Jersey is founded on the same or substantially the same facts as the prosecution in the UK.
57. There can be no doubt that Mr Hill has been prosecuted and punished for the conduct that Jersey is now trying to prosecute him for. He has already served a three-year sentence and if Jersey is successful in its prosecution he could face another six years in prison for the same conduct.
58. There is no prospect of the case in the UK being opened again in respect of the money laundering charges again. The case is closed.
59. The UK authorities knew about the Jersey conduct and Mr Hill has been punished for that conduct. If they did not know, which I do not accept, they should have known and

²¹ Dwyer [2012] EWCA Crim 10

²² Annex 10 - Connelly v DPP [1964] AC 1254; AG for Gibraltar v Leoni (Criminal Appeal No 4 (1998))

there can be no excuse for not having prosecuted Mr Hill for the conduct at the time. Mr Hill cannot be penalised for their inadequate investigation.

60. Any prosecution brought by Jersey on these facts would amount to double jeopardy.
61. In these circumstances the UK would not extradite Mr Hill to Jersey.
62. Spain ordinarily would respect the rule against double jeopardy and the fact that Jersey is not a member state should not make a difference.
63. If Jersey prosecutes Mr Hill for this conduct, it will breach its obligations under Article 14(7) of the ICCPR and would breach the principle of double jeopardy. In these circumstances, Spain should not extradite Mr Hill to Jersey.
64. Any resulting detention following extradition and the prosecution would constitute an unfair and disproportionate interference with Mr Hill's rights under Article 5 of the ECHR.

Declaration

I understand that my primary duty is to the Court. I have complied with that duty and will continue to comply with that duty. I have set out in my statement what I understand from those instructing me to be the issues in respect of which my opinion as an expert is required. All the matters on which I have expressed an opinion, lie within my field of expertise. Wherever I have no personal knowledge, I have indicated the source of that information.

I have drawn to the attention of the Court all facts, of which I am aware, which might adversely affect my opinion. Where, in my view there is a range of reasonable opinion, I have indicated the extent of that range in the statement. I have done my best in preparing this statement to be accurate and complete. I have mentioned all matters that I regard as relevant to the opinions I have expressed.

I have not included in this statement, anything which has been suggested to me by anyone, including lawyers instructing me, without forming my own independent view of the matters. At the time of signing this statement, I consider it to be complete and accurate. I will notify those

instructing me if, for any reason, I subsequently consider that the report requires any correction or qualification.

I understand that this report will be the evidence that I would be prepared to give under oath, subject to any correction or qualification I may make before swearing to veracity. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are in my knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions to the matters to which they refer. This report is true to the best of my knowledge and belief.

A handwritten signature in black ink that reads "Ben Keith". The signature is written in a cursive style with a prominent, stylized initial "B".

Ben Keith

Date: 13 March 2025

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ANNEX 1

000 -EN -2024 -Jersey Indictment

001 -EN -2024 -190924 MJH Statement tot to participate

002 -EN -2018 -Restraint Order Notification

003 -EN -2018 -MJH RO Response –Initial

003A -EN -2018 -CPS Restraint progress report 21 May 18

004 -EN -2019 -Prosecution Sentencing Note 2019-04-16

005 -EN -2019 -MJH Plea Document

006 -EN -2019 -Defense Sentencing Note

007 -EN -2019 -100619 -Full Court Transcript

008 -EN -2019 -HILL Martin Imprisonment order 2019-06-10

009 -EN -2019 -UK Certificate of Conviction

010 -EN -2019 -UK POCA Indictment

011 -EN -2021 -080222 -UK POCA Full Court Transcript

012 -EN -2021 -HILL Martin T20180330 Confiscation Order

013 -EN -2021 -HILL Martin T20180330 Schedule of Assets

Arrest Warrant

Full EU Treaties – Trade Agreement

Ben Keith

Barrister called to the bar in 2004 by Lincoln's Inn.

Chambers: Chambers of David Josse QC, 5 St Andrew's Hill, London EC4V 5BZ

Pupillage at 2 Hare Court, 2005-2006 (Supervisors: Jonathan Laidlaw QC, Oliver Glasgow QC, Brendan Kelly QC), Squatter at 2 Bedford Row (1 year).

Legal Work

- Specialises in Extradition, Immigration, Serious Fraud, International Crime and Public law. Extensive experience of appellate proceedings before the Administrative and Divisional Courts, as well as applications and appeals to the European Court of Human Rights (ECHR) and United Nations. Particular expertise in human rights and extradition proceedings in post-soviet states including Russia, Ukraine, Azerbaijan, Moldova and Kazakhstan. Represents politically exposed persons in immigration, extradition and financial proceedings. Significant expertise in the challenge of INTERPOL Red Notices.
- Ranked in Chambers and Partners as a band 1 leader in the field of Extradition at the London Bar and also ranked in the Legal 500 as a band 1 leading individual in international crime and extradition. The guides say the following:

"Gifted, very diligent and up-to-date on the law." "He is unafraid to raise challenges on all sorts of issues, and has his finger on the pulse." "He is a really clear, straight-to-the-point advocate."

"He has built a career in defending those from former Soviet states and is an expert in dealing with those countries."

"He is tactically astute, fantastic with clients, and adept at giving straightforward and accessible advice in the most complex cases."

"His knowledge of Russia and the political situation is unrivalled."

"One of the most experienced barristers specialising in extradition relating to former Soviet states and the more complicated cases that involve political motivations."

Extradition

- Busy Appellate practice, appeared in over 100 cases before the Administrative and Divisional courts in cases dealing with Human Rights including allegations against requesting states of torture, political corruption, rendition and discrimination.
- Extensive experience in extradition requests from Category 2 jurisdictions including Albania, Canada, Turkey, USA, United Arab Emirates (UAE) Turks and Caicos, Canada, India, Nigeria and South Africa.
- Extensive experience of extradition proceedings to all members of the EAW scheme having conducted in excess of 500 cases.
- Provides advice on mutual legal assistance and extradition requests both inside and outside the European Arrest Warrant Framework including advice on persons being requested to return from foreign jurisdictions to the UK and liability for arrest and detention.
- Provides expert witness reports in foreign jurisdictions including Ireland and Canada.

Immigration

- Specialises in complex asylum claims linked to extradition proceedings and Interpol Red Notices and especially those claiming asylum from former soviet states. He has recently acted in cases involving asylum claims from Ukraine, Russia, Kazakhstan and Turkey as well as judicial review proceedings.
- Advises and represents in relation to nationality applications, Restrictive Leave to Remain policy in sensitive and high-profile cases as well as human rights applications.
- Appointed to the Attorney General's 'B' Panel of counsel and advises the Government Legal Department on a range of public law matters, including Judicial Review, Immigration, Extradition, Search Warrants, Inquests, Prison Law and detention cases. Advised on the drafting of the Immigration rules post-Brexit.
- Advises on unlawful imprisonment and damages arising out of immigration proceedings in cases involving substantial settlements and long period of detention including issue of discrimination because of gender, race, religion, psychiatric issues and political beliefs.

Crime and Serious Fraud

- Maintained a criminal trial practice including in recent years historic sex and fraud cases. Advises in relation to MLA and cross boarder financial crime issues including confiscation and corruption as well as offshore frauds in criminal proceedings.
- Expertise in search warrants.

International Crime

- Recently appointed to the ICC and Kosovo Tribunal counsel lists. Recently presented at the UN conference on Reparations in Doha, Qatar as well as for the Arab Organisation for Human rights in London and Geneva. Advises individuals and NGO's on international law and Universal Jurisdiction.

Public Law

- Significant experience in judicial review and Habeas corpus acting for both individuals and government departments in a range of work, including inquests into death in custody.
- Advises on unlawful detention matters for the GLD as well as wide public law issues such as the use of Acknowledgements of service by HMCTS.

Cases of Note

PART 2 EXTRADITION CASES

Yilmaz and Yilmaz v Government of Turkey [2019] EWHC 272 (Admin) – Representing Appellants in leading case dealing with Article 3 ECHR and prison conditions in Turkey.

Beshiri v Albania [2018] EWHC 91 (Admin) – Appellant alleged torture and mistreatment in custody. Guidance given on the use of evidence on appeal where the Appellant was unrepresented at first instance.

LMN v Turkey [2018] EWHC 210 (Admin) – Successful appeal in Turkish extradition case where the state of the Turkish penal system post the July 2016 coup was examined.

Government of Russia v AA (2017) - Representing in Russian extradition request for fraud. Extradition discharged as politically motivated prosecution against the Defendant.

Government of India v Angurala and Angurala (2017) – case discharged on passage of time

Stanislav Dzгоеv v Russia [2017] EWHC 735 (Admin) – Representing appellant in extradition to Russia. Arguing that prisons conditions in Siberia were not in compliance with Article 3 ECHR.

BTA Bank (Kazakhstan) Five separate proceedings with requests from Russia and Ukraine for Igor Kononko, Roman Solodchenko and AE (2016) – Including one reported case **Government of Ukraine v Igor Kononko [2014] EWHC 1420 (Admin)**

Government of Moldova v Moldeveanu (2016) – case was discharged on Article 3 ECHR grounds as Moldova were unable to provide adequate assurances on prison conditions.

United Arab Emirates v WC (2015) – Extradition was discharged on the basis of breaches of human rights.

Lutsyuk v Government of Ukraine [2013] EWHC 189 (Admin) – Extradition to Ukraine discharged due to the likelihood of a breach of Article 3 ECHR.

Lumenica (aka Bedri Cala) v Government of Albania [2012] EWHC 2589 (Admin) and [2012] EWHC 3802 (Admin) - Authority on the powers of the Court to extend time for the service of appeals.

R(on the Application of Zaporazhchenko and Redya) v Westminster Magistrates Court and Secretary of State for the Home Department [2011] EWHC 34 (Admin) – judicial review of the decision of the Magistrates Court not to discharge a Ukrainian extradition request because the Secretary of State had failed to order extradition in relation to an allegation of large scale fraud in the Ukraine.

PART 1 EXTRADITION CASES

Malik and ors v Public Prosecutors Office, Ausberg, Germany [2018] EWHC 3479 – Representing Appellant in 7 Appellant extradition appeal in an allegation of multi-Million MTIC VAT fraud.

Obert v Greece [2017] EWHC 303 (Admin) – The Divisional Court found that given the passage of time it would be oppressive to extradite.

Muldoon v Spain [2016] EWHC 3689 (Admin) – Appeal was allowed on the basis that there was no offence disclosed on the European arrest warrant.

Domenico Rancadore v Italy [2015] EWHC (Admin) – Resisting extradition to Italy in relation to alleged leader of Cosa Nostra.

Florea v Romania [2014] EWHC 2528 (Admin) – Leading authority on Romanian Prisons.

Brazuks and ors v Latvia [2014] EWHC 1021 (Admin) – Leading authority on Latvian Prisons.

Goman v Poland [2013] EWHC 3606 (Admin) – Extradition appeal allowed on article 8 grounds. Ouseley J allowed time spent on curfew to be taken into account in article 8 balancing exercise.

A and B v Hungary [2013] EWHC 3132 (Admin) – Guidance on Article 8 in extradition proceedings.

Wolokowicz and ors v Poland and ors [2013] EWHC 102 (Admin) – Leading authority on the risk of suicide in extradition proceedings and section 25 of the Extradition Act 2003.

Nikitins v Latvia [2012] EWHC 2621 (Admin) – Appeal allowed due to disproportionate interference with the Appellant's Article 8 family rights.

Szombathely City Court, Hungary and others v Roland Fenyvesi and Kalman Fenyvesi [2009] EWHC 231 (Admin), [2009] 4 All ER 234 – Leading authority on the admission of further evidence on appeal.

IMMIGRATION CASES

Chanda v Secretary of State for the Home Department [2018] EWCA Civ 2424 – Issue of Paragraph 322(1A) of the Immigration Rules on the submission of false documents during immigration proceedings.

"Calais Jungle" Cases – Represented the Home Office in a series of Judicial Reviews of asylum cases involving the Dublin III regulations and unaccompanied minors. The cases were highly sensitive and involved a series of refusals to admit unaccompanied minors from the Calais 'jungle' camp.

MUDIYANSELAGE and ors v Secretary of State for the Home Department and ors [2018] EWCA Civ 65A leading case on the points-based system and evidential flexibility before the Court of Appeal.

ECHR CASES

Ruban v Ukraine (application no. 8927/11) – Application of Article 7 ECHR and maximum sentences after the abolition of the death penalty in Ukraine for client serving a life sentence for murder in Ukraine.

DOMESTIC CASES

Holman Fenwick Willan v Police Service Scotland and ors [2016] EWHC 1005 – Representing Police Service Scotland and the Lord Advocate in a judicial review of a search warrant granted in Scotland in relation to the Glasgow Rangers fraud case.

R(Hickman) v Governor HMP Wayland and Ors [2016] EWHC 719 (Admin) – authority on confiscation and extradition

R v James Citro (Central Criminal Court) - Defending in a cold case review of a historic murder from 1998 of a neighbour in Wembley, the Defendant having two previous convictions for rape in Ireland in 1978.

Sternaj v DPP [2011] EWHC 1094 (Admin) – Instructed as led junior in an appeal by way of case stated on the interaction between the Refugee Convention 1951 and Immigration Act 1971 Offences.

Management and Leadership

- Head of international and extradition team in Chambers. Recruited, trained and marketed a team of 10 barristers practicing in extradition and with a turnover of over £1 million.
- Member of Chambers management committee for 10 years and Chambers treasurer for 1 year. Responsible for budgets, finance, and marketing.

Media Work

- Write and provide legal commentary to national and international newspapers, radio and TV including: Guardian, Times, Financial Times, New Statesman, Independent, Daily Express, Deutsche Welle, Canadian Whig Standard, Wall Street Journal, BBC, ITV, Channel 4, Sky, CNN, LBC and Al Jazeera.

Lecturing

- Associate Lecturer in Human Rights at Birkbeck College, University of London (2012-2018). Taught Human Rights to 3rd and 4th year undergraduate students.
- Lecturing for United Nations, European Criminal Bar Association, Defence Extradition Lawyers Association, European Law Association (Lead lecturer in Athens training of EAW procedures).

Consultation Work

- On behalf of the Criminal Bar Association wrote submissions to the Sir Scott Baker Review in 2011 and the House of Lords Review on Extradition Law in 2015. Gave evidence to the House of Lords in 2015 on the subject of human rights and assurances.
- Represented the Criminal Bar Association at meetings with the senior judiciary in relation to setting up courts in the North of England to deal with extradition cases.

Charity Work

- Trustee of Forest School Camps 2004-2015 – a national educational charity running activity camps for children from a variety of backgrounds, some with learning difficulties and physical disabilities. Ran 40 camps per year with over 1200 children and 500 staff. (www.fsc.org.uk) Executive director for 8 years. Held positions of: General Secretary (2 years), Council Secretary (2 years), Stores Convener (4 years).
- Camp Chief running two-week camps with responsibility for 120 children (aged 6-17) and 38 staff. This required significant planning, management and leadership skills.

Education

- BVC, BPP Law School, 2004
- Post Graduate Diploma in Law, BPP Law School, 2003
- B.A. Hons Modern History with Economics, University of Manchester, 2002

Appointments

- Attorney General's civil list of counsel, B Panel (2015)
- Pupil supervisor (12 pupils supervised)
- Defence Extradition Lawyers Forum, Education secretary
- Co-Founder of Fraud Lawyers Association (2014)

References (available upon request)

- Senior District Judge Arbuthnot
- Katy Smart, Solicitor, Sonn Macmillian Walker

IN SOUTHWARK CROWN COURT

Case No: T20180330

Courtroom No. 6

1 English Grounds
(off Battlebridge Lane)
Southwark
SE1 2HU

11.55am – 12.07pm
Tuesday, 8th February 2022

Before:

HIS HONOUR JUDGE TOMLINSON

R E G I N A

v

MARTIN HILL

MR R B KELLY appeared on behalf of the PROSECUTION

MR N COTTER and MR J OAKES (Solicitor) appeared on behalf of the DEFENDANT

WHOLE HEARING

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A

Court sits at 11.55am.

Defendant identified at 11.56am.

JUDGE TOMLINSON: Yes, hi, would you identify the case for the recording please and identify the defendant?

B

THE CLERK OF THE COURT: Yes, this hearing is sitting at Southwark Crown Court. The case name is Martin Hill for application under the Proceeds of Crime Act 2002. The case reference is T20180330. The date is 8 February 2021, and the time is 11.55am. Are you Martin Hill?

THE DEFENDANT: Yes, I am.

C

THE CLERK: Thank you. Your Honour.

JUDGE TOMLINSON: Yes, now, Mr Kelly, as previously, you are for the prosecution and Mr Cotter, you represent Mr Hill?

MR COTTER: Yes, thank you.

MR KELLY: Your Honour, just so Your Honour knows who else is in the hearing as well-

D

JUDGE TOMLINSON: Yes.

MR KELLY: We have Mr Oakes, who is Mr Hill's instructed solicitor-

JUDGE TOMLINSON: Yes.

MR KELLY: -and we have Mr Love, who is an investigator for the HMRC-

E

JUDGE TOMLINSON: Yes.

MR KELLY: -together with Mr Hill, Your Honour can't see in the picture, but sitting next to him, I understand, is his wife, Amanda Crighton-Hill.

JUDGE TOMLINSON: Yes. All right, is that – Mr Hill, is your wife also present or listening in on the hearing?

F

THE DEFENDANT: She's not listening to it with a headset on, but she's here in case you need to speak to her.

JUDGE TOMLINSON: All right, okay, thank you.

MR KELLY: And Your Honour will recall that this was a matter set down by Your Honour for a contested hearing-

G

JUDGE TOMLINSON: Yes.

MR KELLY: - and Proceeds of Crime Act hearing.

JUDGE TOMLINSON: Yes.

MR KELLY: And the matter had, last year, been close to resolution-

H

- A JUDGE TOMLINSON: Yes.
MR KELLY: -but Mrs Crighton-Hill had instructed her own solicitors and had wanted to challenge
the available asset in terms of the family home-
JUDGE TOMLINSON: Yes, I remember[?] that.
- B MR KELLY: -and seeing an interim [inaudible]. And the position has developed because, over the
last weeks, the prosecution has been informed by – directly by her solicitors-
JUDGE TOMLINSON: Yes.
MR KELLY: -that she no longer seeks any third-party interest-
JUDGE TOMLINSON: Yes.
- C MR KELLY: -in the property. And so, myself and Mr Cotter have been discussing the position
that was pretty much resolved-
JUDGE TOMLINSON: Yes.
MR KELLY: -before that intervention took place, and I'm glad to say that those discussion have
been productive, and we have agreed – reached an agreed position-
- D JUDGE TOMLINSON: Yes.
MR KELLY: -so far as the terms of the confiscation order is concerned.
JUDGE TOMLINSON: Yes.
MR KELLY: One matter that has been a little more difficult to resolve has been the terms of the
- E compliance order, which the prosecution has sought.
JUDGE TOMLINSON: Yes.
MR KELLY: I – again, I'm glad to say that, as a result of discussions today, and I know in
consultation with both Mr Hill and Mrs Hill, there is an agreed compliance order, which I
have emailed directly to Your Honour.
- F JUDGE TOMLINSON: Right, well, let me just-
MR KELLY: [Inaudible].
JUDGE TOMLINSON: All right, let me just see if it has come through yet, I do not think it has,
but you obviously have my address, so I am sure that will pop up in a moment. All right,
- G yes.
MR KELLY: And so, in terms of-
JUDGE TOMLINSON: It has just popped up.
MR KELLY: And I'll just give Your Honour a moment to read that.
JUDGE TOMLINSON: Yes, I will read it now, just bear with me.
- H

A

Pause.

JUDGE TOMLINSON: Yes, just a moment.

Pause.

JUDGE TOMLINSON: Yes?

B

MR KELLY: So, Your Honour, in terms of the agreed – just – so, to recap for Your Honour-

JUDGE TOMLINSON: Yes.

MR KELLY: Your Honour may recall that in the supplementary Section 16 statement of the financial investigator, it was asserted that the benefit was £1.084 million. We have agreed that the benefit at the £800,000-

C

JUDGE TOMLINSON: £800,000 [inaudible], yes.

MR KELLY: Yeah. And whilst in the supplementary Section 16 the available amount was said to be £794,000, we have agreed-

JUDGE TOMLINSON: Yes.

D

MR KELLY: -that the figure should be £550,217.05-

JUDGE TOMLINSON: Yes.

MR KELLY: -all right?

JUDGE TOMLINSON: Right.

MR KELLY: And that is made, and we have sent a 50/50 form to your clerk-

E

JUDGE TOMLINSON: Yes.

MR KELLY: -that is made up of the sale of the [Orchard Lee?] property-

JUDGE TOMLINSON: Yes.

MR KELLY: -with the estimated value of £385,000-

JUDGE TOMLINSON: Yes.

F

MR KELLY: -funds held in an HMRC bank account totalling £5,217.05-

JUDGE TOMLINSON: Yes.

MR KELLY: -and a hidden asset, location unknown, to the value of £160,000-

JUDGE TOMLINSON: Yes.

G

MR KELLY: -giving a total, as I said Your Honour of £550,217.05 and-

JUDGE TOMLINSON: Yes. Right, and that looks, in terms of a compliance order, in some context, all right, thank you.

MR KELLY: Thank you. And in terms of other orders-

JUDGE TOMLINSON: Yes.

H

A MR KELLY: -to make, the default term for a confiscation order between £500,000 and £1 million is up to seven years.

JUDGE TOMLINSON: Yes.

MR KELLY: To put that into the quantum, the range below, between £10,000 and £500,000, would be up to five years.

B JUDGE TOMLINSON: Yes, yes, all right, thank you.

MR KELLY: And in terms of other financial orders, the only matter that I need to raise is the issue of costs of the original proceedings-

JUDGE TOMLINSON: Yes.

C MR KELLY: -which obviously were not dealt with before, because-

JUDGE TOMLINSON: No.

MR KELLY: -of proceeds of crime, the application is for £3,000 of costs.

D JUDGE TOMLINSON: Right, very well. Yes, just – I am looking at the compliance order, and Section 13(a) it is - there is not a lot of sanction that raises one specific matter that the Court ought to consider, which is an overseas travel restriction, which is not intended for this case, and I can see why.

E But is there agreement that the terms of the order may affect Mrs Crighton-Hill just as much as the defendant? I mean I see that, on its face, the Act speaks for any person affected by the order having a right to seek to vary it, but do you agree that that is right, Mr Cotter?

MR COTTER: I do.

JUDGE TOMLINSON: All right, very well. Yes, all right then is – and is there anything you want to say about the application for costs?

MR COTTER: I think I'm going to raise just pragmatic issues.

F JUDGE TOMLINSON: Yes.

MR COTTER: So, I think, he's spent some considerable time, as Your Honour will know, in custody-

JUDGE TOMLINSON: Yes.

G MR COTTER: -he's, effectively, been released into a very different world, one blighted by-

JUDGE TOMLINSON: Yes.

MR COTTER: -the pandemic, and his business has been tourism, so he has limited funds and-

JUDGE TOMLINSON: Yes.

H MR COTTER: -he has substantial POCA claims that he needs to resolve-

A JUDGE TOMLINSON: Yes.

MR COTTER: -so, I'm going to ask Your Honour to take that into consideration when considering the point of costs.

JUDGE TOMLINSON: All right very well, yes.

B Yes, the – and Mr Kelly, can I just confirm that the benefit figure is-

MR KELLY: Yes.

JUDGE TOMLINSON: -that a benefit from particular criminal conduct?

MR KELLY: No, it's from general criminal conduct. The lifestyle, it's a [inaudible].

JUDGE TOMLINSON: Yes, very well. Well – very well.

C RULING

JUDGE TOMLINSON: The parties having reached agreement and I have been satisfied that the agreement reached properly reflects the state of the available evidence, in relation to matters financial. I find that the defendant, Martin Hill, has benefited from his general criminal conduct in the amount of £800,000, and I find that the amount that might be realised is £550,217.05, and I make a confiscation order in that amount.

D In addition, I am satisfied that it is appropriate to make a compliance order pursuant to Section 13(a) of the Proceeds of Crime Act 2002, and I make one in the terms of the order drafted by the parties, and I am grateful to them for that drafting. I shall not – I have not been asked to put any time limit on that order, and I will say that it is until further – it will be expressed as running until further order.

E So far as the enforcement is concerned of the order, I give three months from today's date for the confiscation order to be satisfied, that being the maximum period that I can allow at this time, and I impose a default term of five years' imprisonment.

F In the circumstances, and perhaps as an act of mercy, I am not going to order Mr Hill to pay any amount of cost to the prosecution, although the order is – was properly sought by Mr Kelly, I do not criticise him for seeking it.

Yes?

G MR KELLY: I think Your Honour probably needs to impose the surcharge.

JUDGE TOMLINSON: To the extent that I did not do that on the previous occasion, yes, the surcharge – I recall that the surcharge provisions apply, and an order can be drawn up in the appropriate amount. I am sorry, I thought that had been done, but there it is, yes.

Is there any other matter that anybody wishes to raise?

H

A MR COTTER: No, thank you.

MR KELLY: No, thank you, Your Honour.

JUDGE TOMLINSON: And, Mr Hill, do you understand the impact of what has happened today,
and the orders that have been made?

B THE DEFENDANT: Yes, I do, sir, yeah.

JUDGE TOMLINSON: All right, thank you very much, and I am going to assume – I assume she
is not listening, but I am being told, in any event, that her legal representatives have been
aware of her position, but I – Mrs Crighton-Hill, your wife, also understand the position?

THE DEFENDANT: Yes, sir. Yeah, she does.

C JUDGE TOMLINSON: Thank you very much indeed. Well, I am very grateful, if I may say so, to
the parties for the hard work that they have clearly put in to resolving this matter.

THE DEFENDANT: Thanks very much, sir.

JUDGE TOMLINSON: Yes, thank you all. And this concludes this – the hearing, and I will now
exit the call.

D THE DEFENDANT: Thank you, sir.

MR KELLY: Thank you.

Court rises at 12.07pm.

End of hearing.

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Ubiquis hereby certify that the above is an accurate and complete record of the proceedings
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**IN THE CROWN COURT
AT SOUTHWARK**

**INDICTMENT
TRIAL NO. T20180330**

**STATEMENT OF INFORMATION RELEVANT IN
ACCORDANCE WITH SECTION 16 (3)**

OF THE PROCEEDS OF CRIME ACT 2002

REGINA

V

Mr Martin John HILL

STATEMENT DETAILS

Prepared By : Christopher James Love

**Address : Proceeds of Crime Team
Priory Court
St John's Road
Dover
Kent
CT17 9SH**

Signature : 

Date : 04 / 12 / 2019

Statement Tendered By

Prosecutor : Andrea Thomas

**Address : Specialist Fraud Division (Liverpool)
Crown prosecution service
2nd Floor, Walker House
Exchange Flags
Liverpool L2 3YL**

1 Statement of Information

- 1.1 The prosecutor has requested that the Court proceed to confiscation under Section 6 (3(a)), or the Court has considered it appropriate so to do under Section 6 (3(b)), of the Proceeds of Crime Act 2002 (hereinafter called the Act).
- 1.2 It is considered appropriate for the court to proceed under Section 6(4), as it is believed that the defendant has a criminal lifestyle as defined, and that it is therefore appropriate for the Court to make the assumptions under Section 10 of the Act in determining the defendant's benefit. The defendant is believed to have a criminal lifestyle as:
- The defendant has been convicted of an offence committed over at least six months and the benefit is at least £5,000 (Sections 75(2)(c),75(4))
- 1.3 The Court is therefore required to decide if the defendant has a criminal lifestyle. If the court decides the defendant has a criminal lifestyle it is required to decide if he has benefited from his general criminal conduct. If the court decides the defendant does not have a criminal lifestyle the court must decide if he has benefited from his particular criminal conduct
- 1.4 This is the statement of information dealing with all matters relevant by Christopher James Love, an appropriate officer under section 378 of the Act (as amended); into the financial affairs of Martin John Hill (hereinafter referred to as the defendant) for the purposes of establishing
- a) The benefit derived by the defendant
 - b) The nature of the defendant's available property, so far as it is known to me, from which any Confiscation Order made by the Court may be satisfied.
- 1.5 I have established the benefit to be a minimum of **£1,146,413.48**. The available amount is believed to be a minimum of **£806,642.62**.

(the figures above are stated to be the minimum due to the fact that a component of the funds calculated as both benefit and available amount are subject to Restraint and held within an HMRC interest-bearing account together with any subsequent changes in the value of money between service of this s.16 and disposal of the matter at the Confiscation Hearing).

2 Civil Proceedings

- 2.1 Section 6(6) of the Act indicates that the duty of the court outlined in Section 6(5) becomes a power if it believes that any victim of the conduct has at any time started or intends to start proceedings against the defendant in respect of any loss, injury or damage sustained in connection with the conduct.

- 2.2 To the best of my knowledge no persons have commenced any civil proceedings against the defendant in connection with the criminal conduct to which this statement relates.

3 Summary of Offence

- 3.1 This case concerned the business activities of the defendant and his associated companies listed below pertaining to the Burlington Hotel and Shanklin Beach Hotel, Isle Of Wight through-

Burlington Hotel Sandown Limited (BHSL), trading as The Burlington Hotel

Burlington Hotel Operations Limited (BHOL) trading as The Burlington Hotel

Shanklin Beach Hotel Limited (SBHL) trading as Shanklin Beach Hotel

The defendant was the Director of the above companies and as such suppressed his output (sales) and falsified input (purchases) values in the submission of Value Added Tax [VAT] returns by not providing HMRC with the actual income he has received for bookings relating to accommodation and bar/restaurant takings at the above.

- The time period for BHSL is March 2014 to April 2016.
- The time period for BHOL is November 2015 to April 2016.
- The time period for SBHL is January 2014 to June 2016.

The total VAT evasion in this case is a minimum of £350,000

4 The Criminal Investigation

4.1 Burlington Hotel Sandown Limited (BHSL) T/A The Burlington Hotel

The Burlington Hotel was owned by a company called Damsel fly Limited which went into receivership. The property had a Royal Bank of Scotland charge on it. On the 1st November 2014 BHSL were appointed by the receivers Allsops LLP to manage the hotel, the company's director was the defendant. A management agreement between both parties confirmed that BHSL was to be paid a sum of £1000 a week in management fees for a period of eight months. The agreement had a schedule attached, which was a breakdown of the profit and loss for the Burlington Hotel, showing the hotel had a total income of £631,217.87 for the period March 2014 to October 2014. However, BHSL had submitted nil VAT returns for this same period. The agreement went on to say that BHSL would be liable for all rates, taxes, outgoings and utilities; and pay all the staff wages, expenses, pensions, redundancy payments, and all PAYE and National Insurance contributions due to HMRC.

- 4.2 In June 2015 an HMRC Compliance Officer wrote to BHSL asking if the nil returns submitted to HMRC since the effective date of registration on the 4th March 2014 were correct, and whether the trading activities were being declared by a separate

VAT registration. The defendant informed HMRC that BHSL was dormant and not trading.

- 4.3 HMRC made enquiries with National Holidays who had booked holiday packages to the Burlington Hotel. National Holidays confirmed they used the Burlington Hotel and they had been crediting monies directly to Barclays Bank account 93446018 sort code 20-60-55 for the 2014 period for the sum of £33,290.00, of which £6,658.00 was VAT. Enquiries have confirmed that the bank account is held in the name of the Burlington Hotel. The defendant is a signatory to this account.
- 4.4 National holidays also confirmed the VAT number detailed on the invoice was 970549201. However, this number does not relate to the Burlington Hotel Sandown Limited, it actually relates to a previous company that the defendant was director of; The Falcon Hotel Uppingham Limited, 7 High Street, Uppingham, Oakham, Leicestershire, LE15 9PY, which was dissolved on 28 June 2011.
- 4.5 On 25th August 2015 the defendant offered to purchase The Burlington Hotel from the receivers Allsops LLP for £400,000 increasing his offer on 26th October 2015 to £500,000, but both offers were rejected. There is no indication as to the source or location of these funds.
- 4.6 Following a visit to the Burlington Hotel by the HMRC Compliance Officer on 30th September 2015, the defendant exchanged a series of emails with the HMRC Compliance Officer in which he attempted to explain why he had used the incorrect VAT number on the BHSL invoices.
- 4.7 The HMRC Officer also raised subsequent supplementary questions relating to where the VAT had been accounted for and in which companies books and records. The defendant responded to the HMRC Officer and stated he would look into the matter but had suffered a major flood at his home address and would respond at a later date with an answer. No answer was received.

4.8 Burlington Hotel Operations Limited (BHOL) T/A The Burlington Hotel

The land & buildings for the Burlington Hotel were sold at auction in November 2015 and purchased by a company called INDIGO PYNK LTD.

- 4.9 The defendant entered into an agreement with INDIGO PYNK LTD after the company purchased the land and buildings of the Burlington Hotel. The agreement was to continue the management of the Burlington Hotel under the company name Burlington Hotel Operations Ltd (BHOL) trading as the Burlington Hotel 5-9 Avenue Road Sandown, Isle of Wight, PO36 8BN.

- 4.10 BHOL was registered with companies House on 04 November 2015 with the defendant as Director/Secretary and 100% shareholder, and registered for VAT on 03 November 2015 with an estimated turnover of £500,000. BHOL submitted a nil VAT return for the period 04 November 2015 to 31 January 2016.
- 4.11 Analysis of the BHOL Barclays bank account 83261476 statements identified income received for the quarter ending January 2016 from various tour operators into this account in the form of deposits amounting to £14,562.30. Therefore, this BHOL 'nil' VAT return should have in fact declared VAT of £2,912.46.
- 4.12 BHOL submitted a VAT return for the quarter ending April 2016 with a payment to HMRC for £111. Upon inspection of the bank statements for the BHOL Barclays bank account 83261476 for this period, the income received from the various tour operators totalled £88,094.50. Therefore, the true VAT amount due for that period was £17,618.90.
- 4.13 BHOL only filed the April 2016 return on 18 April 2016 after an automatic central VAT assessment had been issued to BHOL on 17th June 2016 for £3,650. Therefore the provisional amount of VAT owed to HMRC for BHOL should have been as follows:

VAT return for November 2015 - January 2016 = £2,912.46

VAT return for February 2016 - April 2016 = £11,635.71 (i.e. £17,618.90 -£5,983.19 paid)

This equals a total of £14,548.17 in VAT evaded in respect of BHOL for the period November 2015 – April 2016.

4.14 Shanklin Beach Hotel Limited (SBHL) T/A Shanklin Beach Hotel

The Shanklin Beach Hotel was purchased by Astoria Glory Inc. in May 2012 for £1,034,000. Astoria Glory are registered in the British Virgin Islands. The defendant took over the running of SBHL in January 2014, and set up four companies to run the hotel they are, Shanklin Beach Hotel Limited (SBHL), Isle of Wight Hotel Management Services Limited, Shanklin Beach Hotel IOW Limited and Meadowden Consulting Limited.

- 4.15 SBHL submitted a VAT repayment claim to HMRC for the quarter ending March 2016, for £18,913.00. This automatically raised a query from HMRC.
- 4.16 On 13 June 2016, the defendant contacted HMRC stating he would send the documents to support the SBHL repayment claim. HMRC replied via email confirming the premises needed to be visited and suggested various dates. The defendant replied via email agreeing a visit date of 12 July 2016.

- 4.17 HMRC conducted a VAT visit to SBHL at 35 Esplanade, Shanklin, Isle of Wight, PO37 6BJ on 12 July 2016 in order to verify a VAT repayment claim for the period ending March 2016 for £18,913.00.
- 4.18 Purchases declared by SBHL included an invoice dated 4 January 2016 from a company called Coenus Ltd which states 'for the fixtures & fittings for the Burlington Hotel'. It is believed the purchase invoice was created and produced by HILL on the day of the VAT Officer's visit on 12 July 2016. The net amount was £44,720.18 and VAT due was £11,180.05.
The company Coenus Ltd went into company liquidation in June 2014.
- 4.19 The 'Fixtures & Fittings' of the Burlington Hotel, according to an email dated 30 October 2015 sent from the defendant to Allsop, were owned by BHSL. The email stated "As I am the legal owner of the Fixtures & Fittings, the good will trade and intellectual property of the Hotel..." The defendant goes on to talk about vacant possession then states "...Therefore if you wish to purchase these items from me, please could you contact me as a matter of urgency as we will start the clearance process on Monday 2nd November 2015. My original asking price for the above £150,000 (sic), however, I will accept £60,000 for a speedy purchase."
HILL's company BHSL already owned the Fixtures & Fittings and the Coenus Ltd invoice is believed to be a fraudulent act to reclaim VAT from HMRC in the March 2016 return for the SBHL. The defendant fails to differentiate between himself and the legal entity and this illustrates his attitude towards personal finances and the corporate finances he was ultimately responsible for, effectively treating them as his.
- 4.20 The SBHL sales declared for the quarter ending March 2016 was £12,552.00 plus VAT of £2,447.70. The SBHL Barclays bank account 03288773 has been analysed and shows bank deposits of £28,713.50 from various tour operators' income. This would indicate VAT of £5,742.70 should have been declared on the March 2016 return and thus making a shortfall of £3,295.00 VAT which the defendant failed to declare.
- 4.21 Analysis of PACE Schedule 1 Production Order material identified within the SBHL Barclays bank account 03288773 receipts of monies from Merchant Acquirer Worldpay (credit card payments). For the period 04 March 2014 to 31 March 2016 this amounts to a total of £314,934.48.
- 4.22 Within the same account, receipts of monies from tour operators for the same period is £1,016,813.42. Therefore the total banked income for this period is £1,331,747.90.
- 4.23 The declared income from the SBHL VAT returns for the same period is £1,124,680.17. Which leaves £207,067.73 in undeclared SBHL income. The total banked income of £1,331,747.90 minus £1,124,680.17 declared income equals £207,067.73.

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- 4.24 The provisional VAT element evaded on the £207,067.73 income is £41,413.55 and together with the shortfall of £3,295.00 equals £44,708.55 in VAT evaded in respect of SBHL for the period January 2014 to March 2016.

NB The provisional amounts of the respective VAT Fraud were uplifted after the submission of the Forensic Accountant's report (see below)

4.25 Forensic Accountant

John McManus a HMRC Forensic accountant has produced a report on the defendant's three companies (Burlington Hotel Sandown Limited, Burlington Hotel Operations Limited, Shanklin Beach Hotel Limited) who were running the Burlington and Shanklin Beach Hotels on the Isle of Wight. This report has used a number of sources (Bank statements credit card payments, invoices uplifted from business premises and Hill's own companies accountancy package (MYOB)) to compile its final figures of the amount of VAT evaded by the defendant. The amount evaded was calculated to be: £394,032.00.

5.1 Legal Action

- On the 31st August 2016, The defendant was arrested on suspicion of Cheating the Public Revenue contrary to Common Law and by the fraudulent evasion of VAT contrary to s.72 (2) of the Value Added Tax (VAT) Act 1994 and Money Laundering contrary to Proceeds of Crime Act 2002 (as amended) s.327 Concealing, s.328 Arrangements and s.329 Acquisition use and Possession. This is predicated on the belief that the defendant took steps to acquire and conceal criminal property and to disguise the true source of the income within the bank accounts relating to the named companies and the defendant's personal accounts.
- 5.2 Following his arrest the defendant was taken to Newport Police Station, Isle of Wight and interviewed under caution in the presence of his legal representative. The defendant was asked questions about his companies' tax affairs and about the transfers of monies through his accounts but he declined to comment. On the same day searches of premises under S.8 PACE Search Warrants were conducted at the defendant's home at Orchard Lee and the Burlington Hotel and the Shanklin Beach Hotel business premises.
- 5.3 On 25th November 2016 the defendant became the secretary of the three companies (BHSL, BHOL and SBHL), having resigned as the director in each case.
- 5.4 The defendant answered bail at Newport Police Station on 30th November 2016. He was interviewed under caution in the presence of his legal representative, and claimed that all the matters put to him were the result of honest mistakes and oversights, caused partially by his absence abroad and family issues. He did not account for any of the alleged money laundering activity.
- 5.5 On the 2nd of May 2017, Roach Pittis (Solicitors for The defendant at that time) wrote to HMRC claiming that the VAT issue was due to errors and oversights and that the defendant was offering to pay the sum of £76,408.95 to settle matters. The letter failed to address the fact that the monies had been deposited into the defendant's BHSL Barclays account, then disguised as VAT payments and transferred from the defendant's business accounts through his personal accounts and then used towards the purchase of his residential properties. On this date there were only sufficient funds in the defendant's Tesco Bank account number 13693715 to make this settlement. None of the other core business accounts had sufficient funds to do so. It is notable that within a month of this offer the defendant commenced the process of removing his accumulated proceeds through various bank accounts, outside the jurisdiction to his Santander account in Jersey.
- 5.6 The claim of non-payment of VAT due to oversight was therefore strongly disputed. Furthermore, when the defendant's submission of nil VAT returns was queried by HMRC, he clearly lied as he stated that the company was dormant and not trading. Furthermore, the evidence obtained from National Holidays also conflicts with the defendant's assertion that the company was not trading. The letter was forwarded to the Crown Prosecution Service (CPS) for consideration and response.
- 5.7 On the 28 July 2017 the CPS replied saying that the contents were noted, and that they were in the process of reviewing a file from HMRC regarding their client and as soon as a decision is made regarding any possible charges, they would be notified.

- 5.8 The CPS issued a positive charging decision on 19 March 2018 and the defendant was the subject of a requisition by post.

6 The Trial

- 6.1 The defendant first appeared before the Central London Magistrates' Court on 22 August 2018 charged with three offences of fraudulent evasion of VAT and three offences of transferring criminal property.

- 6.2 'Not guilty' pleas were indicated to all charges with the defence being said to be 'no dishonesty'.

- 6.3 On 19 October 2019 the defendant appeared for PTPH before HHJ Eady, sitting at the Southwark crown Court. The defendant entered not guilty pleas to each of the six indictment counts and his trial was fixed for 15 April 2019.

- 6.4 The defendant pleaded guilty at Southwark Crown Court on 15 April 2019 to the following three counts of VAT fraud –

- **Offence:** VAT - knowingly concerned in fraudulent evasion (03/03/2014 - 01/09/2016)

Particulars:

Between 03/03/2014 and 01/09/2016 was knowingly concerned in, and/or took steps with a view to, the fraudulent evasion of VAT by him or any other person in relation to the Burlington Hotel Sandown Limited T/A the Burlington Hotel

- **Offence:** VAT - knowingly concerned in fraudulent evasion (03/11/2015 - 01/09/2016)

Particulars:

Between 03/11/2015 and 01/09/2016 was knowingly concerned in, and/or took steps with a view to, the fraudulent evasion of VAT by him or any other person in relation to the Burlington Hotel Operations Limited T/A the Burlington Hotel

- **Offence:** VAT - knowingly concerned in fraudulent evasion (03/03/2014 - 01/09/2016)

Particulars:

Between 03/03/2014 and 01/09/2016 was knowingly concerned in, and/or took steps with a view to, the fraudulent evasion of VAT by him or any other person in relation to the Shanklin Beach Hotel Limited T/A Shanklin Beach Hotel Isle of Wight.

- 6.5 The guilty plea to counts 1-3 was based on the full facts of the case and the money laundering charges remain on file.

- 6.6 A POCA s.18 Order was authorised by HHJ Gledhill and a confiscation timetable was agreed by the Court on 15 April 2019. The defendant was granted conditional bail until the sentencing hearing, listed for 10 June 2019.
- 6.7 On 10 June 2019 at Southwark Crown Court, the defendant was sentenced by HHJ Hehir to 30 months imprisonment for each of counts 1-3 to run concurrently. He was also disqualified from company directorship for 7 years.

7 Personal History / Lifestyle

- 7.1 The defendant is a 51 year old male, (date of birth 03 March 1968) who resided at Orchard Lee, Nunwell, Sandown, Isle of Wight PO36 9DE until he left the UK for Spain. He lived until his conviction, with his wife **Amanda Crighton- Hill** (date of birth 10 June 1977) and their two children; a son (date of birth 12 December 2002) and daughter (date of birth 01 July 2008).
- 7.2 The defendant was convicted of two counts of theft (in 1987) and five counts of obtaining property by deception (in 1993).

7.3 Corporate Entities

The defendant has formed or caused to be formed numerous limited companies over a long period. Those companies which are relevant to this investigation during the relevant period are scheduled in **appendix 01**.

- 7.4 It would appear that the corporate entities have been utilised to facilitate the defendant's fraudulent activities. He has utilised the corporate entities to conceal his activities around the use and control of funds representing the proceeds of his criminal conduct.
- 7.5 Among those companies listed are the three key companies as set out in paragraph 3.1, BHSL, BHOL and SBHL. The defendant was the sole Director of these companies during the period of the fraud. Following his arrest on 31 August 2016 the defendant became the Secretary of these three companies on 25 November 2016 after resigning as Director. In each case the defendant is the only shareholder of the nominal £1 share in each company.
- 7.6 Other than the three companies mentioned in the previous paragraph, none of the other entities actually traded, rather they were part of the mechanism of the fraud and subsequent layering and placement of criminal proceeds by means of the various company bank accounts.
- 7.7 A clear example of this practice is that of Meadowden Consulting Ltd. as set out in paragraphs 9.79 to 9.93 below although all company bank accounts had roles of varying significance in the concealment and dissipation of criminal proceeds.
- 7.8 The defendant has at different times held the office of Company Director and/or Company Secretary in respect of all the companies listed.

7.9 **Land and property held by the defendant**

Orchard Lee:

The defendant and his wife are the joint proprietors of the property known as Orchard Lee, Nunwell Street, Sandown, Isle of Wight PO36 9DE (Title Number IW 6344). The defendant purchased this property for £295,000 on 29 March 2016 (conveyancing documents **appendix 02**). This property is not subject to any mortgage and the approximate value of the property as at 17 September 2019 is £385,000.00 (Valuation Office Agency, **appendix 03**)

- 7.10 Although the property Orchard Lee is recorded on Land Registry as owned jointly by the defendant and his wife, analysis of the defendant's Tesco Bank statements obtained by means of PACE Production Orders demonstrates that he was the sole source of the monies used to purchase the property and this transaction was carried out using the proceeds of the fraud which are believed to have been laundered through his personal bank accounts in order to fund the purchase of the property.
- 7.11 The defendant's wife has not contributed any funds towards this purchase thus HMRC consider the whole value of the premises to be criminal property (as defined within Section 340 of the Act) and owned by the defendant which is available to satisfy in whole or in part, any confiscation order the Court may make.
- 7.12 This property is subject to the Restraint Order granted on 21 March 2018. Following the Restraint Order and the defendant and his family moving to Spain, the property was let. Rental income from this property was secured in a restrained Lloyds bank account number 23136160. When this account was closed, the balance of £5,208.31 was transferred into an HMRC interest bearing account with the reference GBP8016. This sum plus any accrued interest is thus considered benefit and part of the available amount.
- 7.13 **Flat 5, 16 Prospect Road:**
- The defendant also solely purchased Flat 5, 16 Prospect Road, Shanklin, Isle of Wight PO37 6AE (Title Number IW63896) on 04 December 2014 for £140,000.00 (conveyancing documents **appendix 04**) This purchase was also not subject to any mortgage.
- 7.14 The property then was sold on 24 June 2016 for £170,000.00 (Conveyancing documents **appendix 05**). The funds from the sale of the property were deposited into the defendant's Barclays account number 23134148 from where it was transferred via seventeen separate payments of £10,000 over the course of three days into the defendant's Tesco savings account number 13693715. These funds are a component of the sum which was eventually transferred outside the jurisdiction as laid out in paragraphs 9.37 to 9.44 which are considered part of the available amount.
- 7.15 The defendant was interviewed under caution on 31 August 2016, the day of his arrest, in the presence of a Legal Adviser. During this interview, he declined to comment when asked about the purchase of residential properties.
- 7.16 During a subsequent interview on 30 November 2016, the defendant claimed the flat had been purchased using funds accumulated while living abroad.

- 7.17 During the hearing at Southwark Crown Court, the defence claimed that he had purchased properties using funds borrowed from the Hotel companies and had subsequently repaid the monies used for the purchases.
- 7.18 It is of note that on 16 April 2018 in the defendant's initial provision of information in response to the Restraint Order (**appendix 06**); the defendant claimed that the Orchard Lee property had been purchased following the sale of Flat 15, 16 Prospect Road. He in fact sold the flat some three months later (24 June 2016) after he had already purchased Orchard Lee (29 March 2016) and thus no element of the proceeds of the sale of the flat contributed to the outright purchase of Orchard Lee.
- 7.19 The source and derivation of the funds used to purchase both these properties is explained in paragraphs 9.37 and 9.38 below. HMRC believe that these properties were purchased using proceeds of the fraud and therefore the property Orchard Lee and the proceeds of the sale of Flat 5 (together with any interest accrued) are criminal property as defined within Section 340 of the Act.

7.20 **Lifestyle in Spain**

HMRC received a letter from the defendant's previous Solicitors (Roach Pittis) dated 07 February 2018 which stated that he had left the UK jurisdiction as he had '*..now accepted a job offer overseas and in fact has left the UK with little chance of returning in the short term..*'.

- 7.21 In later correspondence in response to the Restraint Order (**appendix 07**), the defendant claimed through his new solicitors (Blackfords LLP) in a letter dated 29 May 2018 that 'The Alleged Offender is not currently receiving any salary for any employment in Spain. His current business activities in Spain are being undertaken with the prospect of payment in the future;'
- 7.22 Again, in a letter from Roach Pittis dated 31 July 2018 (**appendix 08**) they stated 'Mr Hill is not currently employed in Spain. He is currently conducting market research with a view to future business opportunities. Hence the intention is that the work currently being undertaken will lead to remuneration in the future. The Further to Provision of information also states "*A property has been identified for purchase in Spain and completion achieved*". This is almost four months after service of the Restraint Order. As set out in paragraphs 10.15 to 10.16 below, the defendant claims that on learning about the Restraint Order, he cancelled his planned purchase of a house in Spain.
- 7.23 The defendant has made claims about the status of funds which he dissipated and removed from the UK jurisdiction which are dealt with below in paragraphs 9.37 to 9.44 below. Analysis of his banking and credit card material shows that the defendant funded his lifestyle in Spain with various credit cards which were in turn funded from various company bank accounts associated with the hotels on the Isle of Wight.

8 **Legitimate Sources of Income**

- 8.1 HMRC departmental PAYE records show that the defendant had declared no income during the period of the alleged fraud, save for £3,298.20 Jobseekers Allowance during the fiscal year 2013-2014, on which he paid no tax. After his arrest he started to declare income from SBHL and BHOL as scheduled below.

Martin John Hill			
Pay as You Earn (PAYE) NINO: NP762770D			
Financial Year	Earned Income	Tax paid	PAYE Employer
2011/12	-	-	-
2012/13	-	-	-
2013/14	£3,298.20	£0.00	Jobseekers Allowance
2014/15	-	-	-
2015/16	-	-	-
2016/17	£1,350	£0.00	Shanklin Beach Hotel Limited
2016/17	£6,192	£0.00	Burlington Hotel Operations Limited
2017/18	£2,175	£0.00	Shanklin Beach Hotel Limited
2017/18	£5434.90	£0.00	Burlington Hotel Operations Limited
2018/19	-	-	-
2019-present	£656.80	£0.00	No employer details provided

- 8.2 HMRC departmental Self-Assessment (SA) records show that the defendant registered on 14 January 2015 and was shown as a company director but never registered as trading so a nil return was captured on the system. His record is now dormant.
- 8.3 As set out in paragraphs 9.66 to 9.70, the defendant has made exaggerated claims of legitimate income in his provisions of information following both Restraint and the subsequent s.18 request for information. These assertions are contradictory and bear no relation to his declared income.

9 Financial Record Examination

- 9.1 The fraud as described above in this case, is relatively straightforward insofar as it revolves around the defendant's conduct in respect of the three companies as set out in paragraph 3.1. The financial analysis to calculate the benefit of the fraud is lamentably far more complex.
- 9.2 The defendant created or caused to be created numerous companies as listed in **appendix 01**. He also opened numerous bank accounts to which he was either usually the sole signatory or on a very small number of occasions, a joint signatory with his wife. Some of these accounts are in the names of the various companies linked to the defendant.
- 9.3 With the exception of a small number of accounts which I will refer to as the 'core business accounts', none of the corporate entities or bank accounts traded or had any function other than to fund the defendant's lifestyle by the extraction of funds from the Hotel businesses, then concealing and dissipating these funds using the numerous companies and bank accounts as a means to achieve this.
- 9.4 The level and circumstances of these extractions are not commensurate with established business practice and are not contained within any declared income levels to HMRC.
- 9.5 Thus the business accounts treated as 'personal accounts' are, like the companies whose names they bear; merely a sham, intended to facilitate the layering and placement of the benefit of the defendant's criminal conduct and conceal this activity.

- 9.6 A schedule of all known bank accounts and credit cards is attached as **appendix 09**. In the paragraphs below I have provided the Court with an overview of some of the defendant's accounts obtained initially during the criminal investigation via PACE Schedule 1 Production Orders. Later, one POCA s.345 Production Order was obtained on 30 August 2017 and subsequently material was obtained by means of a POCA s.357 Disclosure Order.
- 9.7 In this case, the mechanism of the fraud and subsequent layering and dissipation of the proceeds of the criminal conduct involved long chains of transfers of funds between multiple bank accounts. Because of this, it is not useful to look at many of the accounts in isolation as no one account can be examined as anything other than a conduit between the source of the funds and their eventual destination.
- 9.8 I have identified two primary groups of bank accounts which I will refer to as the 'core business accounts' and the 'personal accounts'. These terms differentiate the sources of the proceeds of the fraud and the mechanism by which these funds were layered and placed by the defendant.

9.9 **Core Business Accounts**

The core business accounts are those which, irrespective of the account name, could be identified as being firstly the source of the funds that have been identified as benefit; secondly as those which can at least partly be identified as having some legitimate role in the conduct of the Burlington and Shanklin Beach Hotels. The last account in the schedule below was never used; however it is included with the core business accounts as it was thus not part of the mechanism of the fraud or layering of proceeds.

Bank	Account name	Account type	Sort Code	Account number
Barclays	Burlington Hotel Operations Ltd	Business Current	20-60-55	83261476
Barclays	Burlington Hotel Sandown Ltd	Business Current	20-60-55	93446018
Barclays	Shanklin Beach Hotel Ltd	Business Current	20-60-55	03288773
Barclays	Burlington Hotel Sandown Ltd	Active Saver	20-60-55	33613313
Barclays	Shanklin Beach Hotel Ltd	Business Savings	23-77-38	63493776
Barclays	Wheatsheaf Hotel	Business Current	23-77-38	83771474
Barclays	Wheatsheaf Hotel	Active Saver	20-60-55	23565572
Santander	Burlington Hotel Operations Ltd		09-01-28	20193470
Santander	Burlington Hotel Sandown Ltd	Business Current	09-01-28	81524861
Santander	Shanklin Beach Hotel Ltd	Business Current	09-01-28	81528362
Santander	Shanklin Beach Hotel Ltd	Business Savings	09-01-28	81528812

9.10 The two Barclays accounts included in the table above in the name of the ‘Wheatsheaf Hotel’ are associated with the day-to-day running expenses of the Wheatsheaf Hotel, 16 St Thomas Square, Newport, Isle of Wight. Silver Reef Asset management Ltd trading as The Wheatsheaf Newport Ltd. had tenancy of this public house between 11 February 2015 and 15 September 2015. As well as what appear to be legitimate day to day business transactions, the account is the source of multiple cash withdrawals and unexplained transfers to the personal accounts.

9.11 **Personal Accounts**

The personal accounts comprise the rest of the known bank accounts in the name of the defendant or to which he is the signatory. These accounts include those in the names of Meadowden Consulting, The Pheasant Glaston and Isle of Wight Hotel Management Services. Although the accounts bear the names of businesses, they have not been included with the core business accounts for the following reasons:

- There is little or no activity in respect of these bank accounts which indicates either a link with the business whose name it bears or any legitimate business transactions.
- There is clearly activity in the conduct of these accounts which links them to the accounts in the defendant’s name in respect of the movement and accumulation of funds removed from the core business accounts – they are identifiable as part of the mechanism of layering of the proceeds of the criminal conduct.

- 9.12 Throughout the criminal and parallel confiscation investigation, the defendant has failed to disclose all the accounts which are known to be under his control, both in response to the Restraint Order granted by HHJ Gold at Lewes Crown Court on 21 March 2018, and also in his response to the POCA s.18 request for information.
- 9.13 Of the 55 banking and credit card accounts now known to HMRC; which are in the defendant’s name or to which he is a signatory, he has failed ultimately to declare 22 of them after responding to the Provision of Information Order (in respect of Restraint) and the subsequent POCA s.18 Order.
- 9.14 Throughout the relevant period, the defendant transferred funds from the hotel core business accounts to personal accounts or business accounts that had no clear purpose or connection with the day-to-day running of the Hotels.
- 9.15 Throughout both the criminal and confiscation investigations thus far, the defendant has claimed that all the unexplained transactions were legitimate business activity, carried out in the normal conduct of his companies, such as loans between business accounts or movement of funds to take advantage of interest rates from different bank accounts.
- 9.16 No proof of any such loans has ever been provided. With the exception of the savings accounts where monies accumulated for the purpose of purchasing properties or removal from the jurisdiction, funds never stayed in any particular account for long enough to accumulate interest.

- 9.17 A large number of transfers have been allocated names by the defendant as part of the process by which he made them via internet or mobile phone banking services. The names assigned to the transfers include those such as HMRC Vat Payment, PAYE, petty cash and wages, among others. However, the funds transferred go straight to the personal accounts and are then moved on several times until they are either returned in part to the core business accounts or are used, for example, to purchase residential properties or accumulate in savings accounts prior to removal from this jurisdiction.
- 9.18 Due to the particular nature of the defendant's conduct in respect of the chains of transfers between bank accounts, it is not helpful to focus on individual accounts as the chains of complex transfers of funds always involve multiple accounts, including the 'buffer' accounts as mentioned below which appear to have no real function other than to act as extra layers intended to confuse the picture in respect of the source, movement and final destination of monies removed from the core business accounts.
- 9.19 The individual accounts particularised below are identified in order to shed light on particular aspects of the defendant's financial conduct which in turn illustrate the mechanics of layering the proceeds of his general criminal conduct.

9.20 **Layering of Funds**

The money laundering aspect of the criminal investigation was predicated on material obtained by means of PACE 1984 Schedule 1 production orders in relation to the known business and personal bank accounts held in the name of or controlled by the defendant.

- 9.21 Analysis of these accounts show some movements of money from the defendant's BHSL and SBHL business accounts to the defendant's personal savings accounts. The amounts transferred have been referenced on the bank statements as either VAT or PAYE payments to HMRC. No payment was received by HMRC in respect of these transfers.
- 9.22 The funds as described above were transferred from the defendant's business accounts through several of his personal savings accounts, usually through several accounts on the same day (**appendix 10**).
- 9.23 There is also in one instance a payment described as 'ALLSOP OFFICE INV 12112015-01BGC' from the BHSL business account of £67,714.30. An invoice dated 12 November 2015 for £56,428.58 plus VAT of £11,285.72 had been issued to Allsop for management fees relating to the Burlington Hotel for the period 2014/2015, on which the VAT element of £11,285.72 was due but not accounted for because a nil VAT return had been submitted for that period. Therefore the defendant received the full payment of the invoice (£56,428.58) as well as the VAT element (£11,285.72) which he failed to declare to HMRC, kept for himself and layered through his personal accounts thereby deriving further benefit from his general criminal conduct.
- 9.24 In each case the funds were eventually transferred to The defendant's Halifax account 32962763 from which £144,000 was released on 02 December 2014 for the purchase of Flat 5, 16 Prospect Road, Isle of Wight; and his Tesco Bank account 10216556 from which £290,646.40 was released on 14 March 2016 for the purchase of Orchard Lee, Nunwell Street, Sandown, Isle of Wight.

9.25 Corporate entities

The clearest examples of the business accounts being part of the mechanism of the fraud are those which show the payments from BHSL Barclays account number 93446018 which purport falsely to be VAT and PAYE payments. These are then layered through the defendant's personal accounts to fund property purchases. All of the business accounts listed within paragraph 9.9 also show large numbers of transfers of funds which have no description on the bank statements, and subsequently pass through the personal accounts in an identical manner. These transfers are also believed to represent the defendant's money laundering activity and his benefit from his general criminal conduct. There is no reason or evidence to suggest that these transfers and the way they were named were due to inadvertent or unintentional errors. On the contrary, it is the Crown's position that such actions were intended to obfuscate the defendant's financial activities.

- 9.26 Initial analysis of these accounts from production order material dated from March 2014 to the end of August 2016 shows four of the accounts in particular (as detailed below) have had an unusually high percentage of inter-account transfers. Over 93% of the total funds transferred in and out of these accounts originated from or were destined for accounts controlled by the defendant. In the case of account 00684101 100% of the funds paid into the account consisted of funds transferred from other accounts under the defendant's control. At times these accounts appear to operate purely as 'buffers' (accounts through which money passes for no apparent reason other than to disguise it's origin), with large back-to-back transfers on a single day, sometimes leaving exactly the same balance at the end of the day as at the start.
- 9.27 The table below shows percentages (in bold) of the amounts of monies transferred both in and out of the four identified 'buffer' accounts during the period of offending. The percentages of total transactions which were simply a stage in chains of inter-account transfers demonstrates clearly that the dominant purpose of the accounts was to host large sums of money temporarily, for no purpose other than to obscure their origin and derivation:

Account	Name	Total in (£)	Transfers in (£)	Percent of total	Total out (£)	Transfers out (£)	Percent of total
23134148	Martin John Hill	823,152.57	772,402.70	93.83	823,332.27	802,721.68	97.50
00684101	Martin Hill	464,080.30	464,080.30	100.00	463,872.62	441,120.14	95.10
42287973	Mr M Hill	686,755.87	673,650.85	98.09	689,462.12	656,641.38	95.24
10216556	Mr Hill	393,622.17	393,475.56	99.96	392,654.39	371,217.50	94.54

9.28 Example: HBOS 00684101 in the name of Martin Hill

A more detailed analysis of this account shows that between 16 June 2014 and 5 September 2015, all 60 credits to this account are transfers from other known accounts, totalling £421,238. The majority of these transfers (44) are for amounts ranging between £5,000 and £25,000.

A total of £398,940.50 is transferred within this period to other accounts.

£21,995 appears to be payment to a motor vehicle dealership.

This leaves just £302.50 which constitutes regular expenditure within the period, such as bank charges or TV licence payments.

9.29 In the same period, the end-of-day balance on the account only exceeds £1,200.00 on five occasions. On each of these occasions the balance drops back below £1,200.00 on the next day that any activity takes place on the account. **Thus the statement balances appear low despite the large sums moving through the accounts.**

9.30 Between 06 and 27 August 2014 the end-of-day balance every day is £62.08; in that period a total of £70,000 is transferred through the account over three separate days, all from the defendant's accounts, Nationwide Building Society account 42287973 to his HBOS account 32962763.

9.31 The source of the funds subject to these inter-account transfers is the core business accounts described in paragraph 9.9. The funds are clearly not being used in furtherance of the respective corporate entities' trading activities.

9.32 **Interest payments.**

The defendant was interviewed at HMP Wandsworth on 05 November 2019 after service of a notice of a POCA s.357 Disclosure order. During this interview he claimed that the movements of funds were intended to take advantage of preferential interest rates in order to obtain interest on company money.

9.33 Analysis of banking material obtained under the Disclosure Order shows a total of interest credited to the various accounts during the relevant period which adds up to a total of £7,629.78 over 6 years, 11 months in 218 individual credits (**appendix 11**). However 67 of these credits; a total of £4,511.14 were in respect of savings accounts which did not feed the core business accounts, instead they were used to accumulate funds initially in order to purchase property and ultimately to remit funds outside of the jurisdiction. This leaves just £2,668.64 of interest credited to the other accounts during the relevant period.

9.34 As described above, the chains of transactions from account to account resulted in none of the funds extracted from the core business accounts remaining in any particular account long enough to accrue any significant interest.

9.35 The residual amount of £2,668.64 interest credited to the various personal accounts over just under 7 years is negligible and there is no evidence that any of it made its way back to the core business accounts. **The majority of the individual credits which constitute interest accrued are for less than £4.00, many are indeed for less than one pound.**

9.36 Thus the claim that funds were moved from core business to personal accounts in order to take advantage of preferential interest rates is a fiction intended to justify the layering of funds which constitute the benefit of the criminal conduct.

9.37 **Accumulation of funds and removal from the jurisdiction**

As stated previously, funds to the value of £261,188.25 had accumulated by 26 August 2016 in the defendant's Tesco Bank account number 13693715. This sum included the proceeds of the sale of Flat 5, 16 Prospect Road which had been deposited in this account by means of layering seventeen individual payments of

£10,000 over a period of three days. This account was funded almost entirely by transfers from the defendant's personal accounts.

- 9.38 This account was also used to accumulate the funds used for the purchase of Orchard Lee. On 02 March 2016, £290,000.00 was transferred from this account to the defendant's Tesco Bank current account number 10216556. The funds were then transferred to MJP conveyancing (total of £290,646.40) who were the conveyancers for this purchase.
- 9.39 The residual funds in the savings account number 13693715 were eventually dissipated via several personal accounts including a new hitherto unknown Tesco Bank account number 15627401 which had been opened after the defendant's arrest on 31 August 2016. The funds were then dissipated further, outside the UK jurisdiction to a Santander Jersey bank account number 120053268.
- 9.40 This Santander Jersey account was the source of the 1 years' rental money for the Calle La Font property in Spain. The whereabouts of the remainder is unknown at this time.
- 9.41 One year's rental of the Spanish Property was paid from the Santander Jersey account in November 2017. Using an historic exchange rate of €1.1183 to one pound Sterling (www.gov.uk Government Publications historic exchange rates November 2017) this rental amount of €21,600 equates to £19,315.03.
- 9.42 During the interview on 05 November 2019, the defendant was asked about the current location of these funds and why they were removed from the UK jurisdiction. He answered that the funds were removed because he was moving to Spain.
- 9.43 The defendant also stated that he did not know the current location of the funds after the alleged cancellation of the property purchase in Spain. He stated that he had 'bills to pay'. As stated previously, I do not believe the funds were ever intended for use in a property purchase and the defendant has recently given yet another account which contradicts his previous statements.
- 9.44 I believe that the accumulated proceeds of £261,188.25 minus the rent of £19,315.03, remains outside the jurisdiction and no credible account has been given as to its whereabouts. Therefore I consider a sum of **£258,842.59** (£241,873.22 plus an uplift reflecting changes in the value of money as detailed below) to be part of the available amount for payment against any future Confiscation Order the court may make. The full value and whereabouts of this substantial amount of money is peculiarly within the knowledge of the defendant who has failed consistently thus far to account for this.
- 9.45 **Amanda Crighton – Hill wages**
- Between 27 October 2018 and 03 April 2019, there were a total of 74 transfers from the core business accounts (**appendix 12**), which are described as wages to the defendant's wife (except one transfer dated 06 August 2015 for £207.00 which is described as 'Amanda Hill theatre tickets').
- 9.46 In all other cases I have only included in my calculations transactions of £500.00 and over in the interest of fairness. I have not done so in this particular case as all the transfers are relevant to and identifiable against the declared earnings of a third party.

- 9.47 The table below is a schedule of earnings declared to HMRC by Mrs Crighton-Hill. The income which is attributable to the Isle of Wight Hotels adds up to a total of £16,525.20 during the relevant period. The 74 transfers of funds from the core business accounts which name her as the recipient add up to a total of £48,150.57 – almost three times the declared amount.

Amanda Crighton-Hill			
Pay as You Earn (PAYE) NINO: JN700546C			
Financial Year:	Earned Income	Tax Paid	PAYE Employer
2018/2019	£1313.60	£0.00	Burlington Hotel Operations Ltd
2017/18	£2175.00	£0.00	Burlington Hotel Operations Ltd Shanklin Beach Hotel Ltd
2016/17	£750.00 £6158.40	£0.00 £0.00	Shanklin Beach Hotel Ltd Burlington Hotel Operations Ltd
2015/16	£1286.40 £4009.80	£0.00 £0.00	Burlington Hotel Operations Ltd Isle of Wight Hotel Management Services Ltd
2014/15	£832.00 £3888.90	£0.00 £32.00	Isle of Wight Hotel Management Services Ltd Northamptonshire County Council
2013/14	£1684.84 £7057.36	£0.00 £0.00	Northamptonshire County Council Warmington Playgroup
2012/13	£7,330.75	£0.00	Warmington Playgroup
2011/12	£833.78	£0.00	Warmington Playgroup

- 9.48 During an interview on 05 November 2019 under the provisions of POCA s.357, Mrs Crighton-Hill was asked about these payments. She explained that she would have been paid her wages via bank transfer but added that she did not keep her wages slips.
- 9.49 She has since provided copy bank statements which show that all but two of the transfers detailed above were indeed credited to her Lloyds bank account. This reinforces the fact that she was financially dependent on her husband and made no monetary contribution to the purchase of the Orchard Lee property to justify her 50% beneficial share in the house. It also illustrates the extent to which the defendant manipulated transaction data and records to suit his own purposes.

9.50 Santander Account 20193470

The defendant opened a Santander account in the name of Burlington hotel operations Ltd., number 09-01-20 20193470 on 17 November 2017. This was over a year after his arrest. As is the case with many of the accounts to which the defendant is or has been a signatory, there is no clear reason why another bank account associated with the two hotels he was running was required, when so many others existed?

- 9.51 Between 21 November 2017 and 21 January 2019, a total of £129,834 in cash was deposited into this account. There were a total of 81 deposits of cash; all made at the Post office at 4, Albert Road, Sandown PO36 8AN, which is a short distance from the Burlington hotel. These deposits appear to be the primary source of funding of this account. No other deposits of this kind have been identified in any of the other Hotel

business accounts. It is significant that these cash deposits commenced at the same time as the defendant relocated to Spain.

- 9.52 While living with his family in Spain, the defendant was funding his lifestyle via various credit cards. This credit card expenditure took the form of regular transactions at shops and businesses, plus regular cash withdrawals at ATMs, mostly in the Alicante area, where he was living.
- 9.53 Between 02 January 2018 and 21 February 2018 there were 70 debits made directly from this account in Spain, either via cash withdrawals or debit card payments. The sum of these transactions is £10,382.12, which includes £116.57 in non-Sterling transaction fees.

After these transactions ceased, between 23 April 2018 and 02 January 2019, 24 payments were made from this account against Santander credit card 7782 5000889395. These payments total £23,884.98.

- 9.54 Although this account is held in the name of Burlington Hotel Operations Ltd, it has only been included among the core business accounts due to the extractions of funds to the personal accounts. There is however a lack of identifiable account activity which can be linked to the running of the hotels. Between 21 November 2017 and 21 January 2019 there were 55 transfers of funds with a total of £85,835.70 from this account to the Burlington Hotel Barclays account number 83261476 which may appear to be legitimate business-related transfers. However, during this period,
- o The Barclays account was running at a substantial overdraft of up to £25,000
 - o During the same period there were 71 payments from the Barclays account against the defendant's credit cards with a total of £45,178.37.
 - o During the same period, despite the overdraft, there were 34 transfers from the Barclays account to the defendant's personal accounts with a total of £204,681.36.

Apart from a small number of other transfers to and from core business accounts and personal accounts which are dealt with elsewhere in this statement, the Santander account is therefore almost exclusively funded by cash deposits; and almost all the expenditure was primarily to fund the defendant's lifestyle in Spain, latterly to fund one of the number of credit cards which also funded that lifestyle, and finally to fund a core business account which was the source of further extraction which in turn funded the defendant's lifestyle while abroad.

- 9.55 Based on the conduct of the account and the circumstances under which it was opened, I believe some of these deposits to be part of the benefit of criminal conduct. They are not consistent with any other legitimate identified deposits to the Hotel businesses and although not part of the funds transferred outside the jurisdiction, contributed to the funding of the defendant's lifestyle while he lived in Spain.

However it would be impossible to identify which part of the cash deposits eventually funded legitimate hotel expenditure and in order to reduce the risk of any double accounting, the value will not be added to the sum of benefit. The circumstances of these cash credits clearly demonstrate the defendant's access to funds outwith banking facilities. The extent of these payments contradict the defendant's assertion regarding funds held in Jersey as being spent on bills when it is quite evident his bills and

lifestyle were catered for as a result of the above transactions and those made using other credit cards.

9.56 The Old Pheasant, Glaston.

The defendant was a personal guarantor and director of Pheasant Glaston Ltd which had tenancy of the Old Pheasant Inn, Glaston, Rutland between 19 October 2009 and 08 February 2013. The company was dissolved on 16 June 2015. The defendant and his wife were alternatively director and secretary of this company throughout its existence. The company was VAT registered on 19 October 2009 and de-registered on 19 October 2013.

9.57 There are three Santander UK Plc bank accounts in the name of the 'The Pheasant Glaston Ltd' to which the defendant and his wife are joint signatories as follows –

Bank	Sort Code	Account Number	Account Name	Account Type
Santander	09-01-27	85655137	The Pheasant Glaston Ltd	Business Current
Santander	09-01-27	85655593	The Pheasant Glaston Ltd	Business Savings
Santander	09-01/28	34055439	The Pheasant Glaston Ltd	Business Savings

The defendant failed to disclose these accounts in response to either the Restraint Order or the s.18 request for information.

9.58 Analysis of these accounts has shown that as well as having almost no transactions which could be construed as connected to the running of a hotel with a bar and restaurant, most transactions appear to be connected with the defendant's lifestyle expenses such as large numbers of Paypal payments, and the layering of funds from the core business accounts as described above.

Section 18 response

9.59 The defendant was ordered to respond to the POCA s.18 Order by 15 May 2019. A response was received on 16 May 2019. This document is attached as **appendix 13**. The defendant made a number of assertions in his response which HMRC dispute for the reasons set out below.

9.60 The statement that the defendant's wife Mrs Amanda Crighton-Hill has a 50% beneficial interest in both the Orchard Lee property and allegedly also in the Calle la font property in Spain is dealt with in paragraphs 10.1 to 10.6 below.

9.61 The defendant claimed in his s.18 response that he sold the lease to the Old Pheasant Hotel, Glaston (as detailed above) in 2011 although, the lease was actually re-assigned to a company called Smart Inns UK Ltd on 08 February 2013.

9.62 The defendant has also made contradictory claims about his earnings during the relevant period. In his s.18 response, he has asserted that he received salaries from some of the companies under his control.

9.63 The defendant claimed further that Isle of Wight Hotel Management Services Ltd and Silver Reef Asset Management Ltd did not trade and were not the source of any remuneration. As set out below, the banks accounts associated with these companies tell a different story as they are both part of the mechanism of layering funds which constitute benefit of the general criminal conduct.

9.64 **Salary Claims**

On 16 April 2018 the defendant claimed in his response to the Restraint Order that he was receiving a salary of £750.00 per month from Burlington Hotel Operations Ltd. (equating to £9,000 per annum) In his POCA s.18 response dated 15 May 2019 he claimed a salary from this company of £36,000.00 per annum from 2015 to the date of the response.

9.65 The defendant continued in his s.18 response to state that he also received a salary of £50,000.00 per annum in 2014-2015 from Shanklin Beach Hotel Ltd.

9.66 He claimed further in his s.18 response that he also received a salary of £50,000.00 per annum in 2014-2015 from The Burlington Hotel Sandown Ltd.

9.67 Examination of the defendant's Pay As You Earn (PAYE) tax records shows that he was claiming Job Seekers allowance in the tax years 2014-15 and 2015-16. He declared income from Shanklin Beach Hotel Ltd. of £1350.00 in 2016-17 and £2175 in 2017-18.

9.68 He declared income from Burlington Hotel Operations Ltd. of £6192 in 2016-17 and £5434 in 2017-18.

9.69 During the interview on 05 November 2019, the defendant was asked about the discrepancies between his contradictory claims of salary and his income declared to HMRC. He replied that he was paying tax in Spain. This answer is inadequate because the salaries as claimed above cover a period when the defendant was declaring little or no tax in the UK PAYE system and, more seriously was registered on HMRC Self-Assessment as a Company Director but claimed to be dormant and not trading.

9.70 The belated claims to large salaries appear to be intended to justify extractions of funds not declared as income and contradictory to the claims in respect of extraction of 'consultancy fees' during the relevant period.

9.71 **Insurance Payments.**

The defendant also claimed in his s.18 response that he had received insurance payments totalling £90,000 in respect of flood/water damage to flat 15, 16 prospect Road, Shanklin during his period of ownership.

9.72 The defendant stated that – "There was a flood approx (sic) 1 month after the defendant and his family moved in, another in June 015 and a severe flood in October 2015 resulting in an insurance payment of approximately £90,000 to complete the necessary repairs".

9.73 The analysis of credits from the defendant's insurer into his bank accounts disputes this assertion.

Account name	Bank	A/C number	Date	Transaction ID	Amount (£)
Sanklin Beach	Barclays	03288773	06/02/2015	P&CLTD INS BRK 090114-01 BGC	1080.00
M Hill	Barclays	23134148	24/02/2015	P&CLTD INS BRK 33485-CLM BGC	118.56
Shanklin Beach	Barclays	03288773	24/03/2015	P&CLTD INS BRK 33485-CLM BGC	1074.00
Shanklin Beach	Barclays	03288773	24/03/2015	P&CLTD INS BRK 33919-CLM BGC	1320.00
M Hill	Barclays	23134148	29/10/2019	P&CLTD INS BRK CLAIM 037875 BGC	600.00
M Hill	Barclays	23134148	18/12/2015	P&CLTD INS BRK CLAIM 037875 BGC	900.00

The sum of credits into the defendant's bank accounts from his insurer is £5,092.56

- 9.74 The criminal case team enquired with the insurers Deacon Insurance Services, as to the status of the defendant's claim. They received an email from Victoria Elliott of Deacon Insurance Services on 09 October 2015 (**appendix 14**) which summarised a review of the insurance claim as follows –

Claim 032912 – which was settled on 03 February 2015. The date of the loss was 09 January 2015, in respect of the escape of water from a burst pipe in the wet room which was repaired. The insurer settled the claim at £1080 for repairs to the lobby, porch and bedroom.

Claim 033485 – which was settled 23 March 2015. The date of the loss 12 January 2015, in respect of water ingress from the chimney that was repaired. The defendant wanted to claim initially for dehumidifier costs only at £11.56. He advised the insurer that he also claimed £2800 from contents insurers. The defendant then wanted to claim for the resultant water damage to his flat at £1074. The claim was settled at £1192.56 for the dehumidifier and redecorations.

Claim 033919 – (this claim was ongoing at the time of the email). The date of the loss 06/10/2015, in respect of the escape of water from a shared drain, allegedly caused by Southern Water. Cunningham Lindsey (CL) were appointed to attend and validate the claim. The defendant informed them that Environmental Health had been called out and served him 24 hours' notice to remove the foul waste, and would take legal action against him if he failed to comply. CL spoke to a company called Chemdry who had attended under his contents insurance claim, to remove the initial sewage on behalf of the water board. They confirmed that they were not aware of any further sewage and had removed all visible foul water. CL agreed for Chemdry to attend once more due to Hill's claim. CL then called the Environment Agency who confirmed that they had no record of this matter and furthermore they would not actually deal with such a situation. Bank records show that this matter was settled with two payments dated 29 October 2015 and 18 December 2015, totalling £1500.

- 9.75 The deposits listed above match the account of the claims from the insurer. There is no evidence of any insurance payments which match the defendant's assertion made in his s.18 response.
- 9.76 During an interview on 05 November the defendant claimed that he did receive insurance payment of the sum he mentioned in his s.18 response, but was unable or unwilling to give any detail other than the insurer was 'Halifax'.
- 9.77 Analysis of the banking material received has revealed no further credits by bank transfer or cheque which could be regarded as payment of insurance claims, either for

the sum claimed by the defendant, or from Halifax, HBOS or Lloyds who could be the insurer.

- 9.78 As a result of the service of notice of a POCA s.357 Disclosure Order on Lyons Davidson Solicitors, it has been confirmed via email from the firm's Compliance Director (**appendix 15**) that there is an ongoing and long-standing damages claim in respect of this matter but there has been to date no settlement.
- 9.79 Despite the fact that analysis of all known accounts has not revealed payments which can be identified as a settlement of £90,000.00, the defendant is adamant that such funds were received by him. Therefore the Court may consider the £90,000.00 (subsequently adjusted to account for changes in the value of money) as declared in his s.18 response to be part of the amount available to satisfy any future Confiscation Order.

9.80 **Meadowden Consulting Ltd / Meadowden Holdings Ltd.**

The defendant also stated in his s.18 response, in respect of the company 'Meadowden Consulting Ltd':

"Incorporated on 6th November 2014, with an active proposal to Strike Off the register, This company was used to invoice the Shanklin Beach Hotel Ltd and the Burlington Hotel Sandown Ltd for my consultancy fees." (sic).

- 9.81 The defendant invoiced both of the hotels on a monthly basis for these fees. A sample invoice is attached as **appendix 16**. This invoice was for £2,430.56 plus 20% VAT being £486.11, a total of £2916.67. An instruction on the invoice was for payment to the defendant's Nationwide Flex Direct account number 42287973.
- 9.82 Between 02 April 2014 and 11/06/2018, a total of 79 payments were made from the core business accounts to the defendant's Nationwide Flex Direct account bearing the names 'Meadowden Consulting' and 'Meadowden Holdings' (see below). The sum of these transfers is £260,758.53.
- 9.83 These payments were of various amounts as follows:
- 1 payment of £1,666.67
 - 43 payments of £2,916.67, total £125,416.81
 - 4 payments of £3,000.00, total £12,000.00
 - 4 payments of £4,166.66, total £16,666.64
 - 23 payments of £4,166.67, total £95,833.41
 - 1 payment of £4,200.00
 - 1 payment of £5,000.00
- 9.84 The defendant has been both Director and Secretary of this company at different times.

- 9.85 Examination of HMRC records shows that Meadowden Consulting Ltd was never registered for VAT and the only Corporation Tax return submitted by that company was for the year ending 05 November 2015 which declared that no accounts were submitted as the company was dormant. Thus a company which was not trading, not registered for VAT and which has no tax footprint was charging VAT on regular payments which were diverted to one of the defendant's personal bank accounts.
- 9.86 It is my belief that in the same way as other transfers of funds were used as cover for the layering and placement of criminal proceeds, these 'consultancy fees' were actually a component of the benefit of the fraud and/or the defendant's general criminal conduct. It is significant that at the time these funds were being transferred, the defendant actually ran both Hotels and was extracting large sums of money on a regular basis from the Hotels' respective bank accounts so it is unclear what any 'consultancy fees' would have been in respect of.
- 9.87 Despite the fact that none of the payments in respect of the invoices raised found their way into the Meadowden Barclays account number 20-60-55 03372189, there were substantial unexplained transfers into this account from the core business accounts.
- 9.88 The sum of the transfers into the Meadowden Consulting Ltd. Barclays account from 10 December 2014 to 02 January 2019 is £299,663.80. All but one of the transfers are unidentified except one dated 03 August 2016 which is described as a VAT payment. This description is false, part of the fake VAT payments described above.
- 9.89 I consider these transfers to be a component of the benefit of the general criminal conduct and they are included in the benefit calculations.
- 9.90 The transfers again matched the patterns identified elsewhere by which some funds were immediately transferred back into the core business accounts while substantial funds remained in the account and were transferred eventually into other of the defendant's personal accounts. This, despite the company being declared as dormant and not trading. The presence of this money in the account and the associated transfers thus conflicts with the defendant's account of the conduct of this company in his s.18 response.

9.91 **Meadowden Holdings Ltd.**

Between 02 April 2014 and 29 August 2017, a total of 37 transfers from The Burlington Hotel Sandown Ltd Barclays account number 93446018 (a core business account) to the defendant's Nationwide Flex Direct account number 42287973 were made with the name 'Meadowden Holdings'. The sum of these transfers is £108,166.78. All but three of the transfers were of £2916.67 as described above, with the final three transfers being for £3,000.00.

- 9.92 Meadowden Holdings Ltd is a company which was incorporated on 28 February 2008. Companies' House records show that the defendant and his wife were both Company Director and Secretary at different times.
- 9.93 The company was subject to compulsory liquidation and wound up on 02 February 2011. The company had no tax footprint and was struck off after action by the Northampton Official Receiver.

- 9.94 During the interview on 05 November 2019, the defendant was asked about the nature of the payments described above. He claimed that the 'consultancy fees' were in respect of his time as he was not drawing a salary. He claimed further that the inclusion of VAT on the invoices was an error involving the use of documents from an older business.
- 9.95 This account yet again contradicts the defendant's earlier accounts. His claim that the payments were in lieu of salary are untrue, as laid out in paragraphs 9.66 to 9.70. The defendant has claimed salaries far in excess of his declared income from 2014 to the date of his s.18 response. The Meadowden-related payments commenced in April 2014 and continued until September 2017; as noted above, this was a period when the defendant was living and working in the UK and declaring no income or very little to HMRC, followed by his inflated claims of earnings at a later date which lack credibility.
- 9.96 The defendant's answer in respect of VAT also does not bear scrutiny. The invoice shows that a sum of VAT has been calculated and applied to the invoices. This is a conscious act, not an accidental 'cut and paste' of an old defunct VAT registration number onto new invoices.
- 9.97 I therefore consider these 'Meadowden' transfers to be unconnected with any legitimate trade and the sum of **£260,783.53** is therefore a component of the benefit of his general criminal conduct.
- 9.98 **The Wheatsheaf Newport Ltd and Silver Reef Asset Management Ltd.**
- The defendant also claimed in his s.18 response that a company called 'Silver Reef Asset Management Ltd' did not trade and was not a source of income to him.
- 9.99 The defendant failed to mention in his s.18 response a company called 'The Wheatsheaf Newport Ltd'. As laid out in paragraph 9.9 above, there are two Barclays Bank accounts with the name 'The Wheatsheaf' to which the defendant was signatory.
- 9.100 The defendant has at times been the Director of both these companies. Interestingly, Meadowden Consulting Ltd has also been nominated as Director and Secretary of The Wheatsheaf Newport Ltd and Secretary of Silver Reef Asset Management Ltd.
- 9.101 The account opening documents for accounts named 'The Wheatsheaf' show the company as Silver Reef Asset Management Ltd trading as the Wheatsheaf Hotel.
- 9.102 It is notable that for the year ending 31 December 2015 Silver Reef Asset Management Ltd filed an entitlement to exemption under s.480 of the Companies Act 2006 relating to dormant companies. The Wheatsheaf Newport Ltd submitted no accounts during its existence.
- 9.103 However, Silver Reef Asset management Ltd were registered for VAT between 01 January 2015 and 27 July 2016. The Wheatsheaf Newport Ltd were not. Neither company was registered for Corporation tax.

9.104 Of the two Barclays Bank accounts in the name of 'The Wheatsheaf', the savings account number 23565572 does not appear to have been used. The current account number 83771474 is included among the core business accounts as set out in paragraph 9.9 because as well as transactions consistent with legitimate business activity, there are numerous unidentified transfers as described above, into the defendant's personal accounts, among others that represent the recycling of funds through multiple accounts.

9.105 **Vehicle Purchases**

Analysis of banking material shows a total of 18 payments from various bank accounts to which the defendant is a signatory (**appendix 17**). These payments total £89,993.66. They were made between 05 April 2013 and 08 February 2016.

9.106 The defendant listed vehicle purchases in his response to Restraint Order, dated 16 April 2018. A further letter from the Defence dated 08 May 2018 stated:

"Mr Hill states that all vehicles were company vehicles: they were purchased through the business and as such when sold the monies would be returned to the business."

9.107 All the vehicles which can be identified from checks of the Vehicle Keeper Index against the details provided by the defendant show that no vehicles purchased by the defendant were registered to the hotel businesses. They were registered to either the defendant or his wife, at the Orchard Lee address or either of the Hotel addresses.

Curiously, a Mercedes Vito van index HW07CVP was actually registered to the Shanklin Beach Hotel during the relevant period, but this vehicle was not declared by the defendant in either his Restraint or s.18 responses.

9.108 None of the vehicles were registered as company vehicles for tax purposes with HMRC, or with the DVLA, which makes them clearly personal vehicles owned by the defendant and his wife. Copies of V5 registration documents for all the identified vehicles have been obtained during the course of the investigation.

There have been purchases of several Jeep Cherokee vehicles which, through time have been re-registered with the same new index (ABZ181 and ACZ181).

9.109 Of the 18 payments to vehicle dealerships, a total of 7 originated from the core business accounts. The remainder were from the personal accounts. The amounts are as follows:

Payments from core business accounts - £41,280.00

Payments from personal accounts - £42,713.66

9.110 The defendant claims to have sold all the vehicles except a Jeep Cherokee on Ebay and recycled the funds into the company accounts. He states further that he kept no records of these transactions which is curious given his claim that the vehicles were part of the Hotel businesses.

9.111 During an interview on 05 November 2019 the defendant stated that his recollection was that the payments would have been via bank transfers or cash. He also stated that the vehicles were listed as company assets within the hotel's accounting package,

although this cannot be verified. The fact remains that as far as registration and tax status, the vehicles were the personal property of the defendant and his wife.

Examination of the core business accounts shows no substantial payments which could constitute the proceeds of an Ebay sale until 2019, where there is a deposit of £4,862.50 on 27 February 2019 and £8,752.50 on 01 April 2019, some three years after the sales claimed by the defendant.

It was not possible to find credits to any known bank accounts during the approximate dates of sale provided by the defendant which match the amounts the defendant claimed the vehicles were sold for.

- 9.112 I believe that, given the circumstances of these vehicle purchases and alleged sales; and the lack of any evidence that they were in fact owned, operated or registered by the Hotel businesses, the sums detailed above are to be included as benefit of the criminal conduct. Irrespective of any use made of any of the vehicles by the Hotels, they remained the personal property of the defendant and his wife.

To avoid double counting, the payments from the personal accounts will be excluded from calculation of the benefit, but the payments from the core business accounts are included within the calculations in respect of the expenditure assumption.

10 Section 18A Response

- 10.1 On 10 June 2019 at Southwark Crown Court, a POCA s.18a Order was authorised by HHJ Hehir in respect of the defendant's wife, Mrs Amanda Crighton-Hill. This was in respect of her claim of 50% beneficial interest in the Orchard Lee property, and the defendant's claim that she also held a similar interest in a property he claimed to have bought in Spain, Calle La Font, Salmitre, Alicante, Spain.
- 10.2 All property purchases described within this application were funded outright by the defendant using monies believed to be the benefit of the fraud. The defendant paid the entire purchase price of the properties. Mrs Crighton-Hill made no financial contributions at all, directly and indirectly towards these purchases.
- 10.3 In her s.18a response, Mrs Crighton-Hill justifies her beneficial interest in the Orchard Lee property in terms of her assistance with the renovation of the property and her general conduct as a wife and mother.
- 10.4 Everything that Mrs Crighton-Hill did as a wife and mother in respect of the property has to be seen in the context of the defendant not only paying for this property outright, but also in the context of her financial dependence on him. Indeed, the defendant was the source of all of her income declared to HMRC during the period of ownership of the property, plus a considerable sum over that figure as set out in paragraphs 9.45 to 9.50.
- 10.5 This also needs to be viewed in the context of point 7 in Mrs Crighton-Hill's s.18a response where she states:

‘.. I have only ever worked part time, working within schools and nurseries and this was primarily to ensure Martin was able to work and achieve his career whilst I raised our children.’

Thus she has failed to mention even her income declared for tax purposes let alone the other not insubstantial payments attributed to her.

- 10.6 Therefore, any beneficial interest in the Orchard Lee property may be a tainted gift within the meaning of POCA s.77. Furthermore, as identified previously within this statement, Orchard Lee represents criminal property and acquisition and/or possession of criminal property is itself an offence under section 329 Proceeds of Crime Act 2002.
- 10.7 Mrs Amanda Crighton-Hill’s signed POCA s.18A response (received 16 July 2019 – **appendix 18**) states in respect of the Calle La Font property:

“I have no or any interest in this property. It is a rented home and belongs to a Spanish mother and daughter. I attach at pages 8-12 the lease to the property which is both in Spanish and English.”

“Due to current circumstances I returned to Spain to relocate back to the UK after Martin was sentenced on the 10th June. I handed the keys back to the owner leaving the property on 16th June 2019.”

“I have no interest in this or any other Spanish property”.

- 10.8 This assertion is strongly contradictory to the claims made by Hill at various times, both in response to the Restraint Order granted on 21 March 2018 and the subsequent POCA s.18 response.
- 10.9 In a letter from Blackfords LLP (the defence) dated 17 April 2018, in a signed response to the provision of information request, Hill stated regarding the balance of his Tesco savings account number 13693715 (which had been removed from the UK jurisdiction into his Santander Bank Jersey account number 120053268) –

“Following payments for rent, refurbishment/repairs and loans, funds have most recently been transferred to a conveyancer in Spain for the purchase of a family home in Spain”

- 10.10 In a subsequent letter from the defence dated 29 May 2018, Hill stated –

“The Banco Sabadell account ES760081423411000174776 is held by the conveyancer assisting in the purchase of the Spanish property, not the alleged Offender. However the Alleged Offender understands the current balance to be €150,000, which is being held for the payment of Spanish taxes:

An itemised list of the funds used for payment of rent and refurbishment detailed at paragraph (1) of the Alleged Offender’s initial statement dated 16/04/18 is as follows:

£21,000 was paid in August 2017 from the Alleged Offender's Santander account 16-51-71 120053286. This was for 12 months' rent of a Spanish property between August 2017 to August 2018"

10.11 Later in the same letter, Hill stated –

"A property has been identified for purchase in Spain and completion achieved:

An additional further provision of information dated 31 July 2018 and signed by Hill states –

"The address of the property purchased in Spain, and it's purchase price:

CALLE LA FONT DE SALMITRE, SAN JUAN DE ALICANTE, ALICANTE 03550:

€200,000.

The reason for €150,000 being retained for taxes, with an indication of what taxes need to be paid:

Land registry fees, Stamp Duty and Income tax payments to the Spanish Government."

10.12 In his response to the POCA s.18 request for information served on him at Southwark Crown court on 15 April 2019, Hill stated –

"The property Calle La Font de Salmitre, San Juan de Alicante 03550 Spain, is a leasehold jointly owned by the Defendant and Mrs Amanda Crighton-Hill purchased on April 2018 (sic). The Defendant has a 50% beneficial interest in the proceeds of any sale of the leasehold. There is no mortgage on this property."

An examination of the rental contract regarding the Calle La Font property reveals the following –

The bank account number cited by Hill as the conveyancer's account (paragraph 7) is in fact the landlord's bank account into which the first year's rent (€21,600.00) was deposited. The Landlord is Ms Maria SELLES and the account is stated to be her personal bank account. The document which is helpfully bi-lingual, is simply a rental agreement and in no part refers to sale or purchase of the property as a leasehold in the sense being suggested by Hill.

10.13 The €21,600.00 rent covers, according to the rental agreement, a period from 15 November 2017 and 15 September 2018. Hill claims to have purchased the property in April 2018.

10.14 A letter to HMRC from the Defence dated 08 May 2018 stated the following: 'Further to your enquiries, Mr Hill has confirmed the following: The funds for the purchase of the new Spanish Property are held in BANCO SADABELL – ES760081423411000174776 – M Selles.'. This acknowledgement that the Spanish bank account is in the name of the landlady is in conflict with the statement above which claims the account to be that of a conveyancer.

10.15 During an interview on 05 November 2011, the defendant responded to questions about these inconsistencies by saying that he had intended to buy the property but had cancelled after the granting of the Restraint Order which included restraint of the Orchard Lee property which denied him the funds needed for the purchase.

- 10.16 This assertion is curious because by his own admission, the defendant had the funds available for the purchase and had described this fact previously, in some detail as described above.
- 10.17 During an interview of the defendant's wife; also under the Disclosure Order on the same date as that of the defendant, she re-stated that she had no knowledge of any intended purchase of the Calle la Font property, adding that it was unlikely as the property was worth some considerably more than €200,000.00.
- 10.18 These facts make it abundantly clear that the defendant was using and maintained the fiction of a property purchase as a ruse to cover the removal of funds from the jurisdiction and their subsequent concealment.

10.19 **Restraint Order**

On 21 March 2018 in the Hove Crown Court His Honour Judge Gold made a Restraint Order against the defendant which prohibited him from dealing with his assets save as authorised by the Crown Court. This order was sought and granted pre-charge due to evidence of dissipation of funds believed to be the benefit of the alleged fraud. A copy of this Order is included with this application as **appendix 19**.

- 10.20 On 10 January 2019 the Order was varied to remove various accounts. A copy of the variation is included with this application as **appendix 20**.
- 10.21 On 28 November the Order was varied to remove the Spanish Calle La Font property. A copy of the variation is included with this application as **appendix 21**.
- 10.22 The defendant made successive statements in response to the provision of information requirement of the order, dated 16 April 2018, 29 May 2018 and 31 July 2018 (**appendices 06 to 08**).

10.23 **Disclosure Order**

On 02 August 2019 at Southwark crown court, HHJ Bartle QC granted a POCA s.357 Disclosure Order in support of the confiscation investigation (**appendix 22**).

- 10.24 Material received as a result of the associated disclosure notices is the basis of the final calculations and comments detailed in this application. The financial institutions on whom notices were served provided all material from the relevant period including material already received by means of previous Production Orders to ensure seamless records and date ranges of account material.
- 10.25 On 05 November 2019 the defendant and his wife were both interviewed in the presence of their legal representatives, under the provisions POCA s.357.4 (a) following service of notices in respect of the Disclosure Order (at HMP Wandsworth and Newport Police Station on the Isle of Wight, respectively). Where relevant, answers given during these interviews are dealt with in the respective paragraphs throughout the body of this statement. A precis of the interview is included with this statement as **appendix 23**.

10.26 Offer to pay £60,000

On 06 June 2019, a letter from the defence was received which stated:

‘As you are aware Mr Hill has pleaded to a VAT liability of not less than £350,000. In his attempts to satisfy the above liability Mr Hill is in a position to make a payment of £40,000 today, with a further £20,000 on Monday. This is reducing the liability by £60,000 in total so far.’

10.27 Firstly it is clear that the defendant pleaded to Fraudulent Evasion of VAT. The figure of no less than £350,000.00 is not a simple VAT liability.

10.28 When asked for appropriate due diligence as to the origin of the £60,000.00 offered, a further letter was received from the defence dated 07 June 2019. This letter contained a schedule of random transactions from three of the known bank accounts (these have been verified from original account material). These transactions as shown below were, it was claimed, the source of the monies offered.

Business	Account	Date	Amount	Source
Burlington Hotel	93446018	22/04/14	£5,000.00	Barclays 23134148
Burlington Hotel	93446018	30/03/15	£9,000.00	Barclays 23134148
Burlington Hotel	83261476	24/11/15	£5,000.00	Tesco 13693715
Burlington Hotel	83261476	25/11/15	£5,000.00	Tesco 13693715

Business	Account	Date	Amount	Source
Shanklin Beach	03288773	22/04/14	£5,000.00	Barclays 23134148
Shanklin Beach	03288773	30/03/15	£2,000.00	Barclays 23134148
Shanklin Beach	03288773	31/03/15	£5,000.00	Barclays 23134148
Shanklin Beach	03288773	24/11/15	£5,000.00	Tesco 13693715
Shanklin Beach	03288773	25/11/15	£5,000.00	Tesco 13693715
Shanklin Beach	03288773	07/03/16	£10,000.00	Tesco 10216556
		TOTAL:	£56,000.00	

10.29 During the interview under the provisions of the Disclosure Order, the defendant claimed these transfers to be in respect of multiple invoices but failed to declare the location of the monies at the time they were offered to HMRC. He failed to explain how if the monies were sourced from invoiced amounts in respect of the businesses, all the payments listed above were from personal accounts in his name.

10.30 During the date range of these transactions, the credits shown are a random selection of credits from Hill’s personal accounts, by no means all of them. In isolation they appear to be what they claim to be, but a few days either side of each of the listed payments, it is possible to see far larger sums moving

- a) from the core business accounts to the personal accounts, and
- b) being circulated around the personal accounts.

The sums included in this schedule have all been accounted for in the overall calculation of the benefit of criminal conduct.

- 10.31 As an example, during the period covered by the schedule of payments in the Defence letter, the defendant made a total of transfers over £500 each from the core business accounts into just one of his personal bank accounts (Barclays 23134148 MJ Hill) of £213,021.94.
- 10.32 What goes out of the businesses to his personal accounts dwarfs the sums which go the other way.
- 10.33 I believe the selection of these transactions is an attempt to attach meaning to randomly selected transfers of funds which is not borne out by the most cursory look at the defendant's overall financial conduct.
- 10.34 On the date of the initial submission of this defence request 06 June 2019, none of the known bank accounts which were not closed had sufficient funds; even if all combined, to fund this offer by a substantial margin. Therefore the whereabouts of the monies offered are in doubt and suggest funds or assets held outside the knowledge of HMRC and the Court. These funds are included therefore in the available amount.

11 Extent of Benefit from Criminal Conduct

11.1 Benefit derived from Charges

- 11.2 The total amount of benefit obtained by this defendant as a result of the offences in these proceedings is calculated as follows:

The quantum of benefit as laid out during the sentencing hearing on 10 June 2019 by HHJ Hehir was 'no less than £350,000.00'. This was set out in the defendant's written basis of plea dated 03 April 2019 (**appendix 24**).

- 11.3 The offences as charged and convicted are particularised in paragraph 6.

11.4 Assumptions

A Property transferred to the defendant after the relevant day

These calculations are based on unidentified or mis-identified transfers of funds from the core business accounts to the personal accounts after the relevant day. In the interests of fairness, the calculations are based on amounts of £500.00 and over.

Analysis of banking material received as a result of service of various Court Orders as described above, has identified transfers of funds from the core business accounts to the personal accounts as described above which are either unidentified (i.e. have no description) or mis-identified (i.e. they have a description created by the defendant which is believed to be false, such as those described as VAT payments). The rationale for the inclusion of the transfers referenced to Meadowden is detailed in paragraphs 9.81 to 9.98 above.

All transfers of funds from the personal accounts *back* to the core business accounts are included in the calculations.

Schedules of extracts from banking material showing the transactions which are the source for the figures below are included with this statement as **appendices 23 to 25**.

Appendix 25 – Transfers from the core business accounts of over £500.00

Appendix 26 – Transfers from the core business accounts of over £500.00 in respect of Meadowden Consulting Ltd and Meadowden Holdings Ltd.

Appendix 27 – Transfers from the personal accounts to the core business accounts.

In each case, where possible, the debit from the source account and credit to the recipient account are shown in sequence.

- a) Benefit derived as a result of the offences as charged is no less than **£350,000.00**.
- b) Total of transfers from core business accounts to personal accounts (excluding Meadowden Consulting and Meadowden Holdings) after the relevant day = **£1,045,592.53**
- c) Total of transfers from core business accounts to personal accounts in respect of Meadowden Consulting and Meadowden Holdings after the relevant day = **£260,783.53**
- d) Total transfers as above after the relevant day (b + c) = **£1,306,376.06**

- e) Total transfers from personal accounts to core business accounts after the relevant day = **£436,400.00**
- f) Total transfers after the relevant day minus transfers back to the core business accounts (d - e) = **£869,976.06**
- g) Minus £350,000.00 benefit (from particular conduct) as charged and convicted (f - a) = **£519,976.06**
- h) The defendant's declared income of **£15,808.70**
- i) Minus declared income (g - h) = **£504,167.36**

B Property held at any time after the date of conviction

The property held assumption in respect of the Orchard Lee property will not be activated in this case as to do so would produce a double recovery aspect since that property was referable to the funds flows through the account including the false VAT

payments. Thus the purchase price of £295,000 is covered under section A above concerning property transferred to the defendant after the relevant day.

However as the value of the property has increased over time to £385,000, there is a further £90,000 attributable to Change in the Value of Money for the house.

There is also the sum of £5,208.31 plus accrued interest which constitutes rental income from the Orchard Lee property which is subject to the Restraint Order granted on 21 March 2018. (This income was secured in a restrained Lloyds bank account number 23136160. When this account was closed, the balance of £5,208.31 was transferred into an HMRC interest bearing account with the reference GBP8016).

As this sum is the proceeds of rental of the property over and above its current value which is dealt with above, it is captured here under the 'Property Held' assumption.

C Expenditure incurred after the relevant day

The expenditure from the core business accounts detailed below is not captured in the calculations used in application of the property transferred assumption above. The transactions detailed below are entirely separate from the other transfers of funds described in my analysis of financial records.

As stated above, the defendant used personal and company credit cards to fund his lifestyle, especially after re-locating to Spain. The major sources of funding for these credit cards were the core business accounts. Most of the credit cards were not declared by the defendant. Some are in the defendant's name while one Barclaycard; although used to fund the defendant's lifestyle, is in the name of Burlington Hotel Operations Ltd.

a) The total amount of payments against these credit cards from the core business accounts during the relevant period is: **£89,754.16**

b) In respect of payments to vehicle dealerships as detailed above in paragraphs 9.105 to 9.112, the total of identified payments is: **£89,993.66**. This total breaks down into two components:

Payments from core business accounts - **£41,280.00**

Payments from personal accounts - **£42,713.66**

c) The payments from the personal accounts are not included to avoid double counting as they are already covered by the property transferred assumption. Therefore the amount considered to be expenditure after the relevant day is: **£41,280.00**.

Therefore, total expenditure after the relevant day (a + c) = **£131,034.16**

D Valuation (Free Property)

i. This assumption is utilized to allow property subject to the assumptions to be valued.

- ii. For the purposes of valuing any property obtained (or assumed to have been obtained) by the defendant, he obtained it free of any other interests in it.

In accordance with Section 16(4(b)) of the Proceeds of Crime Act 2002 I confirm that I am not aware of any information that would cause the court not to make the statutory assumptions.

This assumption is clearly applicable in respect of the property Orchard Lee.

12 Summary of Benefit

12.1 Table of Benefit

Since the end of the period of offending on 01 September 2016, a change in the value of money has occurred. A new calculation has been conducted (explained at Annex 1a at the end of this statement) and as such the Benefit from conviction figure has altered. The revised figures are included where appropriate in the table below:

Source	Detail	Amount	With CPIH
Benefit from conviction	As agreed at Sentencing	£350,000.00	£373,448.28
<i>Assumptions</i>			
Transfers	Transfers from core accounts minus transfers back, declared income and benefit as charged.	£504,167.36	£537,944.09
Property held	Rental income from Orchard Lee (held in HMRC interest bearing account)	£5,208.31 plus accrued interest	£5,208.31 plus accrued interest (no CPIH)
Expenditure	Credit card payments, payments to vehicle dealerships.	£131,034.16	£139,812.80
Change in the value of money	Increase in value of Orchard Lee property value.	£90,000.00	£90,000.00 (no CPIH)
Total Benefit		£1,080,409.83	£1,146,413.48

13 Known Available Amount

- 13.1 The onus is on the defendant to provide the Court with full details of all his free property, including full internal valuations (carried out by a professional valuer) for any houses he has an interest in. He will also need to supply the Court with details of the likely costs that will be incurred in realizing the property.

Again, changes in the value of money have been applied to the calculations where appropriate, explained in annexes 1b, 1c and 1d below. And will be revised to incorporate any further changes in the value of money.

13.2 The free property that I have identified is as follows:

Asset	Comments and details of any third party interest	Amount
Orchard Lee, Nunwell, Sandown, Isle of Wight PO36 9DE	(Restrained property as detailed above). 50% beneficial interest assigned to Defendant's wife	£385,000 as at 17 September 2019
HMRC Interest Bearing Account reference GBP8016	(Balance of restrained Lloyds account which was closed) No third party interest	£5,208.31 plus accrued interest.
Funds offered to HMRC on 06 June 2019	£60,000.00 (Funds from unidentified source offered against VAT evaded) No known third party interest	£60,222.43 Includes CPIH adjustment (annex 1b)
Hidden asset abroad	£241,873.22 Balance of Tesco savings account 13693715 as at 26 August 2016 prior to removal from UK jurisdiction. (Minus £19,315.03 rent paid for Spanish property). No third party interest.	£258,842.59 Includes CPIH adjustment (annex 1c)
Current bank account balances	Balances as per appendix 09. No third party interest	£190.83
Insurance claim settlement	£90,000 as claimed in s.18 response	£97,178.46 Includes CPIH adjustment (annex 1d)
	Total :	£806,642.62

13.3 The above assets and their valuations are provided for the assistance of the Court. The onus remains with the defendant to show, with evidence that he does not have sufficient assets to meet the benefit.

13.4 The 50% beneficial interest in the Orchard Lee property is set out in Mrs Crighton-Hill's s.18a response and dealt with in paragraphs 10.1 to 10.6.

14 Proportionality

12.1 The Court is required not to make a confiscation order insofar as such an order would be disproportionate and thus a breach of Article 1, Protocol 1.

12.2 I am not aware of any issues which should be brought to the Court's attention and which would affect the proportionality of the order.

13 Defence Response

- 13.1 Section 17 of the Act allows the Court to order that the defendant respond to the Prosecution statement indicating the extent to which he accepts each allegation and to give particulars of any matters upon which he relies. If the defendant fails to comply with such an order he may be treated as accepting every allegation apart from any allegation he has replied to or any allegation that he has benefited from his general or particular criminal conduct.
- 13.2 Any reply to this statement made under the Proceeds of Crime Act 2002 should be served on Southwark Crown Court, and a copy sent to the Crown Prosecution Service
- 13.3 On 19 August 2019 the court ordered the defence to serve a reply to this statement by 15 December 2019. The Court has also set a date for a mention to fix a Confiscation Hearing on 22 January 2020.

14 Confiscation Order

- 14.1 If the Court accepts that the defendant has benefited from the proceeds of crime to the extent of **£1,146,413.48** then the court should declare the benefit in that amount, or in any other amount in respect of which the court finds the defendant has benefited.
- 14.2 The recoverable amount is an amount equal to the Defendant's benefit from the conduct concerned. If the defendant shows that the available amount is less than the benefit, the court should make a confiscation order in that sum. (Section 7 POCA 2002)

15 Certificate under Regulation 11 of the Criminal Justice and Data Protection (Protocol No. 36) Regulations 2014 ("2014 Regulations")

- 15.1 If the Court makes a confiscation order which relates to property in a member State of the European Union other than the United Kingdom, the Prosecutor reserves the right to make an application for a certificate pursuant to Regulation 11 of the 2014 Regulations.

16 Effect of Confiscation on Court's Other Powers

- 16.1 Section 13 of POCA states that the Court must take account of the confiscation order before it imposes a fine or makes an order involving payment by the defendant other than a priority order as set out at Section 13(3). The effect of Section 13 (5) of the Act permits the Court to make a priority order as if a confiscation order had not been made.
- 16.2 If the defendant cannot pay both orders, the priority order must be recovered from sums paid in satisfaction of the confiscation order. (Section 13(6) POCA 2002).

17 Time to Pay

- 17.1 Section 11 of the Act states that a confiscation order must be paid on the day on which the order is made. However where the defendant shows that he requires time to pay, the Court may order payment within a specified period, or within specified periods each of which relates to a specified amount. A specified period must start with the date the confiscation order is made and must not exceed three months from the date the order is made.

18 Compliance Orders

- 18.1 Section 13A(2) of the Act states that a court may make such orders as it believes is appropriate for the purpose of ensuring that the confiscation order is effective (a “compliance order”).

19 Default Sentence

- 19.1 The Court should impose a period of imprisonment in default. With effect from 1st June 2015 the Serious Crime Act 2015 set new terms of imprisonment to be served in respect of an amount ordered to be paid under a confiscation order. The table below is included for reference and the assistance of the Court. See S10 of the Serious Crime Act 2015).

Amount of Confiscation order	Maximum Term
£10,000 or less	Up to 6 months
More than £10,000 but no more than £500,000	Up to 5 years
More than £500,000 but no more than £1 million	Up to 7 years
More than £1 million	Up to 14 years

This statement is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence, I shall be liable to prosecution if I have willfully stated in it anything which I know to be false or do not believe to be true.

Annex 1a

- Taking the CPIH figure for 01 September 2016 (end of the indictment period :) and November 2019 (latest available data: October 2019), this gives an increase from £1,112,035.20 to £1,180,157.60 on the amounts CPIH is applied to.

Notes

- Office for National Statistics Published Consumer Price Inflation index (CPIH) tables for October 2019 used in calculations.
- The CPIH formula: Sum of money times (later date index divided by earlier date index).

Annex 1b

- Taking the CPIH figure for June 2019 (date of offer) and November 2019 (latest available data: October 2019), this gives an increase from £60,000.00 to £60,222.43

Notes

- Office for National Statistics Published Consumer Price Inflation index (CPIH) tables for October 2019 used in calculations.
- The CPIH formula: Sum of money times (later date index divided by earlier date index).

Annex 1c

- Taking the CPIH figure for August 2016 (date of account balance) and November 2019 (latest available data: October 2019), this gives an increase from £241,873.22 to £258,842.59

Notes

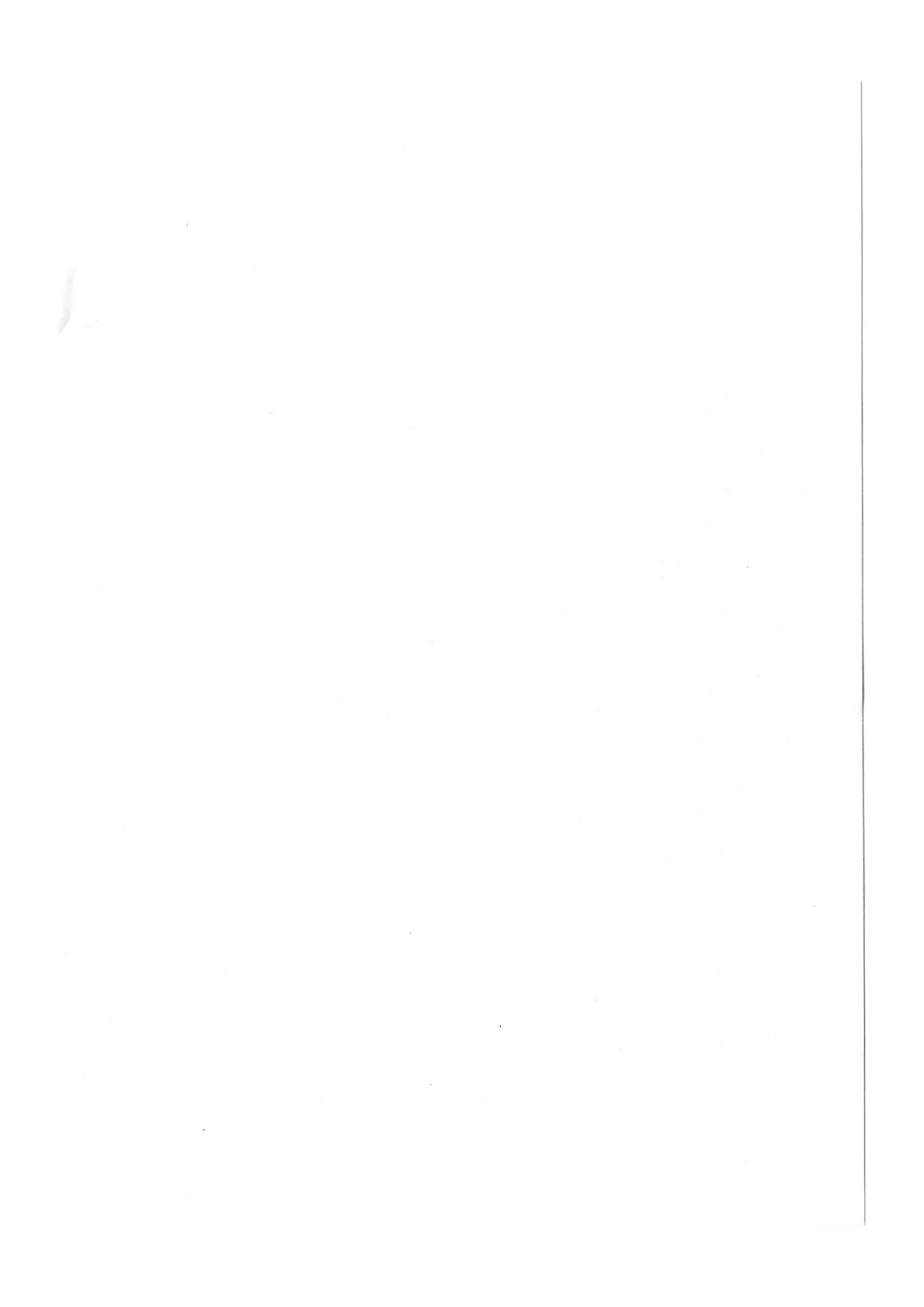
- Office for National Statistics Published Consumer Price Inflation index (CPIH) tables for October 2019 used in calculations.
- The CPIH formula: Sum of money times (later date index divided by earlier date index).

Annex 1d

- Taking the CPIH figure for October 2015 (date of alleged insurance claim) and November 2019 (latest available data: October 2019), this gives an increase from £90,000.00 to £97,178.46

Notes

- Office for National Statistics Published Consumer Price Inflation index (CPIH) tables for October 2019 used in calculations.
- The CPIH formula: Sum of money times (later date index divided by earlier date index).



IN SOUTHWARK CROWN COURT

Case No: T20180330

Courtroom No. 8

1 English Grounds
(off Battlebridge Lane)
Southwark
SE1 2HU

10.56am – 12.28pm
Monday, 10th June 2019

Before:

HIS HONOUR JUDGE TOMLINSON

R E G I N A

v

MARTIN HILL

MR R B KELLY appeared on behalf of the PROSECUTION

MR N COTTER appeared on behalf of the DEFENDANT

WHOLE HEARING

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A

Court sits at 10.56am.

Defendant identified at 10.56am.

THE CLERK OF THE COURT: Your Honour, for sentence Martin Hill.

Discussion sotto voce.

B

THE CLERK: Are you Martin Hill?

THE DEFENDANT: Yes.

THE CLERK: Thank you. Please sit down.

JUDGE TOMLINSON: Yes?

MR KELLY: May it please, Your Honour, I prosecute this matter and-

C

JUDGE TOMLINSON: Yes.

MR KELLY: -Mr Cotter on behalf of the-

JUDGE TOMLINSON: Yes.

MR KELLY: -defendant. He pleaded guilty before His Honour Judge Gledhill on 15 April.

D

JUDGE TOMLINSON: Yes. I saw that. I was just having an enquiry made, because I have read and – because you will not have done a memo that Judge Gledhill left on the digital system, but that memo does include the information that he reserved the case to himself.

MR KELLY: Yes.

E

JUDGE TOMLINSON: Now, it obviously have a rather peculiar listing this morning, and it does seem that Judge Gledhill knew quite a bit about the case. I am not sure whether he has released matters, whether he is aware that the case is listed today. So, what I think we ought to do is just make an enquiry about that before we got any further. If he has released the matter, then I am very happy to deal with it.

F

MR KELLY: Yes, we were both under the impression, up until Friday, that he was going to-

JUDGE TOMLINSON: Yes.

MR KELLY: -sentence Mr Hill.

JUDGE TOMLINSON: Yes. It may be that, because of other commitments, he cannot, but I think we had better check the position.

G

MR KELLY: Yes.

JUDGE TOMLINSON: Right, Carl[?], shall I – I think what I will do is I will just rise for a moment, while that is done.

Court rises at 10.57am.

Court resumes at 11.20am.

H

A THE CLERK: Your Honour, we return to the matter of Martin Hill?
JUDGE TOMLINSON: Yes.
THE CLERK: Step into the dock, please, Mr Hill, thank you.
JUDGE TOMLINSON: Yes, well, Mr Kelly, as you are probably now aware, Judge Gledhill has
B released the case-
MR KELLY: All right.
JUDGE TOMLINSON: -and so I will deal with the sentence.
MR KELLY: Thank you.
JUDGE TOMLINSON: Yes?
C MR KELLY: Well, Your Honour knows that Mr Cotter defends Mr Hill. He pleaded guilty to counts
one to three on this indictment back on 15 April. Counts one to three are all counts relating to
Section 72 of the Value Added Tax Act. In respect of counts four to six, which were in respect
of counts contrary to Section 327, the Crown indicated that it was content for those counts to
lie on the file-
D JUDGE TOMLINSON: Yes.
MR KELLY: -and the fact of the transfers would, simply, be incorporated within the-
JUDGE TOMLINSON: Yes.
MR KELLY: -opening of the case to the Court.
E On 15 April, the Crown submitted that this was, I'll come to the facts in a moment, a Category
5A within the guidelines. The defence submitted it was a upper end 5B, and
His Honour Judge Gledhill adjourned matters setting down a POCA timetable-
JUDGE TOMLINSON: Yes, I have seen the note in relation to that.
MR KELLY: -and giving the defendant an opportunity to make good, if he was able to, of an
F intention, he said, to make compensation towards the Revenue.
The matters have developed in this sense. There is now a sentencing note uploaded to the
digital case from the prosecution-
JUDGE TOMLINSON: Yes.
G MR KELLY: -which I hope the-
JUDGE TOMLINSON: Yes, I have seen that. Just forgive me a second, Mr Kelly, my computer is-
MR KELLY: Of course.
JUDGE TOMLINSON: -becoming intolerably slow.
MR KELLY: Your Honour, will-
H

- A JUDGE TOMLINSON: Yes, carry on.
MR KELLY: -find that at tab T2, and on Friday there was a response at tab T8-
JUDGE TOMLINSON: All right.
MR KELLY: -from the defence.
- B JUDGE TOMLINSON: I have not actually read that as yet, but I will, of course, yes.
MR KELLY: The position is that so far as the history of the case is concerned, it was in for plea and trial preparation hearing back on 19 October, in fact, of last year. At that point, the defendant entered not guilty pleas to all six of the counts. It was fixed for 15 April, in fact, for trial-
JUDGE TOMLINSON: Yes.
- C MR KELLY: -but in the month or so, and it may be a little longer than that, before 15 April, there were some discussions between prosecution and defence. Initially, an offer which wasn't acceptable to the Crown, but then, as Your Honour knows, an offer of pleas transpired to be acceptable to the prosecution, and the basis of plea has been uploaded to the-
JUDGE TOMLINSON: Yes.
- D MR KELLY: -digital case in tab two.
JUDGE TOMLINSON: Yes.
MR KELLY: So far as the facts of this case are concerned, Your Honour will have seen that the facts are set out in some detail in my sentencing note-
- E JUDGE TOMLINSON: Yes.
MR KELLY: -and I'm happy to deal with them in that sort of detail, if it assists Your Honour? The position is that this-
JUDGE TOMLINSON: I think if you want to take matters more shortly, I would not have a difficulty with that, but you deal with them in as much detail as you think they require to be dealt with,
- F basically.
MR KELLY: Well, the overview-
JUDGE TOMLINSON: Yes.
MR KELLY: -if I can put it like that?
- G JUDGE TOMLINSON: Yes.
MR KELLY: The overview is that this defendant set up limited companies in early 2014 in order to run two Isle of Wight hotels, the Burling – Burlington Hotel and the Shanklin Beach Hotel. He then proceeded to, fraudulently and dishonestly, evade the payment of VAT to HMRC. And, in November of 2015, he set up a further limited company to replace the one running the
- H

A Burling Hotel and the fraudulent evasion continued. During the entire period, the two businesses either returned nil returns for VAT, or grossly under-submitted their returns for businesses that were turning over something in the order of £1.5 million per annum.

B In terms of what happened to that money, the prosecution submit that the money was dissipated out of company accounts by way of bank transfers, on occasions using transfer references, such as VAT payment, to make it look as though those payments out of the business accounts were connected to legitimate VAT payments. Those payments were then layered, as the Crown have put it, through a number of buffer accounts, which had very little purpose, before ending up in a personal account from which residential properties were bought.

C The total VAT evaded during the entire period, which was just shy of three years, I think, was just under £400,000. But Your Honour will see from the basis of plea that there has been an agreement between-

JUDGE TOMLINSON: Yes.

D MR KELLY: -the parties that it is put as no less than-

JUDGE TOMLINSON: £350,000.

E MR KELLY: -£350,000. In the sentencing note I then deal with, in detail, the VAT registration numbers, which were given to these three individual limited companies. The reason I've done is that because, despite the fact that they were given to the companies, and they were registered in, as Your Honour will see, March and then November. The position is that those registration numbers were very rarely used by the companies themselves.

F And, moving on to paragraph 11, I've set up – excuse me, I've set out the way in which the VRNs were incorrectly used. So far as the Burlington Hotel was concerned, the invoice design was changed by the defendant from the one that was previously used by the previous owners, Coenus[?] Limited, I hope I've said that correctly. The fact that they were the proprietors was removed from the invoice, and the bank account details set up for the Burlington Hotel were included. The previously used VAT registration number was removed from the invoice and replaced by another VAT registration number. But that was the one – the newly obtained registration, but instead a VAT number used by the Falcon Hotel – Uppingham Limited, a company that was deregistered in 2010, and of which the defendant's wife, Amanda Crighton-Hill had been a director.

G And when the substitute company was set up, BHOL[?], as I refer to it in my note, the invoices were amended to show the new bank account created for that company, but the VRN numbers,

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A the registration numbers, were a mix of the Falcon Hotel, deregistered in 2010, and the correctly – correct newly obtained VRN, and there are some examples of that within the digital case.

B Turning to the Shanklin Beach Hotel, the invoices were changed to add the newly created Shanklin Hotel – Beach Hotel bank account details, and by adding, once again, the incorrect previously mentioned Falcon Hotel registration number, rather than the new one that the company had obtained, and examples are given about that. It wasn't until early 2016, until the Shanklin Beach Hotel's invoices were changed to the correct registration number.

C The purpose of all of that, the prosecution say, was to deliberately shield the fact that the companies, in particular those running the Burling Hotel, were making nil or very low VAT returns, which would have been picked up very easily by some cross-referencing. And, it demonstrates, say the prosecution, an element of premeditation in the way the defendant was to go about concealing the evasion of paying value added tax.

D So far as the returns are concerned, I can summarise these, because so far as the Burlington Hotel was concerned, throughout the period that the Burlington Hotel was being run by BHSL[?] there were nil returns made. The first return was not submitted on time – time. VAT was assessed at just over £5,000, but then, online, a nil return was made, and so the £5,000 assessment was duly withdrawn. And that happened again in July – in the period of July to September 2015, on that occasion just over £4,000 assessed, again, a nil return was submitted, and the £4,000 assessment withdrawn.

E So far as the substitute company was concerned that made a nil return to start with. Then, as Your Honour will see from paragraphs 22 to 24, there was then some returns, and I'll deal with those in due course, when I deal with the forensic accountant. So far as the Shanklin Beach Hotel was concerned, there were returns made, but they were grossly inadequate.

F Turning to the investigation of this matter, the VAT1 in respect of BHSL was said – it was said that the turnover of this company was going to be £500,000. And so, when, of course, there were nil returns submitted in respect of this company, an HMRC officer wrote to the business, in June 2015, asking for clarification. In particular, he queried whether the trading activities were being declared by a different trading entity to perhaps explain why this company was not making returns. The defendant replied. He, effectively, said that the company had gone into administration and that it had been handed over to a fixed asset receiver, Allsop's Limited, and

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A he claimed this company was dormant. In fact, Allsop's were not appointed as the fixed credit receivers until October 2014, and the company had, in fact, been trading for some five months up until that point, as Allsop's were to confirm, and what to become obvious as well is this was a company that was trading during this period.

B And so, it transpired that that response to HMRC was untruthful, and designed to make it appear as though this was a dormant company that was not trading. But the officer did a rather cursory search and found, of course, that the hotel was operating, and so there was a visit in September 2015.

C After finding the defendant at the Shanklin Beach Hotel, the defendant claimed that the documentation was at home. He claimed that he was declaring all income to RBS and Allsop's, and he said he didn't know how the VAT was being declared. And he was told of the incorrect VRN numbers on the invoices. He said he didn't know why the number was being used, he said he'd look into it.

D He then emailed the officer and claimed that the incorrect registration numbers were being used for the Burling Hotel and Shanklin Beach Hotel, due to using old software, he said, from a previous project. When matters developed, and he was pressed about this issue, he emailed the officer saying that his property had been flooded, and he would fully reply to the query, which he never did.

E So far as the Shanklin Beach Hotel was concerned, there was a more long-lasting investigation, if I could put it like that, and it was [Wendy Jakeman?] who telephoned the defendant, in May 2016, in order to arrange a VAT visit. That visit didn't take place until July 2016. During the meeting with the defendant, he provided records from which he said he produced a return for the period of March 2016, and he confirmed that he was the one who prepared the returns, and he submitted them online.

F A number of discrepancies were found, including the invalid VRNs, and a number of purchase invoices had been included when they should not have been. There were missing invoices, and the defendant was asked to email those to Wendy Jakeman by 15 July. One of the disallowed invoices related to Coenus Limited, and that was disallowed because the issuing company had no valid VRN. This was an invoice for over £55,000 plus VAT of over £11,000 in respect of the purchase of the Burlington Hotel fixtures and fittings. Despite a number of emails chasing this information, the defendant claimed that the documents he had sent had been lost in the post, they were lost and that there were no further copies. And so, the documentation in

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relation to this particular claim was never received.

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Following the seizure of the company computers from the hotels, on 31 October, it was demonstrated that the Coenus Limited invoice, produced to Wendy Jakeman, was created by the defendant. It was revealed, and I can cut this relatively shortly, Your Honour has the chronology within my sentencing note, but the reality is this was invoice created from an invoice – the real invoice in 2012. In fact, he'd told Allsop's that he was the legal owner of all the fixtures and fittings. And so, it was a wholly false and doctored document created by this defendant, in order to try to prove something that was manifestly false.

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Turning on to the transfers and layering. The – I don't need to go through this in too much detail, they were, effectively, the accounts giving – sorry, the facts giving rise to counts four to six. The Crown has set out a number of particular transactions where the amount sent has been accompanied by a reference, such as VAT payment, or, on one occasion, HMRC PAYE payment, which have gone through, on every occasion bar one, a very particular process of going through the defendant's personal bank accounts, many of which are simply buffer accounts, which have no real purpose at all, before they have ended up in an account which has been used to purchase residential properties.

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Your Honour will have seen in the response that the defence have made to this particular point that they point out that there were a number of payments back to the business account. I have told Mr Cotter's – Mr Cotter what our response to that is, and that is as follows. You cannot simply pick out in this period and cherry pick a number of payments back into the business account when the net flow, just on one bank account in this period, into his personal account is in excess, I think, of – I'll be corrected if I'm wrong, £230,000.

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The importance of the – of this, the way in which this was done is it was done in a particular way. It was done so that the funds were moved through bank accounts, which had little or no purpose. They were just being used as buffer accounts where money went into them, went into another buffer account, and then another buffer account before then ending up in a personal account, and the personal accounts in which they ended up, even if there were transfers back to the business were the accounts that were, ultimately, used to buy these residential properties.

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And in the next section of my sentencing note I've highlighted the findings of [Steven McManus?] and summarised them.

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JUDGE TOMLINSON: Yes.

MR KELLY: The position is this, and I've summarised it from paragraph 63 onwards. So far as

A BHSL is concerned, Mr McManus concluded that in 2014 the VAT liability was £94,988; in 2015, £85,802; and in 2016, £14,127. Throughout that entire period BHSL made nil VAT returns-

JUDGE TOMLINSON: Right.

B MR KELLY: -and therefore, there was a VAT liability to the HMRC for that period of £194,917.

So far as HS – excuse, HB – SBHL was concerned, in 2014 the VAT liability was £90,203, but only £29,422 declared and, therefore, the difference was £60,781; in 2015, the VAT liability was £91,481, but only £18,533 declared, the difference was £72,948; and, in 2016, the liability due was £54,837 but only £22,827 declared, therefore, the difference was £32,010; and the total liability, therefore, was £165,740.

C So far as BHOL is concerned, that only traded for a shorter period, and I can simply say that the liability – or the difference in liability was £33,376. And so, it was that Mr McManus came to the view using some – what has to be some relatively generous considerations, £394,033 throughout the period, but Your Honour will bear in mind the basis of plea, which limits that to no more than £350,000.

D So, to the sentencing guidelines, the – we are in agreement that the revenue for guidelines are, of course, the correct guidelines. The VAT fraudulently evaded in this case is not less than £350,000, therefore it's Category 5 harm. In terms of culpability there is some disagreement, which is why the Crown put it in 5A and the defence put it towards the top of 5B.

E JUDGE TOMLINSON: Yes.

MR KELLY: But we say there is an element of sophistication-

JUDGE TOMLINSON: Yes.

F MR KELLY: -in the way in which the defendant went about it. There was an element of planning.

There was this element of layering money through these variety of accounts, which seem to have no purpose. And, of course, most obviously, this was a fraud which occurred over a significant period of time, and that is why we say it is a hyper culpability case. And so, so far as 5A is concerned, if the Court is in agreement with that, it would be a starting point of four years' custody with – and a range of between two years six months and five year's custody.

G We say there are some factors increasing seriousness, multiple frauds. There was an attempt to conceal evidence and create false documentation. There were warnings by HMRC about the VRNs which were simply ignored, and the fraud continued regardless. And, of course, he sought to cast blame and responsibility upon Allsop and RBS with the submission of the VAT

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A returns.
 So far as factors reducing seriousness, I need to correct this. I've said no previous convictions, in fact, there are some old convictions, which I've put on the sidebar note. Theft and obtaining by deception dating back to 1987 and 1993 for which he was conditionally discharged, have we got a paper copy of that?

B JUDGE TOMLINSON: Yes.
 MR KELLY: I've got a paper copy of that.
 JUDGE TOMLINSON: All right, well, yes. Yes, so a very long time ago, yes.
 MR KELLY: But they are old convictions, and he was-

C JUDGE TOMLINSON: Yes.
 MR KELLY: -conditionally discharged for them.
 JUDGE TOMLINSON: Yes.
 MR KELLY: But just to correct that.
 JUDGE TOMLINSON: Yes.

D MR KELLY: And it has been some lapse of time since-
 JUDGE TOMLINSON: Yes.
 MR KELLY: -his arrest, although some of that-
 JUDGE TOMLINSON: Yes.

E MR KELLY: -we would say, lays at his door as well.
 JUDGE TOMLINSON: Yes.
 MR KELLY: So far as further orders are concerned-
 JUDGE TOMLINSON: Yes.
 MR KELLY: -Your Honour knows that the POCA timetable has set.

F JUDGE TOMLINSON: Yes.
 MR KELLY: The costs can await that termination. I've pointed out on the sidebar as well that the Court has power under Section 2-

G JUDGE TOMLINSON: Yes.
 MR KELLY: -of the Company Directors Disqualification Act to make a disqualification order for a period not exceeding 15 years.
 JUDGE TOMLINSON: Yes.
 MR KELLY: Is there any other matter I can help with?

H JUDGE TOMLINSON: I do not think so, at this stage, Mr Kelly, thank you very much indeed. Yes,

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Mr Cotter?

MR COTTER: Your Honour, may I deal with the disqualification issue?

JUDGE TOMLINSON: Yes.

MR COTTER: The – my client's wholly realistic-

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JUDGE TOMLINSON: Yes.

MR COTTER: -he makes no submissions in relation to it. I think all he would ask is that, as Your Honour will no doubt do, that any disqualification period be as low as-

JUDGE TOMLINSON: Yes.

MR COTTER: -Your Honour deems appropriate.

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JUDGE TOMLINSON: Yes.

MR COTTER: May I deal briefly before turning to the sentence guidelines with what my client's been doing for the – since he was last here and entered his guilty plea?

JUDGE TOMLINSON: Yes.

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MR COTTER: He has not been idle. His family are based in Spain; his wife is here today. This is a moment of real difficulty, as Your Honour will know, for their family. They've moved back, for obvious reasons, so that they can be closer to him. He is wholly realistic as to the likely sentence that will be imposed today. It has caused tremendous difficulties. He has a 10-year-old daughter, 16-year-old son going through GCSEs. They are all moving back.

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In terms of property, they have a home on the Isle of Wight, that was immediately put up for sale; it's the subject of a restraining order. I'm pleased to say they have had offers on it, but it is a time issue for selling that property. The property has gone on under value, but, certainly, in excess of what is owed, to encourage a sale. The other alternative was to go to auction. The auction value was significantly low, so it was chosen not to undertake that as a way of removing the property. I raise that for Your Honour's consideration to demonstrate that this is a defendant who is making good on his-

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JUDGE TOMLINSON: Yes.

MR COTTER: -promise as reiterated on the last occasion.

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That is not all he has done. He's also been to the bank to see if he can raise a mortgage. He has been told he can, but there is an obvious difficulty with that-

JUDGE TOMLINSON: Right.

MR COTTER: -if he is incarcerated-

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JUDGE TOMLINSON: Yes.

- A MR COTTER: -moving forward. But again, he has that in place should it become necessary.
Turning away from what he's done recently and turning to the sentence guidelines themselves.
- JUDGE TOMLINSON: Yes.
- MR COTTER: I've done a note.
- B JUDGE TOMLINSON: Yes.
- MR COTTER: I'm very grateful to my learned friend for alluding to it, it's at T8. I hope Your Honour will forgive me; it goes through the steps-
- JUDGE TOMLINSON: Yes, well, it is an invaluable exercise.
- MR COTTER: Thank you.
- C JUDGE TOMLINSON: But what it really comes down to is that you say it is obviously – it is a category 5 case.
- MR COTTER: Indeed.
- JUDGE TOMLINSON: You say that there is not sufficient evidence and sophistication or sophisticated planning to make this a Category A case so far as culpability is concerned,
- D you say it is B.
- MR COTTER: I do. The only thing that perhaps pulls it into A, from our perspective, is the time over which this-
- JUDGE TOMLINSON: Yes.
- E MR COTTER: -fraud happened. But in my submission, and I deal with this, forgive me, I think-
- JUDGE TOMLINSON: Yes.
- MR COTTER: -paragraph 13 onwards, is that the lack of sophistication in this matter may enable Your Honour to move down from the bottom of-
- JUDGE TOMLINSON: Yes.
- F MR COTTER: -5A into 5B.
- JUDGE TOMLINSON: Yes, there is, in fact, quite a substantial overlap in the category ranges, in any event.
- MR COTTER: Indeed, and I make that point.
- G JUDGE TOMLINSON: Yes.
- MR COTTER: I hope I do so fairly.
- JUDGE TOMLINSON: Yes.
- MR COTTER: Ultimately, of course, a matter for Your Honour.
- H In terms of – moving away, therefore, and turning to step two, in essence, starting point and

A range, Your Honour's alive to that. If Your Honour sees 5B as being meritable, the starting point is two years six months, although I concede, it will have to be aggravated, because we're above the £300,000 mark as a starting point; a range of 15 months through to three years and six months' custody.

B I turn to the aggravating and mitigating features, which I deal with at paragraphs 24 onwards in my note. Again, I, effectively, concede those aggravating features are there. The first aggravating feature is multiple frauds. The second aggravating feature seems to be false declarations. I make the point, I hope-

JUDGE TOMLINSON: Yes.

C MR COTTER: -fairly, these things happen over a period of time-

JUDGE TOMLINSON: Yes.

MR COTTER: -and there is a double counting exercise-

JUDGE TOMLINSON: Yes.

D MR COTTER: -which I know Your Honour will be alive to.

JUDGE TOMLINSON: Right.

MR COTTER: The issue of not accepting responsibility for VAT returns, again, I concede that fully at-

JUDGE TOMLINSON: Yes.

E MR COTTER: -paragraph 26. I make the point that that was done for a relatively short-

JUDGE TOMLINSON: Right.

MR COTTER: -period in this case. And again, lacks sophistication, because as seems to be candidly put forward, even a cursory look on the Internet demonstrated he was trading.

JUDGE TOMLINSON: Yes.

F MR COTTER: Even a cursory look at the – the fact that he maintained, it would appear, a pretty clear audit trail, isn't demonstrative, in my submission, of real sophistication in this case.

Mitigating features are, perhaps, more salient, and I raise those from paragraph 27-

JUDGE TOMLINSON: Yes.

G MR COTTER: -to paragraph 31. I'm extremely grateful to my learned friend for clarifying, as I do in paragraph 27, that he does have convictions, but they are-

JUDGE TOMLINSON: Yes.

MR COTTER: -of some age.

JUDGE TOMLINSON: I disregard them for these purposes.

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A MR COTTER: I'm extremely grateful. He has, in essence, been a productive member of society-
JUDGE TOMLINSON: Yes.

MR COTTER: -for a long period, and raises a relatively young family, and he's placed himself in a
profoundly difficult position, and placed his family in a profoundly difficult position.

B JUDGE TOMLINSON: Yes.

MR COTTER: He is hugely remorseful for doing that to them, and hugely remorseful that he's in
this position, and he expresses that through his pleas-

JUDGE TOMLINSON: Yes.

MR COTTER: -I pray in aid that on his behalf. The business itself was legitimate in nature-

C JUDGE TOMLINSON: Yes.

MR COTTER: -I make that point at paragraph 28. In our submission the bulk of the monies was
lost through the business, not through personal frittering away, if I can place it that way.
The reason I come to that conclusion, and I hope I make this submission fairly, is the
D transfers that go into the company, which are relied upon in the opening note – or rather go
into the defendant's personal accounts. They are all his personal accounts, that money goes
into accounts that's used to buy the first property. There's already money in that account, it
strikes me there was the best part of £60,000 already there. The property was bought for
£144,000. But I make full concession as does my client that he's clearly benefit, either
E directly or indirectly by that money going into his account.

JUDGE TOMLINSON: Yes.

MR COTTER: I'm pleased to say some of it goes back. And again, I highlight-

JUDGE TOMLINSON: Yes.

F MR COTTER: -what goes back, point out the sources of where that money goes back, and we
submit that the bulk of the money was lost within the business. This was not a successful
business at all times, it's open to the frailties of a business – the holiday business on the Isle
of Wight, and it's perhaps of some merit that only one of those businesses now exists, I
believe.

G Turning away from paragraph 28 of my mitigating features document, I turn to paragraph
29 and 30, I will be short with them. It's submitted on behalf of this defendant that there
was little chance of success in this case. Whenever you put nil on a VAT return and the
company is supposed to be turning over the thick end of £1.5 million spread over two
hotels, it's always going to raise red flags, and, in my submission, it did so almost

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immediately in this case.

Paragraph 30, the defendant did make some admissions in interview. He, effectively, conceded, perhaps for the right reasons, that he knew he owed VAT and was in difficulties.

But I accept on his behalf he should have put his hands up earlier than this. In February, overtures were made-

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JUDGE TOMLINSON: Yes.

MR COTTER: -for pleas to counts one through three, and that was, effectively-

JUDGE TOMLINSON: Right.

MR COTTER: -accepted later on, and I'm extremely grateful for the way my learned friend put that.

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JUDGE TOMLINSON: Yes.

MR COTTER: And I ask for ask for as much credit-

JUDGE TOMLINSON: Yes.

MR COTTER: -I've dealt with the credit and, of course, the guideline on credit within my-

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JUDGE TOMLINSON: Yes.

MR COTTER: -paragraph-

JUDGE TOMLINSON: Well, I am prepared to proceed on the basis that, although, of course, a trial date was set and the guilty pleas came close to that date, this was not quite a plea at the door of the Court date, and I take that into account.

E

MR COTTER: I'm extremely grateful. Paragraph 34, I won't read it, Your Honour-

JUDGE TOMLINSON: Yes.

MR COTTER: -will be alive to it. He accepts the parameters for the type of percentage that may be-

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JUDGE TOMLINSON: Yes.

MR COTTER: -attributable in a case of this nature. The point I'd perhaps make on behalf of my client is that his plea saved the public purse even more money from having a trial-

JUDGE TOMLINSON: Yes.

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MR COTTER: -and I parade that at paragraph 35. Step five of the guidelines, consecutive or concurrent-

JUDGE TOMLINSON: I will not trouble you about that.

MR COTTER: I'm very grateful, thank you ever so much.

And steps six through eight, I needn't trouble Your Honour, unless I can assist? I think I've

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dealt with one of them already.

JUDGE TOMLINSON: Yes, I do not think so. Thank you very much indeed, Mr Cotter-

MR COTTER: May-

JUDGE TOMLINSON: -for your very focused and helpful submissions.

B

MR COTTER: May I just refer Your Honour to one other matter?

JUDGE TOMLINSON: Yes, of course.

MR COTTER: In the sentencing bracket, or the sentencing-

JUDGE TOMLINSON: Yes.

C

MR COTTER: -section, Your Honour will see perhaps a glimmer of the true nature of this defence.

JUDGE TOMLINSON: Yes, I have seen there are a number of character references, which I have briefly read. When I rise, I will reread and reflect upon them.

MR COTTER: I'm extremely grateful. Thank you, I needn't trouble you, unless I can be of any further assistance?

D

JUDGE TOMLINSON: No, thank you very much, Mr Cotter. I will rise to consider the sentence I shall pass. The defendant must remain in custody in the meantime.

Court rises at 11.54am.

Court resumes at 12.19pm.

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JUDGE TOMLINSON: Sorry? Yes. Yes, so I have been provided with a document headed provision of information by interested person, what is the position with this?

MR KELLY: This is an application. So, I was going to deal with it after sentence, in fact-

JUDGE TOMLINSON: I see.

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MR KELLY: -before the defendant was taken down, because it doesn't involve this defendant, it involves his wife.

JUDGE TOMLINSON: Right.

MR KELLY: I've informed Mr Cotter about it, even though he has no locus-

JUDGE TOMLINSON: Yes.

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MR KELLY: -obviously, in respect of that. But it arises out of the Section 18 response, and I was going to deal with it once Your Honour had dealt with sentence.

JUDGE TOMLINSON: All right, very well. Well, it does not, in fact, concern the defendant at all, does it?

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MR KELLY: No.

A JUDGE TOMLINSON: No, all right, well, I will deal with it after I have done the sentence.

MR KELLY: Thank you.

SENTENCE

JUDGE TOMLINSON: Martin Hill, you may remain seated until I indicate otherwise.

B I have to sentence you for three offences of being knowingly concerned in the fraudulent evasion of value added tax contrary to Section 72 (1) of the Value Added Tax Act 1994, and you pleaded guilty to those three counts on 15 April of this year. Your pleas of guilty are accompanied by, effectively, a full facts basis of plea, and I sentence you faithfully to that. Counts four, five and six, to the extent that this has not already been dealt with, I order to lie on the file marked in the usual way.

C It is agreed between the prosecution and defence that the amount of value added tax that you evaded over the indictment period was not less than £350,000. The facts underlying the offences that you have admitted have been opened in some detail, very helpfully, by Mr Kelly for the Crown, and I do not propose to rehearse them in detail now in the course of my sentencing remarks. I, also, record my gratitude to Mr Cotter, who, on your behalf, has provided me with focused and helpful submissions, both oral and in writing about the facts and about the mitigation that is open to you.

D But dealing with the facts in very short summary, the offending in the evasion of value added tax related to your operation of two hotels on the Isle of Wight, which you operated through the medium of a total of three limited companies. The hotels were large turnover operations, turnovers, I am told, in the region of £1.5 million a year. But you submitted and persistently submitted nil or grossly undervalued VAT returns.

E Your offending is clearly so serious that only an immediate prison sentence is appropriate in your case. You caused a substantial loss to the public purse. Money that could and should have been used for purposes beneficial to society as a whole instead went to line your pockets, or help to buy property, or was simply frittered away, and there are a number of aggravating features, which can be identified so far as your offending is concerned. It involved two hotels, as I have said, and three limited companies. It was carried out over an appreciable period of time. And there was, in my judgment, a degree of sophistication attaching to what you did: the use of false VAT registration number; the misdescription of certain bank transfers as VAT payments; what has been described as the layering of monies evaded via a number of bank accounts. And, the fact that at least some of the money went

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to purchase a property may, to some extent, also be regarded as an aggravating feature.

Although, as it seems to me, however the money was spent, whether it was spent, frittered away or just wasted does not, ultimately, matter a great deal. What matters is that the Exchequer did not get the money that it should have had for the beneficial purposes I have already referred to.

B

There is mitigation in your case. You are 51 years of age. You have a couple of very old convictions, which I disregard for these purposes, and I treat you as a man of good character. There is, clearly, a very positive side to your character. I have read and reflected upon the references provided by a family member and a number of employees. I take into account the potential effects of your imprisonment, both on your family and particularly your children and your employees as well.

C

And I, also, give you credit, of course, for your guilty pleas. They were not entered at anything near the first available opportunity, they were entered relatively close to the trial date, but they were not entered at the door of the Court. And it seems to me that your counsel, Mr Cotter, is right when he says you are entitled to more than minimal credit for those guilty pleas, and I am, in fact, going to give you a little over 15% credit in the round for your guilty pleas.

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There is a definitive guideline in relation to offences of this sort, which I must, and do, follow. In fact, there is broad agreement between the prosecution and defence about the facts of the offences and how they can be analysed. But there is disagreement, ultimately, as to which precise category you fit into so far as culpability is concerned. It is, clearly, a Category 5 harm case, because of the agreed amount evaded. And the dispute between the prosecution case is whether your culpability lies in Category A or in Category B.

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And it seems to me that there is – that the position so far as sophistication can really be summed up in this way. There was appreciable sophistication, but not perhaps the utmost sophistication in what you did, and I am going to take what I consider to be a generous view, and I am going to locate this case, there being overlap between the 5A and 5B ranges, as laying somewhere on the cusp and desisting a case, which is either located towards the bottom of Category 5A or the top of Category 5B.

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Would you stand up, please?

My conclusion is that had you continued to contest these offences and been convicted by a jury the least total sentence I could have passed on you would have been one of three years'

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A imprisonment. Given the timing of your guilty pleas, I will give you, as I say, just over 15% discount, which reduces the total sentences to one of two-and-a-half years' imprisonment, or 30 months, and that will be the sentence of the Court concurrently on each of counts one to three.

B You will serve up to half of that sentence in custody, with any time you have spent in custody prior to sentencing counting towards the custodial part. And, once released, you will be on licence and liable to recall for the balance of the sentence.

C I need make no financial orders, because of the position in relation to the Proceeds of Crime Act timetable, but the surcharge provisions apply in this case, and an order may be drawn up in the appropriate amount.

Is there any ancillary matter I have overlooked?

MR KELLY: Has the Court considered the disqualification?

D JUDGE TOMLINSON: I am so sorry, thank you, Mr Kelly. I have. Realistically, Mr Cotter on your behalf has not suggested that it would be wrong to make an order disqualifying you as – from acting as a company director pursuant to Section 2 of the Company Directors Disqualification Act 1986. You misused three companies in the way which I have described, and so there will be a disqualification under that section for a period of seven years beginning with today's date.

E Thank you very much. The defendant can go down, in fact, so take him down, please.

Pause.

JUDGE TOMLINSON: Mr Kelly, in fact, I consider this is not, in fact, a matter that relates to the defendant, or that it is simply easier for me to deal with it in his absence. But tell me what the position is.

F MR KELLY: Well, the position is this, and I appreciate that Mrs Crighton-Hill is in court.

JUDGE TOMLINSON: Yes.

MR KELLY: When the Section 18 reply-

JUDGE TOMLINSON: Yes.

G MR KELLY: -was received there was an assertion regarding half-ownership of-

JUDGE TOMLINSON: Yes.

MR KELLY: -the properties in question-

JUDGE TOMLINSON: Yes.

H MR KELLY: -and that it was Mrs Crighton-Hill who half-owned these properties.

A JUDGE TOMLINSON: Yes.

MR KELLY: The Crown's position is that we are giving active consideration to these being a tainted gift under Section 77.

JUDGE TOMLINSON: Yes.

B MR KELLY: And so, as a result of that we'd invite the Court to make the Section 7 (18)(a) provision of information-

JUDGE TOMLINSON: Yes.

MR KELLY: -order, please.

C JUDGE TOMLINSON: Well, I suppose there may be some benefits, in fact, although it is not a matter in which Mr Cotter really has locus to the defendant if the position can be clearly established, and if there is any evidence that there is a limit to his interest in the property, then that ought to be obtained.

And, Mrs Crighton-Hill, do you have anything to say about this?

D MRS CRIGHTON-HILL: No.

JUDGE TOMLINSON: All right, very well. Yes, well, I am going to make an order under Section 18(a) of the Proceeds of Crime Act to be served on you, that you provide within 28 days of today's date a signed statement of truth disclosing the extent of your interest, and how that was established in the two properties named in the order, one in Sandown and one in San Juan de Alicante. And you have got 28 days from today's date. I cannot give you any advice. It may be that you would wish to seek some legal advice about this, it is a matter for you, but the order stands and must be complied with within 28 days.

E Yes, thank you both very much for your assistance, gentlemen. No need to wait, we will call the next matter on.

F MR KELLY: Thank you.

MR COTTER: Thank you.

Court rises at 12.28pm.

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IN THE SOUTHWARK CROWN COURT

T20180330

88LE4840516

REGINA v. MARTIN HILL

SENTENCING NOTE

History of Proceedings

1. This defendant first appeared before the Central London Magistrates' Court on 22nd August 2018 charged with 3 charges of Fraudulent evasion of VAT and 3 charges of Transferring Criminal Property.
2. Not guilty pleas were indicated to all charges with the defence being said to be 'No Dishonesty'.
3. On 19th October 2019 the defendant appeared for PTPH before HHJ Eady sitting at the Southwark Crown Court. He entered not guilty pleas to each of the 6 indictment counts and his trial was fixed for 15th April 2019 with a 7 day time estimate.
4. In mid February 2019 the defence first approached the prosecution to see whether the case was capable of resolution other than by a trial.
5. By the beginning of April 2019 such a position had been agreed and on 8th April 2019 the defence uploaded a signed basis of plea to the DCS under Tab D.

Overview

6. The defendant stands charged with 3 counts of Fraudulently Evading VAT and 3 of Transferring Criminal Property. The prosecution case is that in early 2014 the defendant set up limited companies to run two hotels Isle of White hotels, The Burlington Hotel and the Shanklin Beach Hotel, and then proceeded to fraudulently and dishonestly evade the payment of VAT to HMRC. In November 2015 a further limited company was set up to replace the one running The Burlington Hotel and the fraudulent evasion of VAT continued.

7. Furthermore, the prosecution case is that having submitted largely nil returns to HMRC in respect of The Burlington Hotel and grossly under declared returns in respect of the Shanklin Beach Hotel, companies that were together turning over in total something approaching £1.5m per annum, the defendant then proceeded to dissipate money out of the company accounts by way of bank transfers, using transfer references such as 'VAT PAYMENT' to make it look as if the transfers were connected to legitimate VAT payments, and then layering them through numerous personal accounts, before the money ended up in personal bank accounts used by the defendant to buy personal residential properties.
8. In total VAT was evaded in a sum just shy of £400,000 in the period in question.

Detail of the Companies, Bank Accounts, Invoicing and VAT Returns

Company details

9. The following Companies were registered with Companies House with the defendant named as director/secretary and 100% shareholder:

BHSL:

Burlington Hotel Sandown Limited trading as The Burlington Hotel

This limited company was registered with Companies House on 4th March 2014 and registered for VAT with HMRC the same day. On the VAT 1, completed by the defendant, the estimated turnover was said to be £500k. The VRN was 183.1026.34.

BHOL:

Burlington Hotel Operations Limited trading as The Burlington Hotel

This limited company was registered with Companies House on 4th November 2015 and registered for VAT with HMRC the previous day. On the VAT 1, again completed by the defendant, the estimated turnover was again said to be £500k. The VRN was 226.8961.74.

SBHL:

Shanklin Beach Hotel Limited trading as The Shanklin Beach Hotel Isle of Wight.

This limited company was registered with Companies House on 10th January 2014 (according to the defence statement and Barclays Profile – see J573) and registered for VAT with HMRC with VRN 177.8394.50.

Bank Accounts

10. The defendant also set up the following bank accounts to be used by each of the limited companies:

SHBL – Barclays Bank – 20-54-22 5389780643

BHSL – Barclays Bank – 20-54-22 5389808246

BHOL – Barclays Bank – 20-54-22 538940361

The defendant had a number of personal accounts and other business accounts at the same bank/branch.

Invoicing and Incorrect VRNs

11. Despite the fact that the defendant had obtained VRNs in respect of each of the limited companies he had set up to run the hotels, he proceeded to invoice customers, who were in the main tour operators making repeat bookings at the hotel, with documents showing the incorrect VRN.

12. In the case of The Burlington Hotel:

- i. When BHSL was set up to run the hotel the invoice design was changed from the one used by the previous owners, Coenus Ltd. The fact that they were the proprietors was removed, the new bank account details set up for BHSL were included and the previously used VRN (977 5758 44) was removed and replaced by the VRN 970549201. This was not the newly obtained VRN (183.1026.34) but the VAT number used by the The Falcon Hotel Uppingham Limited, a company de-registered in 2010 and of which the defendant's wife, Amanda Crighton-Hill, had been a director.
- ii. When BHOL was set up to replace BHSL to run the hotel the invoices were amended to show the new bank account created

for BHOL, but the VRN numbers were a mix of The Falcon Hotel VRN (970549201) and the correct newly obtained VRN (226.8961.74) (see for example the invoice to IOW Tours in June 2016 with VRN 970549201(DCS p. J2693) and the invoice to Travel Style Tours Ltd in May 2016 with the correct VRN 226.8961.74 (DCS p. J112).

13. So far as the Shanklin Beach Hotel is concerned the invoices were changed to add the newly created SHBL bank account details and by adding the incorrect previously mentioned VRN (970549201) used by the The Falcon Hotel Uppingham Limited, rather than the new VRN obtained from HMRC. An early example of such an invoice can be found at DCS p. J2740 an invoice dated 21/3/14 for IOW Tours Limited.
14. In late 2015 a Booking Receipt showed the correct VRN (177.8394.50) for the first time (see DCS p. J2757) and by early 2016 the design of the Shanklin Beach Hotel's invoices changed and the correct VRN (177.8394.50) was shown on the invoices for the first time.
15. The purpose of using incorrect VRNs, say the prosecution, was to deliberately shield the fact that the companies, in particular those running The Burlington Hotel, were making nil (or very low) VAT returns (which would have been identified as an irregularity on a simple cross reference of the VRN on the invoice). It demonstrates an element of pre-meditation in the way the defendant was to go about concealing the evasion of paying VAT.

VAT Returns

BHSL

16. Throughout the period that the Burlington Hotel was run by BHSL there were Nil Returns made online.
17. The first return (for period 4/3/14 to 30/6/14) was not submitted on time and so the VAT was assessed as £5,024.
18. The first return was subsequently completed and submitted online on 11th October 2014 (the same date that the second (nil) return was completed (for period 1/7/14 to 30/9/14)) showing a nil return and so the £5,024 was duly withdrawn.

19. This happened again for the return for period 1/7/15 to 30/9/15. This time the VAT was assessed as £4,088. On 26/11/15 the nil return was submitted online and the £4,088 was withdrawn.
20. The inadequacy of the returns will be highlighted in a later section when dealing with the conclusions of the Forensic Accountant, Stephen McManus.

BHOL

21. The first return, for the period 4/11/15 to 31/1/16 was made online on 20/2/16 and was a Nil Return.
22. The second return, again submitted online, for the period ending 30 April 2016 was for a payment return of £110.52, which was paid.
23. The third return, again submitted online, for the period ending 31 July 2016 was for a payment return of £3,277.93, which was paid.
24. The fourth return, again submitted online, for the period ending 31 October 2016 (which extends beyond the indictment period), was for a payment return in the sum of £24,691.88, which was paid.
25. The inadequacy of the returns will be highlighted in a later section when dealing with the conclusions of the Forensic Accountant, Stephen McManus.

SHBL

26. Throughout the relevant period returns were made online in respect of SHBL. The inadequacy of the returns will be highlighted in a later section when dealing with the conclusions of the Forensic Accountant, Stephen McManus.

Investigation

BHSL

27. Given that BHSL had declared the turnover of the company as £500k in the VAT 1 and given the nil returns that had been submitted, the witness Andrew Jenkins (HMRC officer) wrote to the business in June 2015 seeking clarification. In particular, he queried

whether the trading activities were being declared by a different trading entity.

28. On 15th July 2015 the defendant replied stating that prior to trading the owners (Damsely) had gone into administration and that the property had been handed over to a Fixed Asset Receiver, 'Alsops LLP'. The defendant claimed BHSL was 'dormant'.
29. In fact, according to the witness Peter Mayo, who is a partner at Allsop LLP, partners at Allsops were not appointed as FCRs until October 2014. BHSL had in fact been trading for some 5 months at that point and, according to Mayo, the defendant was permitted to continue trading in order to maintain and enhance the retail value of the hotel.
30. It transpired therefore that the reply given to Andrew Jenkins was wholly untruthful and designed to make it appear as though the nil returns were wholly in keeping with a non-trading dormant company.
31. A search of the internet revealed to Andrew Jenkins that the hotel was in fact trading.
32. On 30th September 2015 Andrew Jenkins went to visit the defendant at the Burlington Hotel but he was in fact at the Shanklin Beach Hotel. When they met him there the defendant stated that he could not give them any of the Burlington documents as SBH was a different VAT registration and the Burlington documents were at home.
33. The defendant claimed that he was declaring all income to RBS and Allsop and did not know how the VAT was being declared.
34. He was told that the Burlington Hotel invoices bore the VRN of an old company (The Falcon Hotel). The defendant said he didn't know why that number was being used and said he would look into it.
35. The following day the defendant emailed Andrew Jenkins and claimed that the incorrect VRNs were being used for The Burlington Hotel and the Shanklin Beach Hotel due to using old software from a previous project.
36. On 1st October 2015 Andrew Jenkins emailed the defendant confused as to the position as to whether the trade of the Burlington

Hotel was being declared by RBS and/or Allsops or under SBHL's VRN.

37. On 7th October 2015 the defendant emailed Andrew Jenkins claiming that his property had been flooded and that he would fully reply to the query 'later', but had no further contact with him.

SBHL

38. As a result of a VAT repayment claim made on behalf of SHBL in respect of period 03/16, Wendy Jakeman (HMRC officer) telephoned the defendant in early May 2016 and after some delay a VAT visit was arranged for the week of 31st May 2016.
39. In fact the visit did not take place until 12th July 2016.
40. During the meeting the defendant provided the records from which he had produced the return for period 03/16. The defendant confirmed he prepared the returns and he submitted them online.
41. A number of discrepancies were found, including the fact that invoices showed invalid VRNs (as the issuing business had ceased to trade) and a number of purchase invoices had been included when they should not have been. There were also missing invoices and the defendant was asked to email these by 15th July 2016. One of the disallowed invoices related to Coenus Ltd, which was disallowed as the issuing company had no valid VRN at a date prior to the apparent invoice date. This was an invoice dated 4/1/16 for £55,900.23 (net) plus VAT of £11,180.05 in respect of the purchase of the 'Burlington Hotel Fixtures & Fittings' (see DCS J(C) p. 7200).
42. Despite a number of emails chasing this information and claims by the defendant that documents had been sent in the post, lost and there were no further copies, the documents were never received by HMRC.
43. As a result of this the repayment was reduced by over £13k. The defendant was also emailed to be told that HMRC would not be charging a civil penalty if suspension conditions were agreed, but the defendant did not respond. As a result the penalty was issued.
44. Following the seizure of computers from the hotels during a section 8 warrants on 31st August 2016 (exhibit Sutherland 0001 from SBH and Mills 0002 from TBH) it could be demonstrated that the Coenus

Ltd invoice produced to Wendy Jakeman was created by the defendant.

45. The analysis revealed that on 13th June 2016, at about 7.23am the defendant had accessed an old Coenus Ltd invoice dated 2nd June 2012 (originally created on 20th April 2012 at 4.33pm) and then at about 10am had emailed Wendy Jakeman offering to send her the documents she required. She was to reply that she would need to visit in any event.
46. On 11th July 2016, the day before Wendy Jakeman's VAT visit, a file called SBH – COENUS INVOICE was created on the TBH computer. The file was originally created at 4.33pm on 20th April 2012. This demonstrated that the new document was in fact simply the old invoice doctored to make it look like a current invoice.
47. An analysis of the bank accounts has revealed no payment to Coenus Ltd for the sum in question.
48. Furthermore the defendant claimed to the witness Mayo of Allsop in October 2015 (3 months before the invoice date) that he was the legal owner of the fixtures and fittings (see exhibit Mayo 0028 at DCS at p. J2331).

Discovery of Transfers and 'Layering'

49. Analysis of the defendant's various business and personal bank accounts has revealed a method by which he repeatedly diverted funds from the business bank accounts into his personal bank accounts under the pretense of the transfers being for the purposes of VAT.
50. The witness Ann Buchanan, an HMRC investigator, has produced a series of 'audit trails' marked Buchanan A to F to show the movement of these funds on 6 specific occasions.
51. Buchanan 'A' shows a transfer of £58,334.53 dated 4th August 2014 from the BHSL Barclays Bank Account 20-60-55 93446018 with the reference '206055 23134148 VAT PAYMENT FT'.
52. The funds then took the following route:

4/8/14	£58,334.53 received into Barclays personal bank account of MJHILL 23134148
6/8/14	Two amounts of £8,000 and £50,000 transferred to Nationwide bank account of Mr M HILL 42287973
6/8/14	£55,000 (in 7 separate transactions) transferred to

6/8/14 Halifax bank account of Martin Hill 00684101
£50,000 transferred to Halifax bank account of Martin
Hill 32962763

53. Buchanan B to E show exactly the same series of bank accounts used to perform the following transfers:

Buchanan B - £31,435.62 – 2/10/14 – ‘VAT PAYMENT’
Buchanan C - £14,740.68 – 25/11/14 – ‘HMRC PAYE PAYMENT’
Buchanan D - £10,000 – 27/7/15 – ‘VAT PAYMENT’
Buchanan E - £7,611.47 – 27/7/15 – ‘VAT PAYMENT’

54. The Halifax bank account into which these funds (Buchanan A to C) finally arrived was used to purchase the defendant’s home address of Flat 5, 16 Prospect Road, Isle of Wight on 2/12/14.

55. The funds transferred in Buchanan D and E were then transferred out as part of a £125,000 transfer to Yorkshire bank account 836979407 on 31st August 2015.

56. Buchanan F deals with the £67,714.30 received by BHSL from Allsop LLP in December 2015. The route for these funds was slightly different. The whole transfer chain was completed on 14th December 2015.

57. The first stage of the transfer was to the BHOL bank account (20-60-55 83261476) before £20,000 of the funds were then transferred into Barclays personal bank account of MJHILL 23134148 (as with the earlier transfers). The £20,000 is then transferred to Nationwide bank account of Mr M HILL 42287973 (as before). The final transfer was to Tesco Bank account of Mr Martin Hill 13693715.

58. In March 2016 this account was used to transfer £290,000 to another Tesco savings account in the defendant’s name and the funds in that account were then used within two weeks to purchase the defendant’s home at Orchard Lee, Isle of Wight.

Forensic Accountant

59. The report of Stephen McManus can be found on the DCS at Tabs G1 and G2.

60. In order to reach his conclusions Mr. McManus used the MYOB accounting package data recovered from the computers seized from

the two hotels, the weekly takings sheets recovered from the two hotels and the bank analysis work undertaken by one of his colleagues. These three sources allowed him to estimate the total income, total expenditure and profit in respect of each hotel management company.

61. Using this data Mr. McManus was able to calculate the output and input tax for each relevant period and was then able to compare this with the amounts declared by each management company in their returns.
62. The final conclusions can be found at Appendix 10 (see DCS p. G40).
63. So far as BHSL is concerned Mr. McManus concluded that in 2014 the VAT liability was £94,988, in 2015 £85,802 and in 2016 £14,127. As BHSL had made nil VAT returns throughout the entire period, the total VAT liability to HMRC for the entire period was £194,917.
64. So far as SBHL is concerned Mr. McManus concluded that in 2014 the VAT liability was £90,203 but only £29,422 was declared on the returns. The difference between the actual VAT liability and that declared was therefore £60,781. In 2015 the VAT liability due was £91,481 but only £18,533 was declared on the returns. The difference between the actual VAT liability and that declared was therefore £72,948. In 2016 the VAT liability due was £54,837 but only £22,827 was declared on the returns. The difference between the actual VAT liability and that declared was therefore £32,010. The total VAT liability to HMRC for the entire period (the difference between the actual VAT liability and that declared) was £165,740
65. So far as BHOL is concerned Mr. McManus concluded that in 2015 (when there were nil returns) there was a repayment due to BHOL of £2,837. In 2016 however he concluded that the VAT liability was £44,995 but only £11,619 had been declared. The difference between the actual VAT liability and that declared was therefore £36,213 for 2016 and £33,376 for the entire period.
66. The conclusion of Mr. McManus was therefore that for the entire period a total VAT liability of £394,033 was due to HMRC in respect of the three management companies.
67. As part of the calculations of input tax Mr. McManus made a number of assumptions which he believed were generous to the defendant

(see paragraph 3.21). Taking the assumption to the position most generous to the defendant (which are highly unlikely given that they would on occasions exceed even that claimed by the defendant in the returns) the prosecution can say with certainty that the VAT liability could not be less than £350,000. This is reflected in the agreed position in the defendant's basis of plea.

Sentencing Guidelines

68. The defendant will plead guilty to counts 1 to 3 and counts 4 to 5 are to be left on the file.
69. The relevant sentencing guidelines are therefore the Revenue Fraud guidelines.
70. As the VAT fraudulently evaded in this case is not less than £350k the case falls into Category 5 Harm.
71. In terms of culpability there was a sophistication in the way the defendant used false VRNs for the sales invoices and the way in which the funds were dissipated in a way intended to make them look like genuine VAT payments and the 'layering' of the transfers intended to make the audit trail difficult to follow in the future if any suspicion was cast on his activities. Furthermore the fraudulent activity was conducted over a sustained period of time. For those reasons it is submitted that this is a High Culpability (A) case.
72. The starting point for a Category 5A offence is based on a loss of £300,000. The current offence therefore is therefore more serious than the starting point. The starting point is 4 years' custody and the category range is between 2 years 6 months' custody and 5 years' custody.
73. Factors increasing seriousness include the fact that there were multiple frauds (in respect of the two hotels), there was an attempt to conceal evidence and create false documents. There were warnings about the use of the incorrect VRN which were ignored, and despite the investigation of the HMRC the frauds continued regardless. The defendant attempted to cast blame and responsibility upon Allsop LLP and RBS for the submission of the VAT returns.
74. Factors reducing seriousness include no previous convictions and lapse of time since first arrest (although there is clearly some blame to be attached to the defendant in that delay).

Further Orders

75. POCA will be actively pursued in this case by the prosecution and a timetable will be provided to the court.
76. The application for costs should await the outcome of the POCA proceedings.

RICHARD KELLY
RED LION CHAMBERS
14th April 2019

ANNEX 7

HM FISCAL GENERAL
MARK TEMPLE KC

HM PROCURADOR
GENERAL MATTHEW
JOWITT KC



DEPARTAMENTO DE POLICÍA **R1**
CASA MORIER
ST HELIER
JERSEY JE1 1DD

Martin John Hill está acusado de los siguientes delitos:-

Recuento 1

Declaración de infracción

Conversión o transferencia de bienes de origen delictivo, en contra de lo dispuesto en el artículo 31(1)(c) de la Ley de 1999 sobre el producto del delito (Jersey).

Datos de la infracción

Martin John **HILL** entre el 23rd día de mayo de 2017 y el 15th día de mayo de 2018 con respecto a la conducta criminal, a saber:

- (a) entre el 3rd de marzo de 2014 y el 1st de septiembre de 2016, haber participado a sabiendas en la evasión fraudulenta del IVA, en contra de lo dispuesto en el artículo 72(1) de la Ley del Impuesto sobre el Valor Añadido de 1994, y/o haber tomado medidas con vistas a dicha evasión;
- (b) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 haciendo declaraciones falsas a Her Majesty's Revenue and Customs mediante la presentación de declaraciones falsas o inexactas aumentando los valores del impuesto soportado y suprimiendo los valores del impuesto repercutido dando lugar al pago insuficiente de impuestos y a intentos de obtener devoluciones de impuestos en perjuicio de Her Majesty's Revenue and Customs y en beneficio del citado Martin John **HILL**;
- (c) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 al no proporcionar a Her Majesty's Revenue and Customs los verdaderos ingresos percibidos en relación con el alojamiento y las entradas de bar/restaurante para el Burlington Hotel Sandown Limited T/A Burlington Hotel, Burlington Hotel Operations Limited T/A Burlington Hotel y el Shanklin Beach Hotel Ltd T/A Shanklin Beach Hotel, lo que dio lugar a un pago insuficiente de impuestos en perjuicio de Her Majesty's Revenue and Customs y en beneficio del citado Martin John **HILL**;
- (d) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 proporcionando intencionadamente a los clientes del Burlington Hotel Sandown Limited T/A Burlington Hotel, Burlington Hotel Operations Limited T/A Burlington Hotel y el Shanklin Beach Hotel Ltd T/A Shanklin Beach Hotel, facturas con un Número de Registro de IVA inexacto y engañoso en perjuicio de Her Majesty's Revenue and Customs y en beneficio del citado Martin John **HILL**.

(conductas que, de haberse producido en Jersey, habrían constituido delitos de Fraude y delitos relacionados con el impuesto sobre bienes y servicios con arreglo a los artículos 88-89 de la Ley del impuesto sobre bienes y servicios (Jersey) de 2007)

convirtió o transfirió el producto de dicha conducta delictiva, a saber, saldos acreedores por un total de £165.900 en la cuenta 10216556, en Tesco Bank, a la cuenta 200253268 en Santander International (Jersey Branch), sabiendo o sospechando que los bienes representaban, en todo o en parte, directa o indirectamente, el producto de dicha conducta delictiva.

R1



Recuento 2

Declaración de infracción

Conversión o transferencia de bienes de origen delictivo, en contra de lo dispuesto en el artículo 31(1)(c) de la Ley de 1999 sobre el producto del delito (Jersey).

Datos de la infracción

Martin John **HILL** en o antes del 27th día de junio de 2017 con respecto a la conducta criminal, a saber:

- (a) entre el 3rd de marzo de 2014 y el 1st de septiembre de 2016, haber participado a sabiendas en la evasión fraudulenta del IVA, en contra de lo dispuesto en el artículo 72(1) de la Ley del Impuesto sobre el Valor Añadido de 1994, y/o haber tomado medidas con vistas a dicha evasión;
- (b) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 haciendo declaraciones falsas a Her Majesty's Revenue and Customs mediante la presentación de declaraciones falsas o inexactas aumentando los valores del impuesto soportado y suprimiendo los valores del impuesto repercutido dando lugar al pago insuficiente de impuestos y a intentos de obtener devoluciones de impuestos en perjuicio de Her Majesty's Revenue and Customs y en beneficio del citado Martin John **HILL**;
- (c) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 al no facilitar a Her Majesty's Revenue and Customs los verdaderos ingresos percibidos en relación con los ingresos por alojamiento y bar/restaurante para el Burlington Hotel Sandown Limited T/A Burlington Hotel, Burlington Hotel Operations Limited T/A Burlington Hotel y el Shanklin Beach Hotel Ltd T/A Shanklin Beach Hotel, lo que resultó en el pago insuficiente de impuestos en perjuicio de Her Majesty's Revenue and Customs y en beneficio de dicho Martin John **HILL**;
- (d) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 proporcionando intencionadamente a los clientes del Burlington Hotel Sandown Limited T/A Burlington Hotel, Burlington Hotel Operations Limited T/A Burlington Hotel y el Shanklin Beach Hotel Ltd T/A Shanklin Beach Hotel, facturas con un Número de Registro de IVA inexacto y engañoso en perjuicio de Her Majesty's Revenue and Customs y en beneficio del citado Martin John **HILL**.

(conductas que, de haberse producido en Jersey, habrían constituido delitos de Fraude y delitos relacionados con el impuesto sobre bienes y servicios con arreglo a los artículos 88-89 de la Ley del impuesto sobre bienes y servicios (Jersey) de 2007)

convirtió o transfirió el producto de dicha conducta delictiva, a saber, un saldo acreedor de 10.000 £ en la cuenta 13693715, en Tesco Bank, a la cuenta 200253268 en Santander



International (Jersey Branch), sabiendo o sospechando que los bienes representaban, en todo o en parte, directa o indirectamente, el producto de dicha conducta delictiva.

Recuento 3

Declaración de infracción

Conversión o transferencia de bienes de origen delictivo, en contra de lo dispuesto en el artículo 31(1)(c) de la Ley de 1999 sobre el producto del delito (Jersey).

Datos de la infracción

Martin John **HILL** entre el 1º día de agosto de 2017 y el 8º día de noviembre de 2017 respecto de conductas delictivas, a saber:

- (a) entre el 3rd de marzo de 2014 y el 1st de septiembre de 2016, haber participado a sabiendas en la evasión fraudulenta del IVA, en contra de lo dispuesto en el artículo 72(1) de la Ley del Impuesto sobre el Valor Añadido de 1994, y/o haber tomado medidas con vistas a dicha evasión;
- (b) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 haciendo declaraciones falsas a Her Majesty's Revenue and Customs mediante la presentación de declaraciones falsas o inexactas aumentando los valores del impuesto soportado y suprimiendo los valores del impuesto repercutido dando lugar al pago insuficiente de impuestos y a intentos de obtener devoluciones de impuestos en perjuicio de Her Majesty's Revenue and Customs y en beneficio del citado Martin John **HILL**;
- (c) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 al no proporcionar a Her Majesty's Revenue and Customs los verdaderos ingresos percibidos en relación con el alojamiento y las entradas de bar/restaurante para el Burlington Hotel Sandown Limited T/A Burlington Hotel, Burlington Hotel Operations Limited T/A Burlington Hotel y el Shanklin Beach Hotel Ltd T/A Shanklin Beach Hotel, lo que dio lugar a un pago insuficiente de impuestos en perjuicio de Her Majesty's Revenue and Customs y en beneficio del citado Martin John **HILL**;
- (d) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 proporcionando intencionadamente a los clientes del Burlington Hotel Sandown Limited T/A Burlington Hotel, Burlington Hotel Operations Limited T/A Burlington Hotel y el Shanklin Beach Hotel Ltd T/A Shanklin Beach Hotel, facturas con un Número de Registro de IVA inexacto y engañoso en perjuicio de Her Majesty's Revenue and Customs y en beneficio del citado Martin John **HILL**.

(conductas que, de haberse producido en Jersey, habrían constituido delitos de Fraude y delitos relacionados con el impuesto sobre bienes y servicios con arreglo a los artículos 88-89 de la Ley del impuesto sobre bienes y servicios (Jersey) de 2007)

convirtió o transfirió el producto de dicha conducta delictiva, a saber, saldos acreedores por un total de 86.500 libras esterlinas en la cuenta 15627401, en Tesco Bank, a la cuenta 200253268 en Santander International (Jersey Branch), sabiendo o sospechando que los bienes representaban, en todo o en parte, directa o indirectamente, el producto de dicha conducta delictiva.



Recuento 4

Declaración de infracción

Posesión o control de bienes de origen delictivo, en contra de lo dispuesto en el artículo 30(1)(c) de la Ley de 1999 sobre el producto del delito (Jersey).

Datos de la infracción

Martin John **HILL** en o antes del 7th día de enero de 2018 con respecto a la conducta criminal, a saber:

- (a) entre el 3rd de marzo de 2014 y el 1st de septiembre de 2016, haber participado a sabiendas en la evasión fraudulenta del IVA, en contra de lo dispuesto en el artículo 72(1) de la Ley del Impuesto sobre el Valor Añadido de 1994, y/o haber tomado medidas con vistas a dicha evasión;
- (b) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 haciendo declaraciones falsas a Her Majesty's Revenue and Customs mediante la presentación de declaraciones falsas o inexactas aumentando los valores del impuesto soportado y suprimiendo los valores del impuesto repercutido dando lugar al pago insuficiente de impuestos y a intentos de obtener devoluciones de impuestos en perjuicio de Her Majesty's Revenue and Customs y en beneficio del citado Martin John **HILL**;
- (c) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 al no facilitar a Her Majesty's Revenue and Customs los verdaderos ingresos percibidos en relación con los ingresos por alojamiento y bar/restaurante para el Burlington Hotel Sandown Limited T/A Burlington Hotel, Burlington Hotel Operations Limited T/A Burlington Hotel y el Shanklin Beach Hotel Ltd T/A Shanklin Beach Hotel, lo que resultó en el pago insuficiente de impuestos en perjuicio de Her Majesty's Revenue and Customs y en beneficio de dicho Martin John **HILL**;
- (d) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 proporcionando intencionadamente a los clientes del Burlington Hotel Sandown Limited T/A Burlington Hotel, Burlington Hotel Operations Limited T/A Burlington Hotel y el Shanklin Beach Hotel Ltd T/A Shanklin Beach Hotel, facturas con un Número de Registro de IVA inexacto y engañoso en perjuicio de Her Majesty's Revenue and Customs y en beneficio del citado Martin John **HILL**.

(conductas que, de haberse producido en Jersey, habrían constituido delitos de Fraude y delitos relacionados con el impuesto sobre bienes y servicios con arreglo a los artículos 88-89 de la Ley del impuesto sobre bienes y servicios (Jersey) de 2007)

tenía en su poder o bajo su control el producto de dicha conducta delictiva, a saber, un saldo acreedor de £340.913,66 en la cuenta 200253268 en Santander International (Jersey Branch), sabiendo o sospechando que los bienes representaban, en todo o en parte, directa o indirectamente, el producto de dicha conducta delictiva.



Recuento 5

Declaración de infracción

Sacar bienes de origen delictivo de Jersey, en contra de lo dispuesto en el artículo 31(1)(d) de la Ley de 1999 sobre el producto del delito (Jersey)

Datos de la infracción

Martin John **HILL** entre el 7º día de enero de 2018 y el 10º día de enero de 2018 respecto de conductas delictivas, a saber:

- (a) entre el 3rd de marzo de 2014 y el 1st de septiembre de 2016, haber participado a sabiendas en la evasión fraudulenta del IVA, en contra de lo dispuesto en el artículo 72(1) de la Ley del Impuesto sobre el Valor Añadido de 1994, y/o haber tomado medidas con vistas a dicha evasión;
- (b) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 haciendo declaraciones falsas a Her Majesty's Revenue and Customs mediante la presentación de declaraciones falsas o inexactas aumentando los valores del impuesto soportado y suprimiendo los valores del impuesto repercutido dando lugar al pago insuficiente de impuestos y a intentos de obtener devoluciones de impuestos en perjuicio de Her Majesty's Revenue and Customs y en beneficio del citado Martin John **HILL**;
- (c) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 al no proporcionar a Her Majesty's Revenue and Customs los verdaderos ingresos percibidos en relación con el alojamiento y los ingresos del bar/restaurante para el Burlington Hotel Sandown Limited T/A Burlington Hotel, Burlington Hotel Operations Limited T/A Burlington Hotel y el Shanklin Beach Hotel Ltd T/A Shanklin Beach Hotel, lo que resultó en el pago insuficiente de impuestos en perjuicio de Her Majesty's Revenue and Customs y en beneficio de dicho Martin John **HILL**;
- (d) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 proporcionando intencionadamente a los clientes del Burlington Hotel Sandown Limited T/A Burlington Hotel, Burlington Hotel Operations Limited T/A Burlington Hotel y el Shanklin Beach Hotel Ltd T/A Shanklin Beach Hotel, facturas con un Número de Registro de IVA inexacto y engañoso en perjuicio de Her Majesty's Revenue and Customs y en beneficio del citado Martin John **HILL**.

(conductas que, de haberse producido en Jersey, habrían constituido delitos de Fraude y delitos relacionados con el impuesto sobre bienes y servicios con arreglo a los artículos 88-89 de la Ley del impuesto sobre bienes y servicios (Jersey) de 2007)

sacó el producto de dicha conducta delictiva de la Isla de Jersey, a saber, un saldo acreedor de £340.500 en la cuenta 200253268, en Santander International (Jersey Branch), a la cuenta ES3121004918187200313303 en el Banco CaixaBank (CAIXESBBXXX) en España, sabiendo o sospechando que los bienes representaban, en todo o en parte, directa o indirectamente, el producto de dicha conducta delictiva.



Recuento 6

Declaración de infracción

Conversión o transferencia de bienes de origen delictivo, en contra de lo dispuesto en el artículo 31(1)(c) de la Ley de 1999 sobre el producto del delito (Jersey).

Datos de la infracción

Martin John **HILL** entre el 16º día de mayo de 2017 y el 27º día de junio de 2018 respecto de conductas delictivas, a saber:

- (a) entre el 3rd de marzo de 2014 y el 1st de septiembre de 2016, haber participado a sabiendas en la evasión fraudulenta del IVA, en contra de lo dispuesto en el artículo 72(1) de la Ley del Impuesto sobre el Valor Añadido de 1994, y/o haber tomado medidas con vistas a dicha evasión;
- (b) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 haciendo declaraciones falsas a Her Majesty's Revenue and Customs mediante la presentación de declaraciones falsas o inexactas aumentando los valores del impuesto soportado y suprimiendo los valores del impuesto repercutido dando lugar al pago insuficiente de impuestos y a intentos de obtener devoluciones de impuestos en perjuicio de Her Majesty's Revenue and Customs y en beneficio del citado Martin John **HILL**;
- (c) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 al no proporcionar a Her Majesty's Revenue and Customs los verdaderos ingresos percibidos en relación con el alojamiento y las entradas de bar/restaurante para el Burlington Hotel Sandown Limited T/A Burlington Hotel, Burlington Hotel Operations Limited T/A Burlington Hotel y el Shanklin Beach Hotel Ltd T/A Shanklin Beach Hotel, lo que dio lugar a un pago insuficiente de impuestos en perjuicio de Her Majesty's Revenue and Customs y en beneficio del citado Martin John **HILL**;
- (d) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 proporcionando intencionadamente a los clientes del Burlington Hotel Sandown Limited T/A Burlington Hotel, Burlington Hotel Operations Limited T/A Burlington Hotel y el Shanklin Beach Hotel Ltd T/A Shanklin Beach Hotel, facturas con un Número de Registro de IVA inexacto y engañoso en perjuicio de Her Majesty's Revenue and Customs y en beneficio del citado Martin John **HILL**.

(conductas que, de haberse producido en Jersey, habrían constituido delitos de Fraude y delitos relacionados con el impuesto sobre bienes y servicios con arreglo a los artículos 88-89 de la Ley del impuesto sobre bienes y servicios (Jersey) de 2007)

convirtió el producto de dicha conducta delictiva, a saber, saldos acreedores por un total de 28.487 libras esterlinas en la cuenta 20053268, en Santander International Jersey Branch), a 31.392 euros en la cuenta 20053269, en euros, en Santander International (Jersey Branch), sabiendo o sospechando que los bienes representaban, en todo o en parte, directa o indirectamente, el producto de dicha conducta delictiva.



Recuento 7

Declaración de infracción

Sacar bienes de origen delictivo de Jersey, en contra de lo dispuesto en el artículo 31(1)(d) de la Ley de 1999 sobre el producto del delito (Jersey)

Datos de la infracción

Martin John **HILL** entre el 16º día de mayo de 2017 y el 27º día de junio de 2018 respecto de conductas delictivas, a saber:

- (a) entre el 3rd de marzo de 2014 y el 1st de septiembre de 2016, haber participado a sabiendas en la evasión fraudulenta del IVA, en contra de lo dispuesto en el artículo 72(1) de la Ley del Impuesto sobre el Valor Añadido de 1994, y/o haber tomado medidas con vistas a dicha evasión;
- (b) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 haciendo declaraciones falsas a Her Majesty's Revenue and Customs mediante la presentación de declaraciones falsas o inexactas aumentando los valores del impuesto soportado y suprimiendo los valores del impuesto repercutido dando lugar al pago insuficiente de impuestos y a intentos de obtener devoluciones de impuestos en perjuicio de Her Majesty's Revenue and Customs y en beneficio del citado Martin John **HILL**;
- (c) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 al no proporcionar a Her Majesty's Revenue and Customs los verdaderos ingresos percibidos en relación con el alojamiento y las entradas de bar/restaurante para el Burlington Hotel Sandown Limited T/A Burlington Hotel, Burlington Hotel Operations Limited T/A Burlington Hotel y el Shanklin Beach Hotel Ltd T/A Shanklin Beach Hotel, lo que dio lugar a un pago insuficiente de impuestos en perjuicio de Her Majesty's Revenue and Customs y en beneficio del citado Martin John **HILL**;
- (d) entre el 3rd día de marzo de 2014 y el 1st día de septiembre de 2016 proporcionando intencionadamente a los clientes del Burlington Hotel Sandown Limited T/A Burlington Hotel, Burlington Hotel Operations Limited T/A Burlington Hotel y el Shanklin Beach Hotel Ltd T/A Shanklin Beach Hotel, facturas con un Número de Registro de IVA inexacto y engañoso en perjuicio de Her Majesty's Revenue and Customs y en beneficio del citado Martin John **HILL**.

(conductas que, de haberse producido en Jersey, habrían constituido delitos de Fraude y delitos relacionados con el impuesto sobre bienes y servicios con arreglo a los artículos 88-89 de la Ley del impuesto sobre bienes y servicios (Jersey) de 2007)

sacó el producto de dicha conducta delictiva de la Isla de , a saber, un saldo acreedor de 26.492 euros en la cuenta 20053269, en Santander International (Jersey Branch), con destino a España, mediante transferencias bancarias a CAIXABANK A/C ES4721004918160700053568, reintegros en efectivo y gastos con tarjeta de débito, y a Francia y Alemania mediante reintegros en efectivo y gastos con tarjeta de débito, sabiendo o sospechando que los bienes representaban, en todo o en parte, directa o indirectamente, el producto de dicha conducta delictiva.

HM FISCAL GENERAL
MARK TEMPLE KC



HM PROCURADOR
GENERAL MATTHEW
JOWITT KC

DEPARTAMENTO DE POLICÍA **R8**
CASA MORIER
ST HELIER
JERSEY JE1 1DD

Convocado a instancia del Fiscal General de Su Majestad para oír la declaración de testigos sobre dicha acusación en virtud del Acta de Corte de fecha 13 de marzo de 2024 y ello de conformidad con la Ley de Enjuiciamiento Criminal.

Testigos de cargo

Nigel Martin David

Sowden Jeremy

House

Testigos de descargo

ANNEX 8

IN THE CROWN COURT AT LEWES

MATTER NO:

BETWEEN

IN THE MATTER OF MARTIN HILL (ALLEGED OFFENDER)

AND

IN THE MATTER OF THE PROCEEDS OF CRIME ACT 2002

PROVISION OF INFORMATION BY MARTIN HILL IN ACCORDANCE

WITH A RESTRAINT ORDER DATED 21ST MARCH 2018 PROHIBITING THE DISPOSAL OF ASSETS

I, Martin Hill, DOB 03/03/1968, make this statement, consisting of 4 pages, each signed by me, which is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated...16.04.2018

Signed.....

I make this statement pursuant to an Order made by His Honour Judge Gold QC sitting at Lewes Crown Court on 21st March 2018 pursuant to s41 Proceeds of Crime Act 2002.

In order to answer the Disclosure Orders at paragraph 8 of the said Order I shall deal with them by way of reference to the numbered paragraphs as follows:-


- a) The details of all persons and financial institutions holding assets under the control of the Alleged Offender are detailed at paragraphs d, e, f, l, j and l below.
- b) The Alleged Offender asserts that third parties hold the following interests in his assets:
 - i. His wife, Amanda Crighton-Hill, holds a joint interest in the account at Lloyds Bank, Isle of Man, account number 23136160 sort code 30-16-41, held in the joint names of Martin Hill and Amanda Crighton-Hill
 - ii. His wife, Amanda Crighton-Hill, holds a joint interest amounting to 50% of the leasehold over property known as Orchard Lee, Nunwell Street, Sandown, PO36 9DE
 - iii. The Alleged Offender purchased the leasehold of Burlington Hotel Avenue Road, Sandown, PO36 8BN. His landlord is Indygo Pink Limited, Cowes, Isle of Wight, who own the freehold of the property


16/04/18

- c) The Alleged Offender currently receives a salary of £750 per month from Burlington Hotel Operations Limited, Burlington Hotel, Avenue Road, Sandown, PO36 8BN, which is paid in to the Alleged Offender's Santander account number 95616370 sort code 09-01-28
- d) The Alleged Offender holds the following bank accounts in the UK and abroad:
- i. Barclays Bank, Newport, Isle of Wight. Name: Martin Hill. Account number: 23134148. Sort code: 20-60-55. Current balance: £129.37
 - ii. Barclays Bank, Newport, Isle of Wight. Name: Martin Hill. Account number: 68685311. Sort code: 20-60-55. Current balance: €58.57
 - iii. Barclays Bank, Newport, Isle of Wight. Name: Burlington Hotel Operations Limited. Account number: 83261476. Sort code: 20-60-55. Current balance: approximately (-£10,000)
 - iv. Barclays Bank, Newport, Isle of Wight. Name: Meadowden Consulting Limited. Account number: 03372189. Sort code: 20-60-55. Current balance: £18.60
 - v. Santander, Liverpool. Name: Burlington Hotel Operations Limited. Account number: 20193470. Sort code: 09-01-29. Current balance: £100.00
 - vi. Santander, Liverpool. Name: Martin Hill. Account number: 95616370. Sort code: 09-01-28. Current balance: £294.00
 - vii. Santander, Liverpool. Name: Martin Hill. Account number: 120053269. Sort code: 16-51-71. Current balance: €4,326.15
 - viii. Santander, Liverpool. Name: Martin Hill. Account number: 120053268. Sort code: 16-51-71. Current balance: £111.20
 - ix. Santander, Liverpool. Name: Martin Hill. Account number: 1200532470. Sort code: 16-51-71. Current balance: US\$0.00
 - x. Tesco Bank. Name: Martin Hill. Account number: 10216556. Sort code: 40-64-20. Current balance: £434.27
 - xi. Tesco Bank. Name: Martin Hill. Account number: 13693715. Sort code: 40-64-05. Current balance: £0.00
 - xii. Tesco Bank. Name: Martin Hill. Account number 15627401. Sort code: 40-64-05. Current balance: £0.00
 - xiii. Lloyds Bank, Isle of Man. Name: Martin Hill & Amanda Crighton-Hill. Account number 23136160. Sort code: 30-16-41. Current balance: £7.50


16/04/18

- xiv. Halifax, Boston, Lincolnshire. Name: Martin Hill. Account number: 00684101. Sort code: 11-00-77. Current balance: £0.00
 - xv. Nationwide. Name: Martin Hill. Account number: 42287973. Sort code: 07-02-46. Current balance: £95.18
 - xvi. Banco Atlantico, Malaga, Spain. Name: Martin Hill. The Alleged Offender has not used this account since 2011 and as such is not able to confirm the account number. Current balance: approximately (-€11,261.00)
 - xvii. Banco Santander, Canaries. Name: Martin Hill. The Alleged Offender has not used this account since 2011 and as such is not able to confirm the account number. Current balance: approximately (-€10,000.00)
 - xviii. HSBC, Singapore. Name: Martin Hill. The Alleged Offender has not used this account since 1999 and as such is not able to confirm the account number. Current balance: \$0.00/overdrawn
 - xix. DBS Bank, Singapore. Name: Martin Hill. The Alleged Offender has not used this account since 2011 and as such is not able to confirm the account number. Current balance: \$0.00/overdrawn
- e) The Alleged Offender has an interest in the following properties:
- i. Leasehold of Orchard Lee, Nunwell Street, Sandown, PO36 9DE. This leasehold is jointly owned with the Alleged Offender's wife Amanda Crighton-Hill. The Alleged Offender has a 50% interest in the proceeds of any sale of the leasehold
 - ii. Leasehold of Burlington Hotel, Avenue Road, Sandown, PO36 8BN. Leased from Indygo Pink Limited, 7 Captains Parade, East Cowes, Isle of Wight, by Burlington Hotel Operations Limited. The interest of Burlington Hotel Operations Limited in the leasehold is 100%
- f) The Alleged Offender holds the following shares:
- i. Burlington Hotel Operations Limited: £1.00/1 share
 - ii. Burlington Hotel Sandown Limited: £1.00/1 share
 - iii. Meadowden Consulting Limited: £1.00/1 share
 - iv. Shanklin Beach Hotel Limited: £1.00/1 share
- g) The Alleged Offender is not a beneficiary of any trust;
- h) There is no income or debt due to the Alleged Offender;


16/04/13

i) & j) The Alleged Offender has transferred and received the following assets valued over £1,000 since 19th March 2012:

- i. Flat 5, 16 Prospect Road, PO37 9AE. This was sold through Purplebricks. Details of the purchaser are unknown as the conveyancing was managed by MJP Conveyancing, Norwich
- ii. Orchard Lee, Nunwell Street, Sandown, PO36 9DE. This property was purchased following the sale of Flat 5, Prospect Road above. The conveyancing was managed by MJP Conveyancing, Norwich, and as such the seller is unknown to the Alleged Offender
- iii. 2011: Jeep Cherokee written off due to flooding
- iv. 2012: Jeep Cherokee purchased through the insurance payment for the previous vehicle that was written off. This vehicle was sold on Ebay, no records were kept of the purchaser's details
- v. 2014: Range Rover Sport. This vehicle was purchased and sold on Ebay, no records were kept of the details of the original seller or the end purchaser
- vi. 2014: Jeep Cherokee. This was purchased on Ebay from Jeep Direct. This was sold on Ebay, no records were kept of the purchaser's details
- vii. 2014: Jeep Cherokee. This was purchased on Ebay in replacement of the above. No records were kept of the seller's details. This was traded in at Meridian Milano, Portsmouth
- viii. 2015: Jeep Cherokee. Purchased from Meridian Milano, Portsmouth, in part-exchange for the above vehicle
- ix. 2015: Ford Transit minibus. This was purchased and sold on Ebay as a company vehicle for Shanklin Beach Hotel. No records were kept of the details of the original seller or the end purchaser
- x. 2016: Ford Transit van. This was purchased and sold on Ebay as a company vehicle for Shanklin Beach Hotel, in replacement of the above. No records were kept of the details of the original seller or the end purchaser


k) The Alleged Offender will provide a copy of any such civil court process, as detailed in paragraph k of the Restraint Order, to the Prosecutor

l) In relation to funds previously held in the Alleged Offender's Tesco Savings account number 13693715 sort code 40-64-05; funds were transferred between accounts to take advantage of accounts with a higher rate of interest. The accounts to which funds were transferred contained both business and personal funds/savings.

Following payments for rent, refurbishment/repairs and loans, funds have most recently been transferred to a conveyancer in Spain for the purchase of a family home in Spain.

Signed: 

Date: 16.04.2018


16/04/18

**WITNESS STATEMENT
IN SUPPORT OF AN APPLICATION FOR A RESTRAINT ORDER
(SECTION 41 PROCEEDS OF CRIME ACT 2002)**

This statement (consisting of three pages, each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have willfully stated anything which I know to be false or do not believe to be true.

Dated: 21 May 2018

Signature: 

IN THE CROWN COURT AT HOVE

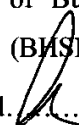
Martin John HILL

WITNESS STATEMENT

1. I am Christopher James Love, a financial investigator employed by HM Revenue and Customs. I make this witness statement to supplement the statement I made on 21 March 2018 in support of an application by the Crown Prosecution Service (CPS) for a Restraint Order pursuant to section 41 of the Proceeds of Crime Act 2002.
2. This statement is made to update the court on the progress of the investigation as required by the Restraint Order against Mr Martin John HILL granted by His Honour Judge Gold on 21 March 2018.

Criminal Investigation

3. I have been asked to provide an update to the court on the progression of the criminal investigation, Operation Insomnia, since 21 March 2018, as required in the restraint process. I have liaised with the criminal case team and state the following:
4. The Forensic Accountants who were tasked with analysis of VAT liabilities in respect of Burlington Hotel Operations Ltd. (BHOL), Burlington Hotel Sandown Ltd. (BHSL) and Shanklin Beach Hotel Ltd. (SBHL) have concluded their investigation

Signed: 

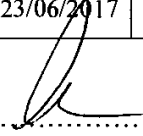
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Date 21 May 2018.....

and submitted a draft report on 25 April 2018. The CPS requested that it be checked by an HMRC VAT specialist. This has been done and a witness statement provided by the HMRC VAT specialist. The report concludes that the final figure of VAT evaded during the period under investigation is £394,032.00.

5. This report was also forwarded to the Crown Prosecution Service for consideration prior to a charging decision being made in respect of the criminal matter on 25th April 2018.
6. The criminal case team have obtained evidence of further dissipation of funds. They obtained a Production order at Hove Crown Court on 24 April 2018 in respect of Tesco Bank savings account number 15627401 in the name of Martin HILL.
7. This account was discovered as a result of a previous Production order obtained at Hove Crown Court on 30 August 2017 in respect of Tesco Bank savings account number 13693715 in the name of Martin HILL, where a sum of £261,188.25 had been accumulated.
8. Mr HILL had purchased Flat 5, 16 Prospect Road, Shanklin, Isle of Wight PO37 6AE (Title Number IW63896) on 10 December 2014 for £140,000. This purchase was not subject to any mortgage. The property then was sold on the 27th July 2016 for £170,000. The funds from the sale of the property were deposited into Mr HILL's Barclays account number 23134148 from where it was transferred via seventeen separate payments of £10,000 over the course of three days into Mr HILL's Tesco savings account number 13693715. The balance of this Tesco account as at the 26th August 2016 was £261,188.25. HMRC believe these funds to be part of the benefit of the alleged fraud. Mr HILL has subsequently transferred these funds as follows:

Date	Amount	Receiving Account	Account Name
30/05/2017	£60,000.00	Tesco Bank 406420 10216556	Martin HILL
23/06/2017	£100,000.00	Tesco Bank 406405 15627401	Martin HILL
23/06/2017	£90,000.00	Tesco Bank 406420 10216556	Martin HILL
23/06/2017	£10,000.00	Santander 165171 20053268	Offshore private account – Jersey (account holder unknown)

Signed. 

2

Date 21 May 2018.....

10. Analysis of the Production order material received in respect of Tesco Bank account 15627401 (which had been opened after Mr HILL's arrest) showed that £84,500.00 of the £100,000.00 transferred into it on 23 June 2017 had once again been transferred to the Santander Bank account held in the States of Jersey. Further sums were transferred out of this account to another account held by Mr HILL with Santander Bank. As of 01 April 2018, this account held a nil balance.

12. The reviewing lawyer has indicated that an MG3 with a charging decision will be provided by the CPS in the week commencing 21 May 2018. The charges that the case team proposed are –

Cheating the Public Revenue contrary to Common Law,

Fraud by making or supplying articles for use in frauds, Fraud Act 2006 s.2 (7),


The fraudulent evasion of Value Added Tax (VAT) contrary to s.72 (2) of the Value Added Tax (VAT) Act 1994,

Money Laundering contrary to the Proceeds of Crime Act 2002 (as amended) s.327 Concealing, s.328 Arrangements and s.329 Acquisition use and possession.

I believe that the facts stated in this witness statement are true.

Name of Witness: Christopher James LOVE

Date: 21 May 2018

Signed: 

Date 21 May 2018.....

*1254 Connelly Appellant; v Director of Public Prosecutions Respondent.



Mixed Judicial Consideration

Court

House of Lords

Judgment Date

21 April 1964

Report Citation

[1964] 2 W.L.R. 1145

[1964] A.C. 1254



House of Lords

Lord Reid , Lord Morris of Borth-Y-Gest , Lord Hodson , Lord Devlin and Lord Pearce.

Edmund Davies , Lawton and Lyell JJ.

1963 Dec. 10, 11, 12, 16, 17, 18, 19. 1964 Jan. 15, 16, 20; April 21.

1963 Sept. 24, 25, 26, 27, 30.

Crime—Nemo debet bis vexari—Acquittal by Court of Criminal Appeal—Effect—Indictments for murder and robbery—Trial on murder charge alone—Two defences, including alibi—Conviction of non—capital murder—Appeal raising issue on alibi only—Murder conviction quashed on ground of misdirection to jury on alibi issue—Whether tantamount to finding on issue of alibi—Trial on second indictment for robbery—Whether barred by plea of autrefois acquit—"Issue estoppel"—Whether available in English criminal law— [Criminal Appeal Act, 1907 \(7 Edw. 7, c. 23\), s. 4 \(1\) \(2\)](#) .

Crime—Evidence—Previous proceedings—Acquittal on murder charge—Trial for robbery—Oral statements attributed to defendant admitted at first trial admissible at second—Whether fact of acquittal admissible in rebuttal—Acquittal by aerate of Criminal Appeal.

Crime—Practice—Indictment—Discretion—Judge of opinion that prosecution should not proceed—Whether discretion to prevent trial.

*Crime—Court of Criminal Appeal—Acquittal by—Effect—Murder conviction quashed on ground of misdirection to jury on one issue—Whether tantamount to finding of fact on that issue—Trial on [*1255](#) further indictment for robbery raising same issue—Whether barred— [Criminal Appeal Act, 1907 \(7 Edw. 7, c.23\), s. 4](#) .*

Estoppel—Per rem judicatam—Criminal proceedings—"Issue estoppel"—Ingredients—Whether available as plea in bar.

By [section 4 of the Criminal Appeal Act, 1907](#) : "(1) The Court of Criminal Appeal on any such appeal against conviction shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law, or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal: Provided that the court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no

substantial miscarriage of justice has actually occurred. (2) Subject to the special provisions of this Act, the Court of Criminal Appeal shall, if they allow an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered ..."

The appellant, C., and three other men were charged on two indictments with murder and robbery with aggravation, arising out of an office robbery in November, 1962, during which an employee was killed. In accordance with practice, the indictment for murder was tried alone, C.'s defence being (a) alibi, and (b) if present, no intent to murder. The jury returned a general verdict of guilty against all four men. At the conclusion of the trial the judge directed that the indictment for robbery should remain on the file marked "Not to be proceeded with without leave of this court or of the Court of Criminal Appeal." C. appealed on some 15 grounds but the sole issue considered by the Court of Criminal Appeal was whether the evidence and the direction to the jury on the question whether or not C. had been present at the scene of the crime were satisfactory. The court considered that on that issue the jury had been so misdirected that the conviction must be quashed and directed a verdict of acquittal to be entered, as required by section 4 of the Act; but the court thereafter granted leave to the Crown to proceed with the prosecution of C. on the second indictment for robbery. One month later the matter came before John Stephenson J. when the plea of *autrefois acquit* was raised on C.'s behalf; the judge directed the jury empanelled to try that issue that the plea had not been established and a verdict to that effect was returned. The judge was also asked to exercise his discretion to prevent the Crown from proceeding on the second indictment, but held that the only discretion which a judge had in such circumstances was to express an opinion; and he expressed the opinion that it would be wrong for the Crown to proceed. Despite that opinion, the Crown proceeded with the prosecution; and a month later C. was tried and convicted on the robbery indictment:-

Held, that the plea of *autrefois acquit* must be given a limited **1256* scope and it was not a bar to C. being tried afresh on the robbery charge. This case did not come within the proposition that the plea of *autrefois* can arise whenever in order to prove the offence alleged in the second indictment the prosecution must prove that the accused has committed an offence of which he has previously been either convicted or acquitted.

Per Lord Morris of Borth-y-Gest. On a plea of *autrefois acquit* it must be considered whether the crime charged in the later indictment is the same, or in effect the same, as the crime charged in a former indictment and it is immaterial that the facts under examination or the witnesses called in the later proceedings are the same as those in the earlier proceedings (post, p. 1306).

Per Lord Devlin. For the doctrine of *autrefois acquit* to apply the accused must have been put in peril for the same offence both in fact and law with which he was previously charged. The offence must be exactly the same in law because legal characteristics are precise and either they are the same or they are not (post, p. 1339).

Per Lord Morris of Borth-y-Gest. The principle of *res judicata* applies to criminal cases, but on a verdict of Guilty or Not Guilty it was often not possible to deduce whether it involved a particular determination; it was not possible in the present case (post, p. 1321).

Per Lord Hodson. The reliance on issue estoppel breaks down here because, looking at the verdict of the jury and the judgment of the Court of Criminal Appeal, it is impossible to establish any separate issue in C.'s favour (post, p. 1334).

Per Lord Devlin. For issue estoppel actual determination of issues is essential and the formal verdict entered by the Court of Criminal Appeal revealed only that there had been a misdirection of fact. There was no determination on the issue of identity (post, p. 1345).

Rex v. Norton [1910] 2 K.B. 496; 25 T.L.R. 550, C.C.A. applied .

Reg. v. Chairman, County of London Quarter Sessions; Ex parte Downes [1954] 1 Q.B. 1; [1953] 3 W.L.R. 586; [1953] 2 All E.R. 750, D.C. followed .

Sambasivam v. Public Prosecutor, Federation of Malaya [1950] A.C. 45866 T.L.R. (Pt. 2) 254; ,P.C. distinguished .

Reg. v. Salvi (1857) 10 Cox 481n.; *Reg. v. King [1897] 1 Q.B. 214; 13 T.L.R. 27*; *Reg. v. Ollis [1900] 2 Q.B. 758; 16 T.L.R. 477*; *Rex v. Barron [1914] 2 K.B. 570; 30 T.L.R. 422, C.C.A.*; *Rex v. Kupferberg (1918) 13 Cr.App.R. 166; 34 T.L.R. 587, C.C.A.*; *Mraz v. The Queen (No. 2) (1956) 96 C.L.R. 62* and *Broaden v. Robinson [1960] S.R.(N.S.W.) 297* considered.

Per Lord Devlin. It is within the power of the court to declare that the prosecution must as a general rule join in the same indictment charges which are founded on the same facts or are part of a series of offences of the same or a similar character. As a general rule a judge should stay an indictment founded on the same facts as the charges in a previous indictment on which the accused has been tried. But a second trial on the same or similar facts is not always and necessarily oppressive and in special circumstances may be just and convenient (*post*, pp. 1359-1360).

***1257**

Per Lord Reid, Lord Devlin and Lord Pearce. The rule of practice based on *Rex v. Jones [1918] 1 K.B. 416, C.C.A.* that a second charge is never combined in one indictment with a charge of murder is inconvenient and should be changed, although in a case where it would have been improper to combine the charges a second indictment is allowable. The course which the present case had taken was in accordance with existing practice (*post*, pp. 1296, 1360, 1368).

Decision of the Court of Criminal Appeal *post*, p. 1268; [1963] 3 W.L.R. 839; [1963] 3 All E.R. 510, C.C.A. affirmed.

APPEAL from the Court of Criminal Appeal (Edmund Davies, Lawton and Lyell JJ.).

The appellant, Charles Connelly, appealed against a decision of the Court of Criminal Appeal delivered on September 30, 1963. On June 24, 1963, he had been convicted at the Central Criminal Court of robbery with aggravation and sentenced to 15 years' imprisonment. The Court of Criminal Appeal dismissed his appeal against conviction and sentence.

In February, 1963, four men - Thatcher, Hilton, Kelly, and the present appellant, Charles Connelly - were charged before Roskill J. and a jury with the murder of an employee of the Royal Arsenal Co-operative Society in the course of robbing their depot at Mitcham on the night of November 17, 1962. At the trial, Thatcher, Hilton and Connelly denied that they were present at the scene of the crime, and Connelly further claimed, as an alternative defence, that, if he had been present, the evidence did not establish that he had the felonious intent necessary to support a conviction for murder. Kelly admitted that he was at the scene of the crime and that he was a robber, but he denied that he was a murderer. The jury convicted Thatcher of capital murder and the other three men, including Connelly, of non-capital murder.

There had originally been against all four men not only the indictment for murder but also a second indictment for robbery with aggravation. In accordance with the rule of practice, the indictment for murder was tried alone; but at the conclusion of the trial, after the four men had been convicted and sentenced, Roskill J. ordered that the second indictment should remain on the file, marked: "Not to be proceeded with without the leave of this court or of the Court of Criminal Appeal."

Three of the convicted men, including Connelly, appealed to the Court of Criminal Appeal. Connelly put forward some 15 grounds of appeal, but the court found it necessary to consider only the first four; and in the event the only issue ventilated ***1258** in the Court of Criminal Appeal was whether the evidence and the direction to the jury thereon relating to Connelly's alleged presence at the scene of the murder were satisfactory. The issue as to murderous intent was not raised.

Ashworth J., giving the judgment of the court (Ashworth, Winn and Thompson JJ.) on April 5, 1963, said ¹: "When Hilton and Connelly were arrested they were also said to have admitted being present. ... On Connelly's appeal, Connelly stated that during the week before the offence he had travelled to the north and back. A New Year card on which he had jotted down details of an accident he said he had seen on the trip was described by the prosecution as the acid test of his veracity. The Crown case was that the whole story was fictitious and the card was a memorandum of information from someone else. Unhappily, when summing up, the trial judge referred to the card, and invited, almost directed, the jury to find that it was bogus. A judge was entitled to express his own views and the trial judge had already told the jury that they could accept or reject any comments he made. It was incumbent on him, however, to lay before the jury, after making his comment, any evidence to a contrary effect so that they could form their own conclusions one way or the other. Connelly's explanation for making notes on the card should have been put before the jury. The court was driven reluctantly to the view that the jury did not receive adequate direction. When

dealing with evidence of a footprint, said to have been made by Connelly on a piece of carbon paper in the office, the judge descended into the arena and reminded the jury of some of the evidence. In the course of doing that the judge made critical comments of the defence evidence. To say that he was pouring scorn on an expert witness for the defence was scarcely putting it too high. It was not for the court to express a view whether the comments were justified; but if the matter was to be dealt with, it was incumbent on the judge to deal with it fully and fairly ... there were matters which, in justice to Connelly, should have been dealt with more fully in the summing up. He was entitled through his counsel to say that the omission of a full and proper direction resulted or might have resulted in a miscarriage of justice. His defence, he said, was not adequately presented in the summing up and this court finds there is justification for that comment. It is undesirable *1259 that this court should go further by commenting on the strength or otherwise of the case against him. It may be that these matters will have to be considered hereafter by a different jury, if Connelly has to face a different charge. ..."

The result of the appeals of the three men was that in Thatcher's case a verdict of non-capital murder was substituted, Hilton's appeal was dismissed, and Connelly's appeal was allowed, the court ordering, as directed by [section 4 \(2\) of the Criminal Appeal Act, 1907](#), that the conviction for murder be quashed and a verdict of acquittal directed. At the conclusion of the court's judgment, the Crown applied for leave to prefer against Connelly the second indictment alleging robbery with aggravation. After hearing argument, the court granted that application, and Connelly was remanded in custody to await trial.

The matter then came before John Stephenson J. on May 8, 1963, when *autrefois acquit* was advanced as a plea in bar to the trial of the robbery indictment and a jury was empanelled for the purpose of adjudicating upon that plea. The judge directed the jury that the plea had not been established, and they returned a verdict accordingly. He further held that the only discretion he had in the circumstances was to express an opinion as to the propriety of the Crown's proceeding with the robbery indictment, and he thereupon expressed the opinion that this would be wrong. Despite that opinion, the Crown was not prepared to abstain from proceeding with the second trial, and the Attorney-General refused to enter a *nolle prosequi*. In those circumstances, John Stephenson J. took the view that there was no way in which he could stop the robbery indictment from proceeding and he ordered that Connelly be remanded in custody to await trial. That trial started before Nield J. and a jury at the Central Criminal Court on June 7 and finished on June 24, 1963. Connelly was convicted of robbery with aggravation and sentenced to 15 years' imprisonment. He appealed against both conviction and sentence on 22 grounds, the principal grounds being set out in the judgment of the Court of Criminal Appeal (*infra*).

C. L. Hawser Q.C. and A. F. Waley for the appellant. First, the doctrine of *autrefois acquit*, which is on the authorities much wider in scope than the two headings set out in Archbold, 35th ed. (1962), para. 436, is wide enough to cover this case; and John Stephenson J. wrongly directed the jury that it had not been made out. The authorities show that the courts have applied the doctrine to cases not only of "the same offence" *1260 but also of "substantially the same offence," and also to cases where a conviction on a second indictment would be inconsistent with acquittal on the first. In *Reg. v. Gould* ² the offences of murder and burglary with violence were not "the same" or even "substantially the same"; but on the issue of the use of violence it was held that the second indictment could not stand.

[LAWTON J. Is not the whole basis of the law relating to *autrefois* a matter of pleading, so that you look at the record to see what was alleged in the two charges?]

No; it was permissible to look beyond the record to see what was actually decided and where an issue could be isolated the plea in bar prevailed: [*Reg. v. Bird* ³; *Reg. v. Elrington* ⁴; *Reg. v. Morris* ⁵; *Reg. v. De Salvi* ⁶; *Wemyss v. Hopkins* ⁷; *Reg. v. O'Brien* ⁸ and *Reg. v. Gilmore* ⁹ were referred to.] In *Reg. v. Miles* ¹⁰ *autrefois acquit* was said to bar proceedings for the same "offence"; but it is submitted that that meant the same "matter."

[LAWTON J. If it is the same "matter," it can be dealt with on a broader basis; but if *autrefois acquit* is a matter for the jury and technically it is the same offence, the judge must direct the jury that it is the same offence and the jury becomes a mere rubber stamp. Who decides in a border-line case that it is the same "matter"??]

The judge decides, and the jury have to do what they are told, as they were in *Reg. v. Buckle and Owens* ¹¹ by Diplock J. and in the present case by John Stephenson J. The situation arose in *Reg. v. King*, ¹² which is relied on, when a larceny conviction was quashed because it was inconsistent with a previous conviction for false pretenses.

In the present case it is agreed that only two issues were before the jury on the murder trial and that only one of those issues was considered by the Court of Criminal Appeal, so that it is possible to isolate the issue on which the acquittal was directed,

namely, whether or not it had been proved that the appellant was present at the scene of the crime; and therefore the plea of autrefois acquit is available. If one were limited to looking at *1261 the record, the issue determined could not be ascertained, but the court can and should look beyond the record and is then able to see in this case the isolated issue determined by the Court of Criminal Appeal as a bar to a second trial. [*Reg. v. Friel* ¹³; *Reg. v. Grimwood* ¹⁴ and *Reg. v. King* ¹⁵ were referred to.]

Secondly, the doctrine known in certain common law jurisdictions as "issue estoppel" is available as a plea in bar to the trial on the indictment for robbery. While it is conceded that the general approach to a plea of autrefois acquit or convict has been somewhat technical, there is some English authority and a large amount of Australian, New Zealand and United States authority to support the submission that where, in the course of deciding a total cause of action, one specific issue is determined, then, if that issue arises as an essential ingredient in subsequent proceedings between the same parties, that issue cannot be relitigated. The decision of the Court of Criminal Appeal in the appellant's favour on the issue of his presence at the crime is a decision on an essential ingredient of the indictment for robbery and therefore the prosecution is estopped from trying him on a second charge where the issue arises again. In *Reg. v. Ollis*, ¹⁶ where it was said that there could be no estoppel, that was because it was not possible to determine on what ground the first acquittal was directed, and it is therefore distinguishable.

[LAWTON J. Under the old terminology any plea in the nature of estoppel would have to be by record, and not by judgment, so that in this case once the two records had been looked at, no question of estoppel could arise.]

The cases show that the question of estoppel is not approached on the narrow basis of estoppel by record; otherwise the whole investigation undertaken by the court in *Rex v. Barron* ¹⁷ would have been unnecessary. [*Welton v. Tanebourne* ¹⁸; *Rex v. Kendrick and Smith* ¹⁹; *Flatman v. Light* ²⁰ and *Rex v. Thomas* ²¹ were referred to.] If it can be established that an issue estoppel exists, that it is a defence and not merely a rule of evidence, and that it is available in English criminal proceedings, as it certainly is in English civil proceedings, this appellant must *1262 succeed. In *Sambasivam v. Public Prosecutor, Federation of Malaya*, ²² the Judicial Committee said that the maxim "Res judicata pro veritate accipitur" was no less applicable to criminal than to civil proceedings. That is relied on. [*Reg. v. Hogan* ²³ was referred to.] See also the Australian decisions in *Reg. v. O'Keefe* ²⁴; *Rex v. Wilkes* ²⁵ and *Kemp v. The King*, ²⁶ and the article by Dr. Colin Howard on "Res Judicata in the Criminal Law" in the Melbourne University Law Review (1961), p. 101, on the "rediscovery" of the doctrine of issue estoppel. *Reg. v. Clift* ²⁷ and *Mraz v. The Queen (No. 2)* ²⁸ are also relied on as strong persuasive authority that where, as in the present case, an issue decided as part of a total decision can be isolated, that issue cannot be relitigated. Once the Court of Criminal Appeal concluded that there might here have been a miscarriage of justice, the appellant was declared innocent on the issue before the court "for all purposes": see *per* Lord Reading C.J. in *Rex v. Barron*. ²⁹ If that is not the effect of the acquittal, a sort of limbo is created in which it is being said: "He is still half guilty."

[LAWTON J. No: he has not been acquitted on the charge of murder. It is astonishing that if issue estoppel exists as a plea in bar the lawyers of the nineteenth century never raised it and that the textbooks have no reference to it.]

But nineteenth century cases such as *Reg. v. King* ³⁰ were determined in favour of an accused person by the application of issue estoppel. [*Reg. v. Flood* ³¹; *Brown v. Robinson* ³²; *United States v. Oppenheimer*, ³³ *per* Mr. Justice Holmes; *Sealfron v. United States* ³⁴ and *Harris v. State of Georgia* ³⁵ were also referred to.] That the doctrine of issue estoppel is available in civil cases is established by the English decisions in *Hoystead v. Commissioner of Taxation* ³⁶; *New Brunswick Railway Co. v. British and French Trust Corporation Ltd.* ³⁷ and the Australian decision in *Jackson v. Goldsmith*. ³⁸

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On those authorities the approach to this case should be that when the court looks, as it may do, beyond the bare record, and analyses what the jury did on the murder trial and what the Court of Criminal Appeal did in quashing the conviction of murder, there was an acquittal of this appellant which negatives the commission of the robbery for all purposes, because he was not present.

[LYELL J. But in our law quashing a verdict of guilty on the ground of misdirection does not have the effect of making a finding of fact on anything.]

Neither the jury nor the Court of Criminal Appeal ever make a positive finding; but the effect of the acquittal here on the only issue before the appellate court is to bar a trial in which that issue again arises.

Thirdly, the acquittal by the Court of Criminal Appeal on the charge of murder is inconsistent with the verdict of guilty by the jury on the robbery charge, and as the two verdicts cannot stand together, the conviction on the second charge must be quashed or set aside: *Rex v. Cooper and Compton*³⁹ and *Reg. v. Walker*⁴⁰ are relied on.

Fourthly, if neither *autrefois acquit* nor *issue estoppel* are made out, John Stephenson J. had a discretion to bar or stop the second trial in view of his expressed opinion that it ought not to proceed. The judge had originally been invited by counsel both for the Crown and for the appellant to exercise a discretion, on the basis that such a discretion existed; but when the judge had expressed his opinion, he was uncertain how to implement it, and was convinced by counsel for the Crown that he had no power to do so. If in fact the judge had a real discretion and had exercised it, in the light of his opinion, in favour of the appellant, this man would have gone free. It is submitted that the judge could have implemented his opinion by making an order to stay proceedings in the same form as is made on an order of *autrefois acquit*, namely, "that the judgment is that the defendant shall go *sine die* and he is altogether discharged from the prosecution."

It is conceded that if a trial is a trial *de novo*, the judge may not have a discretion to stop proceedings, whatever his own views may be; but where the question is of a second trial there is a ***1264** discretion if the judge considers it right on grounds of justice and fairness to stop the trial: see *Rex v. Miles*⁴¹ and *per* Lord Reading C.J. in *Rex v. Barron*,⁴² referring to *Reg. v. King*,⁴³ *per* Hawkins J. The argument as to the propriety of this court quashing the verdict on the second trial is strengthened by the fact that there is no way in criminal proceedings of testing the decision of John Stephenson J. on the question of discretion, as there is no machinery for going to the appellate court on a preliminary point in a criminal matter, as there is in a civil matter. One would have assumed, in the present case, that where a judge expressed an opinion against proceeding to a second trial, the prosecution would not go ahead, but when the prosecution ignores the opinion and proceeds, there is an inherent discretion in the court to stop it; but there is no authority directly on the point. The Crown has contended that it has some special and inherent right to have matters litigated, but that cannot be right, for it does not apply in cases of *autrefois convict* or *acquit* and that is judge-made law.

[LAWTON J. Unfortunately for this submission, Lord Goddard C.J. in *Reg. v. Middlesex Quarter Sessions, Ex parte Director of Public Prosecutions*⁴⁴ said that the prosecution has a right to present its case and that it is the duty of the court to hear it.]

In civil cases it has been held that there is an inherent discretion in the court to stop an action from proceeding: see *Metropolitan Bank v. Pooley*⁴⁵ and *Willis v. Earl of Beauchamp*.⁴⁶

[LAWTON J. Civil cases do not assist, for ever since the reign of William and Mary Parliament has laid down the procedure by which cases come before the jury on an indictment, and there cannot be an omission of the procedure in bringing a matter before a jury.]

The fact that there is such machinery does not matter; and it would be odd if the inherent jurisdiction were not available in cases concerning the liberty of the subject when it is available in mere civil cases: see *Reg. v. Tancock*⁴⁷ and *Rex v. Baines*,⁴⁸ which are also relied on.

Fifthly, on the facts of this case, the foundation of the Crown's case on both trials was a series of statements amounting to ***1265** admissions alleged to have been made by this appellant to the police. Objection was raised to their admission on the second trial on the basis of the decision in *Sambasivam v. Public Prosecutor, Federation of Malaya*⁴⁹; but Nield J. ruled that they were admissible because it could not be said that the admissions were admissions of murder. It is submitted that where the Crown relies on statements as the foundation of a case for murder, it cannot subsequently rely on the same statements as the foundation of its case for robbery after the murder conviction has been quashed. Further, after the evidence had been admitted, the jury should have been told what had happened on the previous trial and the ground on which the murder conviction was quashed; but the judge refused to allow the jury to be told of those matters. [Phipson on Evidence (Pt. 2) 9th ed. (1952), p. 49, was referred to.]

[Counsel then made detailed criticisms of specific points in the summing up of Nield J. to the jury.]

Finally, the sentence imposed by Nield J. was excessive, having regard to the fact that the accused must in law be treated as a robber and not as a murderer; and in the special circumstances of this case the court may feel it proper to impose a different sentence.

J. Griffith-Jones and Alastair Morton for the Crown. It is conceded that the real principles of the doctrine of *autrefois* to be gleaned from the authorities go beyond the statement of principle in 2 Hawkins Pleas of the Crown, c. 35 (1824, 8th ed.) and the two headings in Archbold (para. 436) and extend to cases (a) offences of which the accused could have been convicted on the first indictment and cases (b) where a previous acquittal necessarily involves an acquittal on a second charge. They are all based on the wider principle of *nemo debet bis vexari*: see *Rex v. Kupferberg*⁵⁰ (where the expression is "the same essential ingredients"), and *Flatman v. Light*.⁵¹ But the two headings set out in Archbold, together with (a) and (b) above, are a comprehensive list of the only circumstances known to the law of this country in which *autrefois* acquit or convict applies as a plea in bar. The facts of the present case have only to be stated to see that it cannot be brought under any of those four heads. The two offences of murder and robbery require quite different *1266 elements; on the first trial for murder, two quite distinct defences were put forward, though one with more vigour than the other. It cannot be known on which ground the jury returned the verdict of guilty; and unless this court holds that the quashing of the conviction for murder by the Court of Criminal Appeal was in fact a finding on an "essential element" in the murder trial, namely, the issue of alibi, which is also an essential element in the robbery case, this cannot be a case of *autrefois* acquit.

On issue estoppel, though it would appear that there has developed in the Australian and United States courts such a plea in bar, the first question is whether it operates as a plea in bar in English criminal law? The next question is whether, if it does operate here, the quashing of the murder conviction was a decision on the issue whether the appellant was or was not present at the scene of the crime?

The only distinction between *autrefois* acquit and issue estoppel which appears to have emerged during the present submissions is that in the latter case one can look behind the record at the evidence, the judgment and so on; but there is no single case in English law where the doctrine has been applied.

[LAWTON J. There is plenty of authority in civil cases and it would be strange if one were bound by a stricter rule in cases affecting the life and liberty of the subject.]

The position in this case is that the quashing of the murder conviction cannot be said to be a finding on the essential issue of alibi. The Court of Criminal Appeal performing its duty under the *Criminal Appeal Act, 1907*, is not required to "find" directly on any issue but only to allow the appeal in specified circumstances set out in section 4: the only one which was applicable in this case was the fourth circumstance, namely, the court's opinion that "on any other ground there was a miscarriage of justice."

Those words were judicially interpreted in *Rex v. Cohen and Bateman*⁵² as meaning that where by reason of a mistake of fact or omission at the trial the appellant lost the chance of being acquitted which was fairly open to him; and as the court had no power to grant a new trial the conviction had to be quashed. That is all that the Court of Criminal Appeal can be said to have "found"; and it is clear, both from the judgment of the court and from the fact that at its conclusion the court gave leave to proceed against the acquitted person on the second indictment for robbery, that the court was not considering that on *1267 the issue as to alibi it was finding anything in the appellant's favour. The court should look at the reality of the decision on the murder appeal and not at the suggested fiction that by quashing a conviction under section 4 of the Act of 1907 in the circumstances of this case the Court of Criminal Appeal made a finding of fact. There is no single authority to support that submission and it would be against the true interests of the administration of the criminal law to introduce fictions of that nature. Moreover, *Rex v. Norton*⁵³ - a decision which is on all fours with the present case - was a case in which, if issue estoppel were part of our criminal law it must have been raised as a plea in bar; yet it was held not to be a case of *autrefois* acquit, and the question of issue estoppel was not even mentioned: see also per Lord Maugham L.C. in the *New Brunswick* case,⁵⁴ that estoppel cannot be made to extend to presumptions or probabilities.

Further, if the court considers that the principle of issue estoppel, described in the Melbourne University Journal as being "rediscovered" in the Australian and United States courts, applies in English law, the court must also apply the conditions essential to its operation, as stated in *Harris v. State of Georgia*⁵⁵ and *Mraz v. The Queen (No. 2)*,⁵⁶ namely, that the previous judgment must have been conclusive on matters in issue actually found and necessarily decided, or issues "distinctly raised and found." *Reg. v. King*⁵⁷ was not a case of issue estoppel, the ground for refusing a second trial there being that the two offences - fraud and larceny - were wholly inconsistent.

[LAWTON J. I am worried about issue estoppel, for two reasons: (1) This doctrine arises commonly in civil cases, and it would be deplorable that a defence available in civil cases would not be available in identical circumstances in a criminal matter; and (2) it would also be deplorable if there were divergences between countries under the common law system, and if English law lagged behind because of a strict rule of pleading.]

On the first proposition it must be borne in mind that in civil cases there is no plea such as *autrefois acquit*. On the second proposition, it is agreed that a divergence in the common law countries would be unfortunate.

On the question whether a judge has a discretion to stop a trial because in his view it would be unfair or unjust to let it go ^{*1268} on, it is submitted that there is no such discretion, and a judge cannot say that an issue between the Crown and a subject shall not be tried unless it can be said to be an abuse of the process of the court or there is some established principle of law which bars a trial. *Reg. v. Middlesex Quarter Sessions (chairman), Ex parte Director of Public Prosecutions* ⁵⁸ and *Reg. v. London (County) Quarter Sessions, Ex parte Downes* ⁵⁹ are authorities that a court of trial has no discretion to refuse to try a case except in the four sets of circumstances set out by Lord Goddard C.J. in the *Ex parte Downes* case. ⁶⁰ *Reg. v. Tancock* ⁶¹ does not support the view that there is a discretion; and when Lord Reading C.J. in *Rex v. Barron* ⁶² referred to *Reg. v. King* ⁶³ as a case of the exercise of discretion he was not strictly accurate. It is well known from one's experience that an accused man has a right to have the verdict of a jury if he desires it; and it would be strange if the Crown, acting in the interests of the community as a whole, were in a less favorable position than an accused person. There is no discretion as such in a judge to stop a trial.

[The court indicated that they did not wish to hear counsel on the criticism of the summing-up.]

Hawser Q.C. in reply referred to *Rex v. De Kuiper* ⁶⁴ and *Rex v. Aughet* ⁶⁵ and Archbold, p. 67, on "Preferring the Bill of Indictment." If it had not been for the rule of practice by which indictments for murder are not tried with any other indictment on the record, and if the robbery had been tried with the murder charge, the plea of *autrefois acquit* would have been available to this appellant, even if the jury had been discharged from giving a verdict on the robbery charge. That strengthens the argument that the judge who considered the plea of *autrefois acquit* has a discretion to stop the proceedings on the second trial.

Cur. adv. vult.

September 30. EDMUND DAVIES J.

read the following judgment of the court: This is an appeal by Charles Connelly against his conviction and sentence, before Nield J. and a jury at the Central Criminal Court on June 24 last, on an indictment alleging robbery ^{*1269} with aggravation in connection with a robbery and murder which took place at the Royal Arsenal Co-operative Society Depot in Mitcham on November 17, 1962. The appellant was sentenced to 15 years' imprisonment. [His Lordship stated the facts as set out above and continued:] The foundation of the present appeal against his conviction for robbery with aggravation is that the quashing by the Court of Criminal Appeal of the murder conviction is said to have involved a finding by that court that Connelly's presence at the Mitcham crime had not been proved. Upon those premises Mr. Hawser has constructed an elaborate argument (for which the court is greatly indebted) that the robbery conviction ought now to be quashed for one or more of the several reasons he advanced.

These reasons were: (1) that Connelly was entitled to rely upon the plea in bar of *autrefois acquit* which he had raised, and that John Stephenson J. misdirected the jury in telling them that it was not available to him; (2) that, assuming that *autrefois acquit* was not available, Connelly was entitled to rely upon what in some of the Commonwealth and American authorities has been called an "issue estoppel," and in consequence he ought never to have been tried on the robbery indictment; (3) that the conviction for robbery should be quashed as being inconsistent, in the circumstances, with the quashing of the murder conviction; (4) that, even though neither *autrefois acquit* nor "issue estoppel" could be made out, the trial judge had a discretion to prevent Connelly being tried on the robbery indictment if he felt that in the particular circumstances it was unfair and unjust that there should be re-litigation on an issue which was before this court in the murder appeal and upon which the ultimate verdict of acquittal was founded, even though there had been no specific finding on that issue; that John Stephenson J. had wrongly held that he had no such discretion; and that, in those circumstances this court should now either quash the conviction or order (as in cases of *autrefois acquit*): "That the defendant shall go sine die and altogether be discharged from the prosecution."

In addition to the foregoing matters, the summing-up of Nield J. has been criticised in a number of respects.

Before proceeding to consider these submissions seriatim, it is important to see what happened, first at the murder trial at the Central Criminal Court and, secondly, in the Court of Criminal Appeal, and then to examine the precise effect, under the *Criminal Appeal Act, 1907*, of the quashing of the murder conviction.

As to the first matter, it is clear beyond doubt, and it is [*1270](#) conceded, that the defence of Connelly was a twofold one: (a) an alibi, and (b) alternatively, even were he present at the scene of the murder, the evidence did not establish that he had the felonious intent necessary to support a murder conviction. As to the second matter, some fifteen grounds were relied on in the Court of Criminal Appeal, but, in the event, this court found it necessary to deal only with the first four grounds. The first and second grounds related to what was called "the Heysham incident," and it is perfectly clear that the Court of Criminal Appeal regarded it as having relevance not only to the alibi defence, but also to the general issue of the credibility of the appellant. The third ground related to Roskill J.'s direction to the jury as to the evidence relating to footprint impressions on two pieces of carbon paper found in the Mitcham office, and that relating to a pair of shoes found at the premises where Connelly was arrested. The fourth ground of appeal alleged misdirection as to the evidence adduced in support of the allegation that Connelly had gone into hiding with his co-accused Hilton, after the murder. As we have said, the Court of Criminal Appeal, in giving its reasons for quashing the murder conviction, found it unnecessary to deal with the remaining grounds of appeal. To this should be added that counsel appearing before us are in agreement that the only issue ventilated in the Court of Criminal Appeal was whether the evidence (and the direction thereon) relating to Connelly's alleged presence at the scene of the murder was satisfactory, and that the issue as to murderous intent was not raised. That being so, it is argued, the quashing of the murder conviction is explicable only upon the basis that the Court of Criminal Appeal held that proof of presence at Mitcham had not been established, and this "finding" (as it has been called) applies not only to the murder charge originally preferred, but is fatal also to the second indictment for robbery with aggravation.

That the Court of Criminal Appeal did not itself consider that, in quashing the murder conviction, they were arriving at any "finding" that Connelly had not been proved to be at Mitcham on the relevant date is clear, both from the language employed by Ashworth J. in delivering the judgment of the court, and from the fact that after argument, the court granted leave for the trial on the robbery indictment to proceed. But that cannot prejudice the appellant if in law the effect of what the court then did is as his counsel submits.

The grounds on which this court may quash a conviction, and [*1271](#) the effect of so doing, are dealt with in [section 4 \(1\) and \(2\) of the Criminal Appeal Act, 1907](#), in the following terms: "(1) The Court of Criminal Appeal on any such appeal against conviction shall allow the appeal if they think that the verdict of the jury should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal: Provided that the court may, notwithstanding that they are of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has occurred. (2) Subject to the special provisions of this Act, the Court of Criminal Appeal shall, if they allow an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered."

Where this court quashes a conviction ... "the appellant, having by order of this court, on his appeal from his first conviction, had a judgment and verdict of acquittal entered, is in the same position for all purposes as if he had actually been acquitted" (*per* Lord Reading C.J., in [Rex v. Barron](#) ⁶⁶).

Does that mean more than that the appellant is thereafter to be treated as if the original jury had acquitted him? If it does not, then, in view of the twofold nature of the defence relied upon at the Central Criminal Court, it cannot, in our judgment, be said that acquittal involved a finding that Connelly was not proved to have been at Mitcham on November 17, for such a verdict might equally have been based on the jury's not being satisfied that, although there, a murderous intent had been established. But it is submitted that as the only issue ventilated in the Court of Criminal Appeal was as to his presence at the scene of the crime, that (and that alone) must have been the ground on which the appeal was allowed and there was accordingly a finding in Connelly's favour to that effect. We find ourselves unable to accept that submission. In the murder appeal this court had to consider whether there had been "a miscarriage of justice" and, if so, whether it nevertheless could be said "that no substantial miscarriage of justice had actually occurred."

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As was said in [Rex v. Cohen and Bateman](#), ⁶⁷ *per* Channell J.: "There is such a miscarriage of justice not only where the court comes to the conclusion that the verdict of guilty was wrong, but also when it is of opinion that the mistake of fact or omission on the part of the judge may reasonably be considered to have brought about that verdict, and when, on the whole facts and with a correct direction, the jury might fairly and reasonably have found the appellant not guilty. Then there has been not only a miscarriage of justice but a substantial one, because the appellant has lost the chance which was fairly open to him of being acquitted. ..."

In such circumstances, this court not only quashes the conviction but, as required by section 4 (2) of the Act of 1907, *must* "direct a judgment and verdict of acquittal to be entered." In so directing, it does not, in our judgment, arrive at any specific finding regarding any of the ingredients of the offence charged. In *Reg. v. Salvi*⁶⁸ Pollock C.J. said: "The acquittal of the whole offence is not an acquittal of every part of it, it is only an acquittal of the whole." These words are equally applicable to a verdict of acquittal entered by this court as to an acquittal resulting from the verdict of a jury. In our judgment, the position is not altered by the fact that the issue ventilated in the Court of Criminal Appeal was simply whether or not the evidence and the legal direction relating to the issue of presence at Mitcham were satisfactory. We accordingly hold that no such finding as is contended on the appellant's behalf was either arrived at by this court or is implicit in its quashing of the murder conviction.

In the light of the foregoing, we turn to consider the four main submissions relied upon before us. As to the first, *autrefois* acquit, it is not sufficiently comprehensive to say (as in Archbold's Criminal Pleading, Evidence and Practice, 35th ed. (1962), para. 436) that: "The only cases in which a previous acquittal can effectually be pleaded in bar to a subsequent indictment are:- (i) where the acquittal was for the exact offence charged in the subsequent indictment; or (ii) where the subsequent indictment is based on the same acts or omissions in respect of which the previous acquittal was made and some statute directs that the prisoner shall not be tried or punished twice in respect of the same acts or omissions."

As subsequent paragraphs in that most useful work show, the **1273* cases establish that this plea in bar extends, as Lord Reading C.J. said in *Barron's* case⁶⁹ "not only to the offence actually charged in the first indictment, but to any offence of which he could have been properly convicted on the trial of the first indictment." And in *Rex v. Kupferberg*⁷⁰ Lawrence J. said: "For a plea of *autrefois* acquit to be maintainable, the offence of which the accused has been acquitted and that with which he is charged must be the same in the sense that each must have the same essential ingredients. The facts which constitute the one must be sufficient to justify a conviction for the other." But whatever test one applies, it cannot, in our judgment, be said correctly that, in the circumstances of this case, the statutory "acquittal" by the Court of Criminal Appeal on the murder charge enables the appellant to plead *autrefois* acquit in bar to the robbery indictment.

The decisions of this court in *Rex v. Norton*⁷¹ have some relevance to this matter. The only issue raised in the trial of the accused for a sexual offence, in the course of which the victim was wounded, was as to the identity of the assailant. The conviction was quashed and Norton was thereafter indicted and convicted for wounding the same girl on the same occasion. Defence counsel submitted to this court that the identity of the assailant was the sole point at issue in both indictments, that by the quashing of the first conviction it had become *res judicata* that Norton had not committed the sexual offence and that, as it was common ground that the same person committed both offences, he was entitled to rely upon *autrefois* acquit, and that accordingly the second conviction should be quashed. Dismissing the appeal, Lord Alverstone C.J. said⁷² : "There is only one possible view which would have supported the appeal. If the evidence as to the injury shows that it was essential to the commission of the sexual offence, then it may be that a verdict of acquittal for the sexual offence would support a plea of *autrefois* acquit upon the charge of felonious wounding." It is true that no reference was made to the "identity" point expressly relied on by appellant's counsel, but it is inconceivable that it would not have been dealt with had this court considered that the quashing of the first conviction had the effect which had been contended.

The submission as to "issue estoppel," which was the second **1274* matter advanced on the appellant's behalf, is a somewhat novel one in the criminal courts of this country, although it is being increasingly raised both in the Commonwealth and in the United States of America (see, for example, *Harris v. State of Georgia*⁷³ and is discussed at length in a valuable article "Res Judicata in the Criminal Law" by Dr. Colin Howard in the Melbourne University Law Review ((1961), p. 101).

In *Mraz v. The Queen (No. 2)*⁷⁴ Dixon C.J. said: "The law which gives effect to issue estoppels is not concerned with the correctness or incorrectness of the finding which amounts to an estoppel, still less with the processes of reasoning by which the finding was reached in fact. ... It is enough that an issue or issues have been directly raised and found. Once that is done, then, so long as the finding stands, if there be any subsequent litigation between the same parties, no allegations legally inconsistent with the finding may be made by one of them against the other. *Res judicata pro veritate accipitur*. ... And ... this applies in pleas of the Crown."

In *Brown v. Robinson*⁷⁵ Herron and Maguire JJ. said that: "Before issue estoppel can succeed in a case such as this there must be a prior proceeding determined against the Crown necessarily involving an issue which again arises in a subsequent proceeding by the Crown against the same prisoner. ... It depends upon an issue or issues having been distinctly raised and found in the former proceeding."

Does issue estoppel avail an accused person in this country? We do not find ourselves, in the circumstances of the present case, called upon to give a definite answer to that question. But, as Lawton J. observed in the course of the argument, it would be deplorable if English law lagged behind in this matter because of a strict rule of pleading. That an issue distinctly raised and decided in civil proceedings here may not generally be permitted to be litigated afresh between the same parties or persons claiming under them is well established; see, for example, *Hoystead v. Commissioner of Taxation*⁷⁶ and *New Brunswick Railway Co. v. British and French Trust Corporation Ltd.*⁷⁷ And, as Mr. Justice Holmes said in *United States v. Oppenheimer*⁷⁸: "It cannot be that the safeguards of the person, so often and so rightfully *1275 mentioned with solemn reverence, are less than those that protect from a liability in debt." Furthermore, in *Sambasivam v. Public Prosecutor, Federation of Malaya*,⁷⁹ Lord MacDermott said: "the maxim 'Res judicata pro veritate accipitur' is no less applicable to criminal than to civil proceedings." And it is of some significance that, in *Reg. v. Ollis*,⁸⁰ Wright J., having said that *autrefois acquit* was an inappropriate plea in the circumstances of that case, added⁸¹: "Nor can there be an estoppel of record or quasi of record, unless it appears by record of itself, or as explained by proper evidence, that the same point was determined on the first trial which was in issue on the second trial." It may be that issue estoppel is the true basis upon which a second trial arising out of the same incident or transaction was held, in such cases as *Reg. v. King*,⁸² not to lie, notwithstanding that *autrefois acquit* and *autrefois convict*, as explained in some of the older cases, were not in strictness available to the defendant.

Assuming, without deciding, that such a plea may validly be raised in the criminal courts of this country, even so, as Herron J. expressed it in *Reg. v. Clift*⁸³: "... the situation would not often arise in a criminal court, where the very issue of fact upon which the decision rests can be so isolated as to be capable of decision that such issue had been already determined in another previous criminal trial." For the reasons we have already sought to state, these conditions cannot be said to be fulfilled in the present case. For issue estoppel to arise, there must have been distinctly raised and inevitably decided the same issue in the earlier proceedings between the same parties. "The doctrine (of estoppel) cannot be made to extend to presumptions or probabilities as to issues in a second action which may be, and yet cannot be asserted beyond all possible doubt to be, identical with those raised in the previous action" (*per* Lord Maugham L.C. in the *New Brunswick* case⁸⁴). It is this impermissible extension which is involved, in our judgment, in the issue estoppel point here raised on behalf of the appellant. We accordingly hold that the submission is invalid.

The third point raised by the appellant's counsel is closely linked with those already dealt with. It was submitted that the *1276 conviction on the robbery indictment was wholly inconsistent with the quashing by this court of the conviction on the murder indictment. That the court will interfere to prevent inconsistent verdicts is well established; see, for example, *Rex v. Cooper and Compton*.⁸⁵ In this connection we were referred to Diplock J.'s direction to the jury in *Reg. v. Beach and Owens*⁸⁶ that *autrefois acquit* was established in answer to a charge of conspiracy to pervert the course of justice, following upon this court having quashed ([1957] *Crim.L.R.* 687) the conviction of the two accused for having respectively attempted to pervert the course of justice and with aiding and abetting that offence. But each case turns on its own facts. In the present case, no inconsistency can be said to exist between the quashing by this court of the murder conviction and the conviction by the jury on the robbery charge except upon the one ground advanced, namely, that the quashing amounted to and involved a finding that Connelly was not proved to have been present at Mitcham. We have, I hope, already sufficiently indicated our reasons for holding that no such inconsistency is involved.

We turn to consider the fourth point relied on by appellant's counsel. The question primarily raised is whether John Stephenson J. had any discretion which entitled him to refuse a trial on the second indictment. The judge originally thought he had, and Grown counsel originally thought he had, though that concession was later retracted. Appellant's counsel has submitted that on this occasion first thoughts were best. He contends that, whatever may be a judge's powers in relation to preventing the trial of a first indictment, he clearly has a discretion if he considers that it would be unfair and unjust for an accused person to be retried on an issue upon which a previous acquittal was founded, even though there was no specific finding on that issue. Reliance is placed on *Rex v. Miles*,⁸⁷ where Lord Alverstone C.J. said: "The judge has a discretion ... and if, when a man has been acquitted, he considers the acquittal should make an end of the whole case, he can express his opinion," and to some observations of Lord Reading C.J. in *Rex v. Barron*.⁸⁸ We were also referred to *Reg. v. Tancock*⁸⁹ and *Rex v. Baines*,⁹⁰ where Walton J. said that, "The old Queen's Bench had ample jurisdiction over all criminal proceedings." *1277 But, as always, these cases turn on their particular facts. In our judgment a judge is not entitled to refuse the trial of any indictment, be it a first or second indictment, merely because he thinks the trial ought not to proceed. He may do this only in accordance with established principles. To hold otherwise involves dangers too obvious to need stating. Avowing said in *Reg. v. Middlesex Quarter Sessions (Chairman), Ex*

parte Director of Public Prosecutions ⁹¹ that, "the prosecution had a right to present their case," Lord Goddard C.J. added, in *Reg. v. London (County) Quarter Sessions, Ex parte Downes* ⁹² : "Once an indictment is before the court the accused must be arraigned and tried thereon unless (a) on motion to quash or demurrer pleaded it is held defective in substance or form and not amended; (b) matter in bar is pleaded and the plea is tried or confirmed in favour of the accused; (c) a nolle prosequi is entered by the Attorney-General, which cannot be done before the indictment is found; or (d) if the indictment disclosed an offence which a particular court has no jurisdiction to try. ..." Although Mr. Hawser contended that this classification ought not to be regarded as exhaustive, we regard it as a valuable and complete exposition of the law on the matter. But even if counsel is right, in our judgment it cannot be said, for the reasons we have already indicated, that the trial of the appellant on the robbery indictment involved the relitigation of an issue upon which the quashing of the murder conviction was founded. So to say is mere conjecture. We accordingly hold that neither John Stephenson J. nor Nield J. had any discretion to refuse that the trial of the second indictment proceed.

The summing-up of Nield J. was criticised on many grounds. It might be sufficient for this court to say that in our judgment it was a conspicuously fair, accurate and helpful summing-up and that none of the criticisms advanced have been substantiated. But out of deference to the industry and ability with which appellant's counsel has presented his case, we feel that mention should be made of two of the matters he relied on. It is, first, said that the judge was wrong in allowing the prosecution to give evidence of and rely upon certain oral statements alleged to have been made by the appellant to certain police officers, inasmuch as these same statements had been relied upon by the prosecution ^{*1278} in the first trial for the purpose of endeavoring to prove that the appellant was guilty of murder, a charge upon which he was ultimately acquitted by this court. Secondly, it is said that the judge was wrong in refusing to allow the defence to refer to and rely on the fact that the appellant had been acquitted on the murder charge, "and the circumstances in which and the issue upon which he was so acquitted." These criticisms were said to be supported by the decision of the Privy Council in *Sambasivam v. Public Prosecutor, Federation of Malaya* ⁹³ and that of the Supreme Court of Georgia in *Harris v. State of Georgia*, ⁹⁴ but in our judgment the issues involved in these cases were wholly different from those we are called upon to consider and the cases are not in point. The oral statements imputed to Connelly had a distinct relevance on the issue of whether he was present at Mitcham, that issue was involved in and common to both indictments, and the fact that the first indictment had ultimately resulted in a quashing of the conviction thereon by this court in no way prevented the same oral statements from being adduced in evidence on the trial of the second indictment. We accordingly hold that they were rightly admitted. Whether or not the Crown was being excessively technical in objecting to its being elicited that Connelly had been acquitted on the murder conviction is nothing to the point as to whether such evidence was strictly admissible. In our judgment it was not. Even more inadmissible would it have been to seek to elicit "the issue upon which he was acquitted."

For these reasons we hold that none of the submissions advanced for the quashing of this conviction have been made good. The appeal against conviction is accordingly dismissed.

The appeal against sentence is, however, based on more cogent grounds. The judge was clearly right in saying that armed robbery is a grave offence, and one of a character which is rife at the present time. Furthermore, the appellant, who is 38 years old, has a number of previous convictions, including one 18 years ago for robbery with violence. But he suffers from disseminated sclerosis, a progressive disease, and has undergone the ordeal of being convicted of murder, of having that conviction quashed and then hearing one judge express the opinion that he ought not to be proceeded against a second time, and finally, after an adjournment of over a month, being brought to trial before ^{*1279} another judge. It has been urged upon us that, in sentencing the appellant to 15 years' imprisonment, the judge was treating him as one of a party out to kill if needs be, and that notwithstanding his acquittal on the murder charge. Following on the appellant's acquittal of murder, this court has felt impelled as a matter of law to put out of mind the fact that during this armed robbery a man was killed by one of the robbers. The only evidence against the appellant about the intended use of violence was set out in one of Kelly's written statements which by oral admissions Connelly accepted as being true. This statement was to the effect that the robbers had taken unloaded guns to the scene of the crime with intent to frighten but not to injure. Had there been any evidence that the appellant had intended to injure, the question for consideration might well have been whether the sentence was severe enough. In those circumstances, gravely reprehensible though his conduct unquestionably was, this court is of the opinion that the sentence passed was excessive and should be reduced. The appeal against sentence is accordingly allowed and one of 10 years' imprisonment substituted.

Appeal against conviction dismissed. Appeal against sentence allowed. Sentence of ten years' imprisonment substituted. Certificate under section 1 (2) of the Administration of Justice Act, 1960, that a point of law of general public importance was involved in the decision, which ought to be considered by the House of Lords, namely: "Whether there was any reason

in law why the trial of the indictment for robbery with aggravation should not have proceeded to verdict and sentence?" and leave to appeal to the House of Lords. (M. M. H.)

Representation

Solicitors: T. W. James do Wheater ; Director of Public Prosecutions .

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The appellant appealed to the House of Lords.

C. L. Hawser Q.C. and *A. F. Waley* for the appellant. In the Court of Criminal Appeal on the first appeal the only issue gone into was whether the evidence, relating to the appellant's alleged presence at the scene of the murder, and the direction to the jury on that matter was satisfactory. The question of intent to murder was not raised. So it can be taken that the appeal was allowed on the other point.

The point of law of general public importance defined in the certificate under the Act of 1960 comprises three matters: (1) The question of the nature and extent of the doctrine of *autrefois acquit*; (2) (a) the question whether the criminal law recognises the doctrine of issue estoppel, if it is different from *autrefois acquit*; (b) the question whether it operates in this case; (3) the question whether the judge has any discretion in matters like this to stop the trial of the second indictment when he finds that further process would be unjust, unfair or oppressive, and, if so, what discretion.

Two further questions also arise: (4) Whether it is open to the Crown in the second trial to adduce, for the purpose of establishing robbery, evidence of admissions alleged to have been made by the appellant, which were relied on at the first trial for the purpose of establishing a case of murder; (5) Whether it was right for the judge at the second trial to order that the appellant was not to be at liberty to refer to the basis on which he was convicted at the first trial and to adduce evidence as to the making of his alleged statements. Both these questions should be answered in the negative.

This case started with the trial of two issues, robbery and intent to murder. In the Court of Criminal Appeal after the first trial the issue of robbery became isolated and the court decided in the appellant's favour on that issue alone. It held that there was a substantial miscarriage of justice and quashed the conviction, entering a verdict of acquittal on the issue of murder. The legal effect of quashing the conviction was the same as an acquittal. The issue cannot be relitigated by the Crown. The principle *nemo debet bis vexari* applies in criminal as well as in civil cases.

For the law relating to *autrefois acquit* see Archbold's Criminal Pleading, 25th ed., paras. 436, 438, 446, 449 (pp. 149-150, 154-156). It was in accordance with a rule of practice that the appellant was not tried on both the murder charge and the ***1281** robbery charge at once. If the two charges had been tried together the jury might have found him guilty of either or both and the Court of Criminal Appeal could have quashed both convictions. To convict the appellant of robbery now would be inconsistent with the acquittal which negated in effect his being guilty of robbery by force.

Even if this is not strictly a case of *autrefois acquit* or issue estoppel, the court has jurisdiction to prevent abuse of its powers because to relitigate the issue is unfair to the accused. The evidence given at the second trial was substantially the same as that given at the first. Neither side has an absolute right to the verdict of a jury. For example, the Attorney-General can enter a *nolle prosequi*. It is entirely in the court's discretion to decide whether or not this case should proceed.

As to the authorities on *autrefois acquit*, *Reg. v. Gould* ⁹⁵ illustrates issue estoppel and is the foundation of this part of the law: "If a party charged with the crime of murder committed in the perpetration of a burglary, be generally acquitted on that indictment, he cannot afterwards be convicted of the burglary with violence." For the other offences of which a man charged with murder may be found guilty, see Archbold's Criminal Pleading, 25th ed., para. 4323 (pp. 1663-1664): see also para. 2546 (p. 1019). As to the ingredients of robbery, see paras. 1761 and 1763 (pp. 701-702). If a man is acquitted of robbery with violence the Crown is not at liberty to avoid the plea of *autrefois acquit* by subsequently charging him with another offence, say, burglary, leaving out some of the ingredients of the greater offence which has been already dealt with. As to *autrefois convict*, see *Reg. v. Walker*. ⁹⁶ In *Reg. v. Bird* ⁹⁷ it was established that it is permissible to analyse the case to find what the decision of the jury in the first case really was, and, where it is possible to isolate an issue, *autrefois acquit* will operate as a plea in bar. See also *Reg. v. Elrington* ⁹⁸; *Reg. v. Salvi* ⁹⁹; *Reg. v. Morris* ¹⁰⁰ and *Wemyss v. Hopkins*. ¹⁰¹ *Reg. v. Tancock* ¹⁰² is not a case of *autrefois acquit* in the strict sense but one in which the judge exercised his discretion. *Reg. v. O'Brien* ¹⁰³ is of little assistance. *Reg. v.*

Gilmore ¹⁰⁴ is rather more important. *Reg. v. Serné* ¹⁰⁵ *1282 is relied on. *Reg. v. Friel* ¹⁰⁶ does not advance the matter. Hawkins J. in *Reg. v. Miles* ¹⁰⁷ said that conviction is "a bar to all further proceedings for the same offence." There "offence" should be read as meaning "matter." In *Reg. v. Hilton* ¹⁰⁸ after a summons for assault against the defendant had been dismissed the person alleged to have been assaulted died. On production of the certificate of dismissal it was held that the defendant could not be tried on a charge of manslaughter. The dismissal negated a criminal assault, but conviction would have established it. *Reg. v. Grimwood* ¹⁰⁹ is in favour of the appellant. *Reg. v. King* ¹¹⁰ is important. It was a case of issue estoppel and the court analysed the issues. *Reg. v. Ollis* ¹¹¹ is distinguishable, because it was not possible there to determine the ground of the first acquittal. *Welton v. Taneborne* ¹¹² indicates that one may go behind the charges and see what the evidence was. *Rex v. Miles* ¹¹³ indicates that the judge has a discretion to stop a second trial if he thinks it right on the ground of fairness and justice. The strongest case against the appellant relied on by the Crown is *Rex v. Norton*. ¹¹⁴ If necessary, the House of Lords should overrule it, though it might be held to be distinguishable from the present case because the assault with the stone was not essential to the sexual offence. But in the present case the Crown essentially alleged, not an independent murder, but robbery by the appellant which incidentally involved murder. On the facts of this case, if the robbery were struck out, there could not be a conviction of murder; one cannot strike out the robbery without striking out the whole foundation of the murder charge. *Rex v. Barron* ¹¹⁵ indicates that estoppel is not confined to estoppel by record. Where a previous acquittal necessarily involved a finding on an essential element of the second offence charged, the accused cannot be convicted because the verdict would involve a contrary finding on that essential element. The true question is whether on the first trial the accused was in peril of being convicted of the same crime for which he was in peril of being convicted on the second trial: *per* Avory J. in *Rex v. *1283 Tonks*. ¹¹⁶ See also *Rex v. Kupferberg*, ¹¹⁷ which illustrates the principle *nemo debet bis vexari*. *Rex v. Kendrick and Smith* ¹¹⁸ and *Flatman v. Light* ¹¹⁹ do not carry the argument much further. *Rex v. Cooper and Compton* ¹²⁰ is important as showing that where the Crown seeks to prove a different charge on the same substantial facts the court will not allow the trial to go forward, *Rex v. Thomas* ¹²¹ does not help much. *Reg. v. Beach* ¹²² was a remarkable and striking case; the court looked at the facts behind the charges and found that, in the particular circumstances, the governing issues determined the guilt or innocence of the accused in the case of two totally different offences. Reliance is placed on what Lord Parker C.J. said in *Reg. v. Hogan*. ¹²³

As to issue estoppel, either it already exists in English law or, if it does not yet exist, the House of Lords should now recognise it. See *Reg. v. O'Keefe* ¹²⁴ and *Rex v. Wilkes*. ¹²⁵ Issue estoppel rests on the basic principles of *nemo debet bis vexari* and *res judicata*. Once an issue can be isolated, issue estoppel operates. As to the principles of *res judicata* and issue estoppel, see *New Brunswick Railway Co. v. British and French Trust Corporation Ltd.* ¹²⁶

Section 4 (2) of the Criminal Appeal Act, 1907, puts a man whose appeal has been allowed in the same position as if he had been acquitted by a jury. The court's decision must be treated as a final determination of the issue before it, and here the issue was the robbery. The result of the proceedings was that the court entered a verdict of Not Guilty which was the same as if the jury had acquitted the appellant. Issue estoppel accordingly applied. The mere fact that the offences charged are different is not enough to defeat the plea of *autrefois acquit*. The present case falls within the principle of *Sambasivam v. Public Prosecutor, Federation of Malaya* ¹²⁷ that the plea of *autrefois acquit* applies whenever the prosecution, to prove the offence alleged in the first indictment, must establish that the accused has been guilty of *1284 an offence of which he has been previously acquitted or convicted. Much reliance is placed on the general approach in that case.

Issue estoppel can operate (1) as a plea in bar or (2) by allowing the prosecution to open its case but not allowing it to lead evidence on an issue already decided or (3), if it arises in the course of the case, by directing the jury to acquit. This is an aspect of the court's inherent jurisdiction not to allow abuse of its process by relitigating an issue already decided. See Halsbury's Laws of England, 3rd ed., Vol. XV, paras. 362, 357 and 387 (pp. 187, 184-185 and 207); *Kemp v. The King* ¹²⁸ and *Reg. v. Clift*, ¹²⁹ which is a clear example of the application of issue estoppel. The same principle operates in the case of an acquittal by the Court of Criminal Appeal; otherwise a man would be acquitted for one purpose, but not for another. In the present case the case presented in the second trial was exactly the same as in the first and the appellant's acquittal in the Court of Criminal Appeal was founded on one issue only. *Autrefois acquit* is issue estoppel and nothing else. See *Rex v. de Kuyper* ¹³⁰; *Reg. v. Flood* ¹³¹; *Mraz v. The Queen (No. 2)* ¹³²; *Brown v. Robinson* ¹³³ and "Res Judicata in the Criminal Law" by Colin Howard, Melbourne University Law Review (1961), pp. 101, 102-103, 120.

Issue estoppel is applicable in England, because, just as one cannot try a man again for the same offence, so one cannot try him again on the same issue. The principle that it is in the public interest that litigation should cease applies in criminal law as in civil law. Support is found in the American cases: see *United States v. Oppenheimer*¹³⁴; *Sealfon v. United States*¹³⁵ and *Harris v. State of Georgia*.¹³⁶

On the right approach to [section 4 \(1\) \(2\) of the Criminal Appeal Act, 1907](#), see *Rex v. Wann*¹³⁷ and *Rex v. Cohen and Bateman*.¹³⁸

The Court of Criminal Appeal in the decision which is now appealed from held that no issue had previously been decided in the appellant's favour. But that produces an inconsistency. The verdict of acquittal of murder was based only on his not ***1285** having been there. The jury held that all those men in the office had the intent to murder. If they acquitted one of the men charged, it could only have been on the ground that he was not there. The appellant should not be in a worse position because he has been acquitted by the Court of Criminal Appeal. Its decision necessarily involves that he was not present and he cannot be retried on that issue. Before the Court of Criminal Appeal no question arose as to murderous intent. The court allowed the appeal on the issue of the appellant's presence. From this acquittal by the Court of Criminal Appeal an acquittal of manslaughter follows because on the murder indictment he could have been convicted of manslaughter. On the second indictment the charge of robbery cannot be separated from the supervening killing and a conviction would involve a finding inconsistent with the acquittal of manslaughter. If the appellant were held guilty of the robbery he must have been at least guilty of the manslaughter of which he was acquitted. Accordingly *autrefois acquit* applies. The Court of Criminal Appeal should deal with inconsistent verdicts in two different trials in the same way as it deals with inconsistent verdicts in the same trial. Accordingly, the second conviction should be quashed.

*Rex v. Betts and Ridley*¹³⁹ illustrates the guilt incurred when a killing results from a common design to commit robbery with violence.

The court was entitled to look at the whole of the proceedings in the previous trial to see what it was all about. Quite apart from the doctrine of *autrefois acquit* it would be entitled to say that a verdict of guilty in the second trial was inconsistent with the result of the first.

The appellant's submissions on issue estoppel are: (1) The verdict of acquittal in the Court of Criminal Appeal has at least as much effect as a jury's acquittal. In [section 4 \(2\) of the Criminal Appeal Act, 1907](#), the language deliberately used says that the court shall not only quash the conviction but also direct a verdict of acquittal to be entered. (2) A verdict of acquittal cannot amount to something less than Not Guilty, for in English law there is no half-way house. (3) It would be grossly unfair if issue estoppel operated on a jury's verdict of acquittal, but not on one in the Court of Criminal Appeal, because a man who had not had a fair trial and whose conviction was quashed would be in a worse position than one who had had a fair trial and who ***1286** had been acquitted by a jury. (4) If that were so it would introduce a very illogical and inconsistent application of the law. On the strict application of *autrefois acquit* a man cannot be indicted for an identical offence. It would be inconsistent if he could be indicted on the same facts as those already determined. (5) Reliance is placed on *Mraz v. The Queen*¹⁴⁰ and *Reg. v. O'Keefe*.¹⁴¹

Alternatively, there was a discretion in the court to stop the second trial. In this matter there is no distinction between civil and criminal courts. The court has always exercised a jurisdiction to control its own process. Its reserve of powers can be drawn on when it is necessary to prevent abuse of its process. John Stephenson J. considered that in the particular circumstances of this case it would be unfair to try the appellant again, and the Crown has abused the process of the court by insisting on this case being tried. This branch of the matter does not depend on *res judicata*.

Here, if the charge of robbery had been included as a count in the indictment and that charge had been tried with the murder charge, the principle of *autrefois acquit* would have applied. Under [rule 3 of Schedule I to the Indictments Act, 1915](#), charges for any offences may be joined in the same indictment if they are founded on the same facts: see Archbold's Criminal Practice, 25th ed., para. 130, p. 60. It was only the rule of practice based on *Rex v. Jones*¹⁴² that prevented the inclusion of the charge of robbery in the present case. This rule is inconvenient and should not have been applied. The Crown should not take advantage of its application in this case.

As to the court's discretion, see *Rex v. Lynch*.¹⁴³ The judge has an inherent jurisdiction to prevent a case coming for trial if he thinks it unfair or oppressive for it to do so. In this respect the Crown is in no different situation from any other litigant. It does not matter whether the court's discretion is exercised by quashing the indictment or otherwise. All common law rules emanating from the breasts of the judges are in origin discretionary.

As to the court's power to see that its process is not abused, *1287 see *Metropolitan Bank Ltd. v. Pooley*¹⁴⁴; *Willis v. Earl of Beauchamp*¹⁴⁵; *Reichel v. Magrath*¹⁴⁶; *Stephenson v. Garnett*¹⁴⁷; *Greenhalgh v. Mallard*¹⁴⁸; *Wright v. Bennett*¹⁴⁹ and *Rex v. Baines*.¹⁵⁰ *Reg. v. Chairman, Middlesex Quarter Sessions, Ex parte Director of Public Prosecutions*¹⁵¹ and *Reg. v. Chairman, County of London Quarter Sessions, Ex parte Downes*¹⁵² do not really help on this point, which is the counterpart of *res judicata* in a civil court.

In a case such as this the House of Lords is not limited to the consideration of the points certified by the Court of Criminal Appeal: see *Attorney-General for Northern Ireland v. Gallagher*.¹⁵³ It is within the discretion of the House to consider the two additional matters, points (4) and (5) already referred to.

A. F. Waley following. The question arises how *autrefois acquit* is to be applied where a conviction in the second trial would be inconsistent with that in the first. On this see *Bird's* case¹⁵⁴ and *Sealfon's* case.¹⁵⁵ The true principle is that one must look at all the circumstances behind the record to see what was really being decided at the first trial.

Sir Peter Rawlinson Q.C., S.-G., J. M. Griffith-Jones, Alastair Morton and Patrick Milmo for the Crown. It is submitted: (1) As to *autrefois acquit*, it is clear that there has been some extension of the principles governing it since Hale's *Pleas of the Crown* (1778 ed.), Vol. II, p. 240. But in adopting issue estoppel the Australian authorities have extended it further than is proper in a way not consistent with the law of England. (2) As to issue estoppel as an extension of *autrefois acquit*, this is a doctrine designed to analyse the facts in a way they would not be analysed in England. (3) As to discretion, the court in the exercise of its criminal jurisdiction has not the discretion claimed by the appellant. There are historical safeguards for the protection of the accused at every stage, and an indictment, once presented, must be tried, unless there is a motion to quash it or *1288 a demurrer or a plea in bar or unless the Attorney-General enters a *nolle prosequi* or unless there is no jurisdiction. Both the prosecution and the accused have a right to have the indictment duly tried. There is no discretion in a judge not to try an indictment.

The doctrine of *autrefois* comes under four different heads: (1) When it is sought to try the same offence, though not in the same terms; (2) where the act or omission is the same, where there is a statutory provision that a person shall not be tried twice for the same act or omission; (3) where the offence is one of which the accused could have been convicted on the same indictment: see *Rex v. Barron*¹⁵⁶; (4) by an extension, where to prove the offence alleged in the second indictment the Crown must prove that the accused has committed an offence of which he has already been convicted or acquitted, provided that at the first trial the offence is complete: see *Reg. v. Morris*.¹⁵⁷

As to this last, one is entitled to go behind the record. In some measure that was always necessary, even in the old days. What one must look for is the offence; in the English cases one does not go beyond the record to identify the offence. The Australian cases go further. The purpose for which one can look beyond the record is laid down in *Bird's* case.¹⁵⁸

There might be a charge of murder arising from rape and if it were shown that the girl had died from some other cause the court would direct an acquittal of the murder. Because of the existing rule of practice there would be no other count in the murder indictment. In that case a new indictment for rape would not be barred by *autrefois acquit*.

In England one can go behind the record for a limited purpose. Having discovered what was proved in the first trial, one can only make a limited use of it. One can look at the facts to see whether the offences were the same, but not to find whether their factual substance was the same. One is looking for only one matter, the essential ingredient of the offence: see *Reg. v. Salvi*¹⁵⁹ and *Reg. v. Miles*.¹⁶⁰ If the wider Australian rule applied, the second *Miles* case¹⁶¹ and *Reg. v. Norton*¹⁶² should have been decided differently and would now have to be overruled. *1289 See also *Gilmore's* case¹⁶³ and *Gould's* case.¹⁶⁴ *Wemyss v. Hopkins*¹⁶⁵ does not help the appellant's argument.

If in order to prove X offence one must prove Y offence, then for this purpose those offences are substantially the same, and one must ask whether the accused has been in jeopardy of conviction of that other offence, so as to decide whether *autrefois*

acquit or autrefois convict applies. See Broom's Legal Maxims, 10th ed., pp. 223-224; *Reg. v. Elrington* ¹⁶⁶; *Reg. v. Tancock* ¹⁶⁷; *Reg. v. Gilmore* ¹⁶⁸; *Reg. v. Miles* ¹⁶⁹ and Stephen's Digest of the Law of Criminal Procedure, 1883 ed., art. 265, p. 127. *Reg. v. Grimwood* ¹⁷⁰ on its facts does not put the Crown's principle in jeopardy, *Reg. v. King* ¹⁷¹ is not either against the Crown's contentions or for the appellant's because the procedure there was very unusual and would not recur. *Reg. v. Ollis* ¹⁷² is not an authority against the Crown; it dealt with admissibility of evidence and it is hard to see how issue estoppel could have arisen. Reliance is placed on *Reg. v. Hutchings*. ¹⁷³ *Welton v. Tanneborne* ¹⁷⁴ was wrongly decided. In the second *Miles*' case ¹⁷⁵ there is no suggestion of issue estoppel and the case fits in with the Crown's submission on the fourth head. *Reg. v. Barron* ¹⁷⁶ and *Reg. v. Kupferberg* ¹⁷⁷ are relied on. *Reg. v. Beach* ¹⁷⁸ does not show that the Crown's submission is wrong, nor does it help the appellant on issue estoppel. *Reg. v. Kendrick and Smith* ¹⁷⁹ puts the matter on its true basis; what matters in autrefois acquit is the offence which is charged. That case is inconsistent with issue estoppel and so is *Flatman v. Light*. ¹⁸⁰ In *Reg. v. Cooper and Compton* ¹⁸¹ the verdicts were clearly inconsistent on the facts. See also *Reg. v. Thomas*. ¹⁸² The authorities show that the principle of autrefois acquit goes no further than the Crown is here submitting.

In *Mraz v. The Queen* ¹⁸³ a subtle analysis of the jury's verdict was undertaken to show that no issue had been decided in the defendant's favour. If it were held that the principle of *1290 issue estoppel did apply in England, the conditions essential to its operation, as illustrated in that case, would have to be applied, namely, that the previous judgment must be conclusive on issues distinctly raised and found. One cannot analyse a jury's verdict unless one knows what part of the evidence they have accepted or rejected. To do that one would have to go into the jury room. Issue estoppel would constitute a formidable introduction into English law, involving the revision of a tremendous amount of material. It would lead ultimately to putting express questions to the jury and giving every accused person the right to a special verdict.

As to the inherent jurisdiction of the court to stay proceedings which are an abuse of its process, see Annual Practice, 1963, p. 577 (R.S.C., Ord. 25, r. 4) and Annual Practice, 1964, pp. 408-409 (R.S.C., Ord. 18, r. 19 (1)). In criminal matters it is of great importance constitutionally that a private person may lay an information and be bound over by a magistrate to prosecute. There could be circumstances in which a public authority did not wish to prosecute and then a private prosecution may be tried. There can be no abuse in the mere allegation that a crime has been committed; the court will investigate that. In criminal law there are recognised safeguards for the accused who may not be committed for trial. Although in civil matters there exists the inherent jurisdiction relied on by the appellant, there never was an inherent jurisdiction in a criminal court to stop the trial of an indictment which is properly before it, unless one of the recognised pleas is available. One former safeguard of the accused was the power of the grand jury to return "no true bill." As to the abolition of grand juries and the subsequent procedure for indictment, see sections 1 and 2 and Schedule II to the Administration of Justice (Miscellaneous Provisions) Act, 1933 (Archbold's Criminal Pleading, 25th ed., pp. 67 et seq.) Magistrates must commit for trial if this procedure is in order and if there is proper evidence which they accept. In section 1 of the Vexatious Actions Act, 1896, the words "legal proceedings" do not include criminal proceedings: see *In re Boaler*. ¹⁸⁴ As to the right to present bills of indictment, see Stephen's Digest of Criminal Procedure, art. 191, p. 121. In *Reg. v. Chairman, Middlesex Quarter Sessions, Ex parte Director of Public Prosecutions* ¹⁸⁵ there is no reference to any such power of the court in its *1291 inherent jurisdiction as the appellant here suggests. Nor is there in *Reg. v. Chairman, County of London Quarter Sessions, Ex parte Downes*. ¹⁸⁶ The only authority supporting the appellant's contention apart from the second *Miles* case ¹⁸⁷ is *Reg. v. Barron*. ¹⁸⁸ The Crown adopts what was said on this point in the Court of Criminal Appeal in the present case. ¹⁸⁹ The sanction against oppressive prosecutions lies in due process of law and judicial decision. The danger of abuse is a matter for the Crown, which can be trusted not to abuse its powers. In the case of abuse by a private prosecutor, a nolle prosequi will be entered.

[LORD REID intimated that their Lordships did not require to hear argument on the appellant's points (4) and (5).]

J. M. Griffith-Jones following. The jury could have acquitted the appellant on a ground other than a finding that he was not at the place of the crime. It would not have been fanciful if the jury had acquitted the appellant of murder, not on that ground, but because he had not the necessary intent. On the evidence they could not have convicted him of manslaughter; it was either guilty of murder or acquittal.

Issue estoppel, if it is to be applied, is rather a ground of law on which a conviction can be quashed on appeal than a plea in bar: see section 4 (1) of the Criminal Appeal Act, 1907. There is insuperable difficulty in deciding such a point before the accused has even pleaded and before the issues are clearly defined. It would require an analysis of the evidence, the speeches and the

summing-up in the previous case. It is an almost impossible task for the jury to decide the matter; it is far more suitable for the court to decide it. If the matter is to be decided by the jury, is it to be the same jury as would try the indictment if the plea failed?

As to the principles of *autrefois* acquit or convict, the courts have always examined the essential ingredients of the first and the second offences charged. The principle applies: (1) where the previous conviction is of an offence consisting of all the essential elements of the second offence; (2) where the previous acquittal or conviction was of an offence based on the same act as the second charge: see Archbold's Criminal Pleading, 25th ed., para. 437, p. 149; (3) where on the previous acquittal the accused could have been convicted of the offence subsequently charged; *1292 (4) where there was a previous acquittal or conviction of an offence and that acquittal or conviction necessarily involved a finding of one of the essential elements of the offence subsequently charged: see *Reg. v. Grimwood*¹⁹⁰; (5) where there is a previous conviction of an offence and that conviction necessarily involves a finding that the accused did not have the intent necessary to the offence subsequently charged.

The rule laid down in *Rex v. Jones*¹⁹¹ that a second charge is never to be combined in one indictment with a charge of murder was extended in *Rex v. Large*.¹⁹² It was properly followed in the present case. As to the joinder of several offences in different counts, see section 4 and Schedule I to the Indictments Act, 1915 (Archbold's Criminal Pleading, para. 130, pp. 59-60).

C. L. Hawser Q.C. in reply. The maxim *nemo debet bis vexari* has two aspects - *res judicata* and issue estoppel. They mean that one cannot relitigate the same issue. But some cases do not always fall within either of these principles and then the courts exercise their inherent jurisdiction to prevent abuse of their process. This jurisdiction is not done away with by the Rules of the Supreme Court. It enables the courts to deal with border-line cases by preventing a trial from taking place at all. This inherent jurisdiction is not limited to an examination of the formal record, and the court can look into the facts. *Stephenson v. Garnett*¹⁹³ is based on inherent jurisdiction, and *Wright v. Bennett*¹⁹⁴ is a striking example of it. There is no difference between the exercise of these powers in a civil and a criminal court. *Autrefois* acquit is an example of judge-made law, a check on the power of the Crown or of a private individual to prosecute. The doctrine has continued to develop, though it may have started simply. It is too narrowly stated in Archbold's Criminal Practice, para. 436, p. 149. It is not a static doctrine but develops in a way very familiar in the common law.

There is no case in which *autrefois* acquit has been used to stop a trial in the middle. But there is an inherent power in the court to stop a trial as soon as it appears that it infringes the maxim *nemo debet bis vexari*. This basic principle operates in different ways. It is a convenient package and there are different ways of applying it besides the doctrine of *autrefois*. There is *1293 a discretion in the court to prevent injustice by the violation of the principle *nemo debet bis vexari*. This discretion goes beyond the jurisdiction in strict *autrefois* and thence arises issue estoppel.

All are agreed that *autrefois* applies (1) where the same offence is in question; (2) in the case of a statutory provision, where the same act is in question; (3) where there has been a previous acquittal on a trial in which the accused could have been convicted of the offence subsequently charged; (4) where to prove the offence alleged on the second indictment one must prove the offence alleged in the first indictment, that is, any offence of which the accused could have been convicted or acquitted.

A possible extension of *autrefois* is the doctrine of inconsistency. Where a verdict of guilty on the second indictment would be inconsistent with the acquittal or deemed acquittal on the first indictment, the second verdict cannot stand. In such a case it may be only at the end of the hearing that one decides that there is an issue estoppel or *res judicata*. If the verdicts were inconsistent it could not matter whether the counts were in the same or in different indictments. As to motion in arrest of judgment in the case of felonies, see Bowen-Rowlands on Criminal Proceedings, 2nd ed., r. 298, p. 276. At the end of the trial the judge may say that the verdict in the second trial cannot stand because it is inconsistent with that in the first. He must look at the facts to see what was decided in the two trials. The judge may also stay the proceedings in the second trial at the outset if he has looked at the record (in the broadest sense) in the first trial and ascertained from counsel what they are seeking to prove in the second trial. The Court of Criminal Appeal has power to quash an inconsistent verdict, whether or not the counts with which it is dealing are in the same indictment. In *Beach's* case¹⁹⁵ the report of the proceedings in the Court of Criminal Appeal makes it clear that the court, in acquitting Owens of an attempt to pervert the course of justice and Beach of aiding and abetting the offence, had negatived conspiracy to pervert the course of justice. Accordingly, on a subsequent prosecution for conspiracy Beach was properly allowed to plead *autrefois* acquit.¹⁹⁶ The appellant relies on that case. See section 4 of the Criminal Appeal Act, 1907, and Archbold's Criminal Pleading, para. 911, p. 373. *Sealfon's* case¹⁹⁷ is entirely consistent with the appellant's contentions. In the *1294 present case the issue on which the Court of Criminal Appeal decided in the appellant's favour was that he was not present and that issue cannot be relitigated. Further, since the jury could have convicted the appellant of manslaughter on the previous trial, they must be deemed to have acquitted him of that and the verdict of guilty of robbery is inconsistent with

that acquittal, since, on the facts, a finding of participation in the robbery involves a finding of guilty of manslaughter if not of murder. On the authorities, if one does an unlawful act likely to injure another person, whom one accidentally kills, that is manslaughter: *Reg. v. Hall*.¹⁹⁸ If robbers take guns with the intention of frightening those who resist them, and one of them strikes a man with his gun and he dies, that is manslaughter. As to joint responsibility see *Rex v. Mohun*¹⁹⁹; *Reg. v. Harrington*²⁰⁰ and *Rex v. Betts and Ridley*.²⁰¹

As to the court's discretion, the situation in criminal cases is exactly analogous to that in civil cases. The traditional safeguards for the accused should not be used to cut it down, where the maxim *nemo debet bis vexari* applies, although the case does not come within one of the recognised categories. The grand jury formerly and the magistrates now would not be informed of matters giving rise to a plea in bar or facts conferring a right to claim the exercise of the court's discretion.

The appellant's contentions in summary are: (1) This is a case of strict *autrefois acquit*. Any reasonable jury must have found at least manslaughter against any of the men present in the *iffy*, since all were equally guilty of at least manslaughter. A conviction of robbery must involve a finding that the appellant was present. (2) On the doctrine of inconsistency, there must be a miscarriage of justice if the second jury's verdict impugns the finding of the first jury: see *Wemyss v. Hopkins*.²⁰² (3) Issue estoppel applies. It operates on the facts of this case on the basis that if the jury had acquitted the appellant and convicted the others it is reasonably probable that that would have amounted to a finding in his favour on the issue of his presence. The fact that he was acquitted by the Court of Criminal Appeal cannot alter the position. This is in accordance with *Hawkins's Pleas of the Crown*, 8th ed. (1824), Book II, p. 515. See also Colin Howard on *Res Judicata* in *Melbourne University Law Review*, Vol. III, *1295 p. 111. This finding ought to operate as a bar to any relitigation of the same issue. The only way to ensure consistency is to use the test of issue estoppel throughout. *Autrefois acquit* is an example of issue estoppel. (4) As to the court's discretion, the court has an inherent jurisdiction to prevent abuse of its process and this is not excluded by pleas in bar, which are matters of right. The residual power of the court justifies it in such cases in ordering that there shall not be a retrial of issues already litigated. (5) Finally, no one is to be tried again for the same offence. The appellant has already been tried as a robber with an intent to murder and it is sought to retry him for robbery.

Their Lordships took time for consideration.

April 21, 1964.

LORD REID.

My Lords, the question in this case is essentially simple. The appellant took part in an armed robbery. In the course of that robbery one of the robbers shot and killed a man. Clearly those facts were capable of giving rise to two charges against the appellant - murder and robbery. He was tried and convicted of murder, but by reason of a misdirection this conviction was quashed by the Court of Criminal Appeal. Ought he then to have been tried afresh on the charge of armed robbery?

If it were proper to be guided by the view of public policy which presently commends itself to Parliament I would think not. Ever since the passing of the Criminal Appeal Act, 1908, Parliament has persistently refused to permit a retrial in respect of the same offence after a verdict of guilty has been quashed on any ground by the Court of Criminal Appeal. Refusal to allow a new trial has always been put on the ground of fairness to the accused and I cannot see why, if it is unfair to allow a retrial for the same offence, it is fair to allow a fresh trial on the same facts merely because the offence now charged is different.

But I must take the law as I find it. The numerous authorities marshalled by my noble and learned friend, Lord Morris of Borth-y-Gest, show that many generations of judges have seen nothing unfair in holding that the plea of *autrefois acquit* must be given a limited scope. It may not be possible to reconcile all the decisions, but I cannot disregard the fact that with certain exceptions it has been held proper in a very large number of cases to try a man a second time on the same criminal conduct where the offence charged is different from that charged at the first trial. Distinctions between cases where a man can be tried *1296 a second time and where he cannot may seem technical, but they seem to me to be so well established by authority that it would be wrong to disregard or overrule them even if I desired to do so.

The difficulty in this case arises from the practice, based on *Rex v. Jones*,²⁰³ that a second charge is never combined in one indictment with a charge of murder. I would think that the *Indictments Act, 1915*, was designed to ensure that all charges arising out of the same facts are combined in one indictment and thus to prevent there being a series of indictments and trials on substantially the same facts. I have had an opportunity of reading the speeches of my noble and learned friends, Lord Devlin

and Lord Pearce, and I agree with them. I think that the present practice is inconvenient and ought to be changed. I realise that there are cases where, for one reason or another, it would be unfair to the accused to combine certain charges in one indictment. So the general rule must be that the prosecutor should combine in one indictment all the charges which he intends to prefer. But in a case where it would have been improper to combine the charges in that way, or where the accused has accepted without demur the prosecutor's failure so to combine the charges, a second indictment is allowable. That will avoid any general question as to the extent of the discretion of the court to prevent a trial from taking place. But I think there must always be a residual discretion to prevent anything which savours of abuse of process.

As regards the present appeal I think that the course which this case has taken was in accord with existing practice, and I would therefore dismiss the appeal.

LORD MORRIS OF BORTH-Y-GEST.

My Lords, there were two indictments against the appellant. The first charged him (together with three others) with the murder of a man named Hurden on November 17, 1962. The second charged him (together with the three others) with robbery with aggravation contrary to [section 23 \(1\) \(a\) of the Larceny Act, 1916](#). The particulars of the offence charged in the second indictment alleged that on November 17, 1962, the accused, being armed with offensive weapons, to wit firearms, and being together with others robbed a man named Davies of a sum of over £519. By reason of a rule of practice (see [Rex v. Jones](#) ²⁰⁴) the charges could not both have been contained in one indictment. The appellant pleaded [*1297](#) not guilty to both. The two indictments could not be tried together. The first was taken first. The appellant's defence (at a trial at the Central Criminal Court) was that he was not guilty for the reason that he had not been present at the scene of the crime. He made an alternative submission that if he was present he was still not guilty of murder. The submission was put by learned counsel to the jury in the following words: "... nevertheless, members of the jury, if you come to the conclusion that Connelly was there, you still have to decide whether he is guilty of murder, and my submission to you is this. There is no evidence that any of the men in the office intended to do more than frighten people with unloaded guns. There is no evidence that the guns in the office were loaded; there is no evidence that any of the men in the office knew that the man outside had a loaded gun or intended to use it, and unless the prosecution satisfy you that the men in the office either were themselves prepared to use such force as would cause grievous bodily harm or knew that their confere outside was prepared to do the same kind of thing, then the prosecution would not have established the necessary ingredients of murder. They would, of course, have established the necessary ingredients for robbery and quite clearly, on the second indictment, if Connelly came up again and the jury had found that he was present, then he would go down on the second indictment."

The jury found the appellant guilty of murder. The learned judge said that the second indictment should remain on the file and be marked as not to be proceeded with unless the court or the Court of Criminal Appeal gave leave.

The appellant appealed to the Court of Criminal Appeal. On the ground that there had been misdirection in that part of the summing-up which dealt with the appellant's defence of an alibi and because the court did not feel it possible to apply the proviso, the appeal was (on April 5, 1963) allowed, and the appellant's conviction of murder was set aside. The question of the trial on the second indictment then arose. The Court of Criminal Appeal recognised that a plea of *autrefois acquit* could not then be argued and acceded to an application made by the prosecution for leave to prefer the second indictment. It has not been suggested that this circumstance would prevent the success of a later plea of *autrefois acquit* if the plea could be justified.

The appellant appeared again at the Central Criminal Court on May 10, 1963. He pleaded *autrefois acquit*. A jury was sworn to try that issue. The learned judge told the jury about the [*1298](#) proceedings in the Court of Criminal Appeal and of the resulting acquittal of murder, and in his direction to them said: "The question that you have to decide is a short and simple one: has this man Connelly proved that he has already been tried and acquitted of the same felony or offence, or of substantially the same offence, or has he already been tried and acquitted on an indictment on which he could have been convicted of the same or substantially the same offence?" Pointing out that the murder which was alleged in the first indictment took place in the course of the robbery which was alleged in the second indictment, he asked the jury whether it could be said that the murder of Hurden on November 17 was the same or substantially or practically the same as robbery with aggravation of a sum of money from Davies. He told the jury that the answer must be "no." He directed them that on the indictment for mirroring Hurden the appellant could not have been convicted of robbing Davies. The jury, on his direction, found that the appellant had not previously been acquitted of the felony for which he was indicted in the second indictment.

My Lords, for reasons which I will elaborate, I can find no error in the direction of the learned judge. The appellant could not on the first indictment have been found guilty of the offence of robbery with aggravation. Nor is proof of robbery with aggravation equated with proof of a killing.

Following the verdict of the jury, the learned judge expressed the view that the Crown ought not to proceed with the second indictment. The reason formulated by the learned judge for that view was that the issue whether the appellant had taken part in the raid at Mitcham on November 17, 1962, had already been decided and ought not to be re-tried. So far, however, as there had up to then been any direct decision, such decision was that of the jury, who found that the appellant was guilty of murder. That necessarily involved that he had been at Mitcham on November 17, 1962. The Court of Criminal Appeal did not decide that he had not been there. Their decision, publicly stated, records no such finding. Though the appeal was presented on the ground that there had been misdirection concerning the issue as to whether the appellant had been at Mitcham, and though the issue of murderous intent was not raised, all that the Court of Criminal Appeal decided was that there had been misdirection in the summing-up and that they could not apply the proviso. The result was that the conviction was set aside. The result is that the appellant can validly assert that he has been **1299* acquitted of the charge of murder - with the consequential result that he has also been acquitted of manslaughter. He cannot, however, say that anyone has ever decided that he was not present. Indeed, it is probable that the Court of Criminal Appeal would not without demur have agreed that the second indictment hewed be proceeded with, had they thought that their decision in any way involved a finding or conclusion to the effect that the appellant had not been at Mitcham. The verdict of acquittal of murder which was the consequence of the decision of the Court of Criminal Appeal (see [section 4 of the Criminal Appeal Act, 1907](#)) can be regarded as placing the appellant in the same position as he would have been in if the jury had returned a verdict of not guilty. Such a verdict of a jury could not, however, be analysed. The appellant's case, as submitted to the jury on the murder charge, was twofold, namely, (1) I was not there at all; (2) if I was there, I was in no way responsible for the killing that took place. A verdict of not guilty would not proclaim what had been the view of the jury.

The Crown decided to proceed with the second indictment. A submission was then made to the learned judge that he could and that he should prevent the prosecution from proceeding. He was invited (1) to make an order that all further proceedings on the indictment should be stayed or that the indictment should lie on the file and that the matter should be adjourned sine die, or (2) to allow the indictment to remain on the file of the court marked "Not to be proceeded with without leave of the court," or (3) to quash the indictment, or (4) to em panel a jury and to direct them to acquit the appellant. The submission apparently was that it "waylay be unfair or contrary to the interests of justice" to allow the second trial to take place.

The learned judge declined to give any direction to the prosecution that they should not proceed. They did proceed, and in due course the appellant was convicted. My Lords, in my view the learned judge was entirely correct in so declining. He had no power to suppress the prosecution. There was no abuse of the process of the court. The indictment was correct in form. There was no basis for the quashing of it. Should it, then, be said (in a somewhat vague and imprecise way) to have been "unfair" that the appellant should have been tried on the second indictment? The guiding principles as to what is fair and in the interests of justice have been evolved over the centuries: some of them, indeed, find their expression in the rules governing the pleas of *autrefois acquit* and *autrefois convict* and other kindred **1300* pleas; but if an appellant, being faced with a charge, cannot show that any of these pleas avail him, why is it unfair that he should take his trial? He will not be convicted unless his guilt of the charge is established so that a jury are quite sure of it. Why is that contrary to the interests of justice? The most that can be said in this case is that if there had not been a rule of practice which prevented the joinder in one indictment of other charges together with a charge of murder and if there had been such a joinder and all offences had been charged in one indictment and tried together, and if in that event there had been misdirection in the summing-up seemlier to the misdirection in the summing-up on the trial of the first indictment and if the appellant had been convicted by a jury, the result of an appeal to the Court of Criminal Appeal would have been that the appellant would have been acquitted of all charges. That the plight of the appellant would on all those suppositions have been different does not seem to me to be a valid basis for a view that it was contrary to the interests of justice that the trial of the second indictment should proceed. In any event, if there had been a joinder of all charges in one indictment it is possible that there might have been a request to have a separate trial of the robbery count. I consider that if a charge is preferred which is contained in a perfectly valid indictment which is drawn so as to accord with what the court has stated to be correct practice and which is presented to a court clothed with jurisdiction to deal with it and if there is no plea in bar which can be upheld the court cannot direct that the prosecution must not proceed. I agree with what was said by Lord Goddard C.J. in *Reg. v. Chairman, County of London Quarter Sessions, Ex parte Downes*,²⁰⁵ that once an indictment is before the court the accused must be arraigned and tried thereon unless (on a motion to quash or demurrer pleaded) the indictment is held to be defective in substance or form and is not amended, or unless matter in bar is pleaded and the plea is tried or confirmed in favour of the accused or unless (after the indictment is found) the Attorney-General enters a *nolle prosequi* or unless the court has no jurisdiction to try the offence disclosed by the indictment. In that case Lord Goddard said that he knew of no power in the

court to quash an indictment because it is anticipated that the evidence would not support the charge: indeed, the only ground on which the court can examine the depositions, before arraignment, is to see whether ***1301** (in a case where there is a count for which there has not been a committal) the depositions disclose the offence covered by that law count.

There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process. The preferment in this case of the second indictment could not, however, in my view, be characterised as an abuse of the process of the court.

I consider that the rule of practice that counts for other offences should not be included in an indictment for murder (see *Rex v. Jones* ²⁰⁶ could with advantage now be modified. Some of the considerations which no doubt prompted the rule are not now as fully applicable as they were before the passing of the Homicide Act, 1957. The ruling in *Rex v. Jones* ²⁰⁷ was, I consider, not a ruling of law but was one of practice and procedure. (See also *Rex v. Large* ²⁰⁸ and *Rex v. Davis*. ²⁰⁹ There must now often be circumstances in homicide cases (though probably not in capital murder charge cases) in which such joinder of charges as is made permissive by the rules of the *Indictments Act* would not be undesirable. In view of this and in the light of current experience, the time is, I think, opportune for a reconsideration by the Court of Criminal Appeal of the rule of practice. It is, however, clear that in framing two indictments against the appellant in the present case the prosecution were not at fault and were only doing what they were obliged to do. While, as I will endeavour to show, there has never been a rule that the same facts may not form the basis of successive charges, there is inherent in our criminal administration a policy and a tradition that even in the case of wrongdoers there must be an avoidance of anything that savours of oppression. That fine tradition is not tarnished if, where rules (which have themselves been evolved in the interests of fairness) make it inevitable, and where the interests of justice so direct, a second trial takes place in which facts are for a second time investigated.

The power (which is inherent in a court's jurisdiction) to prevent abuses of its process and to control its own procedure ***1302** must in a criminal court include a power to safeguard an accused person from oppression or prejudice. That power, as is demonstrated by a stream of authority to which I will refer, has, however, never been regarded as endowing a court with a power to say that evidence given in reference to one charge may not be repeated in reference to another and different charge. Nor does it enable a court to order that a prosecution be dropped merely because of some rather imprecise regret that an accused should have to face another charge. If there had not been the rule of practice against the joinder with a murder charge of another charge (a rule which in 1918 may have been based upon the fitness of things, having regard to the fact that a conviction for murder alludes resulted in a sentence of death but which was not, I would have thought, a rule designed to give any assistance to the defence), then, in the circumstances of the present case, the murder and robbery charges might have been in one indictment. Had they been, I do not understand it to be suggested that there would have been any prejudice to the accused. Nor is it suggested that the judge would have been invited to require the prosecution to elect between the two charges. He might possibly have been invited to order that the charges should be tried separately. He clearly would have had power so to order. I do not consider that the court would have had any power to order that one or other of the charges must be dropped. Had there been a trial of the two charges together the powerful plea of counsel for the accused would have been that, if the jury were satisfied (contrary to the submission of the defence) that the appellant had been present, they should acquit him of murder but would then inevitably have to convict him of robbery. It could not, therefore, be said that the two charges are repugnant: the appellant might have been convicted of both of them. There could be no very obvious embarrassment for the appellant either in dealing with the two charges at the same time or in dealing with them at different times.

If there had been an acquittal by the jury on the murder charge it would not have been known what was the basis of the acquittal. The jury had been told that, on one view, the appellant, in the event of an acquittal of murder, would be tried for robbery: he certainly would have expected that in that event he would be or might be so tried. He was in fact convicted, and when the conviction was set aside by the Court of Criminal Appeal there could be no second trial on the charge of murder. No ***1303** question as to second trials arises, therefore, in this case. There was a first and an only trial for robbery.

When the Court of Criminal Appeal gave judgment allowing the appeal from the conviction for murder the prosecution applied to that court for leave to proceed with the second indictment. That application was made because of the order that had been made by the learned judge after the jury had convicted at the trial for murder. The second indictment was to lie on the file of the court and was not to be proceeded with unless the court or the Court of Criminal Appeal gave leave. It is not necessary to express any concluded opinion as to the effect of such an order. It may not amount to more than a statement by the defence to the court that there is no insistence by them upon having the outstanding charge dealt with at once and a statement by the prosecution to the court that the charge would not be tried until such time as the court said that it could be tried. In fact leave was given, but it was

annealed given after a detailed and careful submission had been made to the Court of Criminal Appeal to the effect that, quite apart from any question as to the plea of *autrefois acquit*, there were various reasons why the case should not proceed on the second indictment. The arguments as to the undesirability of proceeding to trial upon the second indictment were put to the court in similar terms to those developed before your Lordships and were put on the basis that it was for the court to decide whether or not to give its leave. The matter was put as being one that was entirely within the discretion of that court. Having heard and considered the submission, the court merely stated that it acceded to the application of the prosecution and ordered the accused to remain in custody. When the case later came before John Stephenson J. and a jury the plea of *autrefois acquit* was pleaded and it is accepted that that was the right time to raise the plea. As already stated, it was rejected by the jury. When thereafter the learned judge expressed his opinion that the second indictment should not be tried but should be dropped, that opinion was based upon the view "that to try him on this indictment would be to ask a jury to determine an issue of identity which was decided against him by another geared and in his favour by the Court of Criminal Appeal on the ground that if the jury had been differently directed they might have reached the opposite determination of the same issue." The learned judge thought that the appellant ought not to be tried on the second indictment "because the issue whether he took part in the raid at Mitcham on November 17, 1962, had already *1304 been decided and ought not to be re-tried." With respect, as I have indicated above, the Court of Criminal Appeal did not decide that the appellant had not been at Mitcham. What they decided was that the finding that he had been there was reached after a summing-up that was open to criticism and that the conviction for murder should be set aside. The only positive result was that the appellant was acquitted - finally and absolutely - of murder. It had then to be decided whether or not to proceed with the second indictment. The decision involved some difficult considerations. Views may differ as to which course was desirable. I can appreciate and understand the view which appealed to the learned judge. I can appreciate and understand the view of those who had the responsibility to decide whether to proceed with the untried indictment or whether to abandon it. It was not, however, for the court to decide as between the two views, and I consider that the learned judge was entirely correct in refusing to direct that there should be no trial. It was a matter for the prosecution. I cannot think that it can properly be said that the decision of the prosecution to proceed involved any abuse of the process of the court. The learned judge himself was clearly of this opinion. In reference to the application of learned counsel for the appellant he said: "Indeed, there would be an abuse of the process of this court not in my refusing but in my consenting to treat this indictment as he asks me to treat it." I agree with that approach of the learned judge, and I also agree with him "that generally speaking a prosecutor has as much right as a defendant to demand a verdict of a jury on an outstanding indictment, and where either demands a verdict a judge has no jurisdiction to stand in the way of it." Indeed, under the English system of law criminal procedure has been conceived of as an action between a plaintiff and a defendant to be tried by a process substantially similar to that implored in any other action (see Holdsworth's History of English Law, Vol. 3, p. 622). It would, in my judgment, be an unfortunate innovation if it were held that the power of a court to prevent any abuse of its process or to ensure compliance with correct procedure enabled a judge to suppress a prosecution merely because he regretted that it was taking place. There is no abuse of process if to a charge which is properly brought before the court and which is framed in an indictment to which no objection can in any way be taken there is no plea such as that of *autrefois acquit* or *convict* which can successfully be made.

Even had I not been of the opinions which I have just *1305 expressed, and had I considered that on some ground there was some discretionary power in some court to order that the robbery indictment be not tried, I would very much doubt whether after what transpired in the Court of Criminal Appeal, and thereafter before John Stephenson J. and before Nield J. and after the dismissal of the second appeal in the Court of Criminal Appeal, there ought now, in your Lordships' House, to be some new and original exercise of a discretion which would involve the quashing of the conviction.

In my opinion, there was no abuse of the process of the court in proceeding with the outstanding indictment and there was no bar to it unless the appellant could successfully plead "*autrefois acquit*."

I pass, therefore, to a consideration of the questions which arise concerning the plea of *autrefois acquit*. In giving my reasons for my view that the direction given by the learned judge was entirely correct, I propose to examine some of the authorities and to state what I think are the governing principles. In my view, both principle and authority establish: (1) that a man cannot be tried for a crime in respect of which he has previously been acquitted or convicted; (2) that a man cannot be tried for a crime in respect of which he could on some previous indictment have been convicted; (3) that the same rule applies if the crime in respect of which he is being charged is in effect the same, or is substantially the same, as either the principal or a different crime in respect of which he has been acquitted or could have been convicted or has been convicted; (4) that one test as to whether the rule applies 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; (5) that this test must be subject to the proviso that the offence charged in the second indictment had in fact been committed at the time of the first charge; thus if there is an assault and a prosecution and conviction in respect of it there is no bar to a charge of murder if the assaulted person later dies; (6) that on a plea of *autrefois acquit* or *autrefois convict* a man is not restricted to a

comparison between the later indictment and some previous indictment or to the records of the court, but that he may prove by evidence all such questions as to the identity of persons, dates and facts as are necessary to enable him to show that he is being charged with *1306 an offence which is either the same, or is substantially the same, as one in respect of which he has been acquitted or convicted or as one in respect of which he could have been convicted; (7) that what has to be considered is whether the crime or offence charged in the later indictment is the same or is in effect or is substantially the same as the crime charged (or in respect of which there could have been a conviction) in a former indictment and that it is immaterial that the facts under examination or the witnesses being called in the later proceedings are the same as those in some earlier proceedings; (8) that, apart from circumstances under which there may be a plea of *autrefois acquit*, a man may be able to show that a matter has been decided by a court competent to decide it, so that the principle of *res judicata* applies; (9) that, apart from cases where indictments are preferred and where pleas in bar may therefore be entered, the fundamental principle applies that a man is not to be prosecuted twice for the same crime.

These principles, which, in my view, should be accepted and followed, have been evolved over a long period. Brief reference may be made to some of the statements in the books. Thus Coke (3 Inst. 213) says that "*autrefois acquit* must be of the same felony." Blackstone in his Commentaries, Book IV (1759 ed.), p. 329, says that "the plea of *autrefois acquit*, or a former acquittal, is grounded on this universal maxim of the common law of England, that no man is to be brought into jeopardy of his life, more than once, for the same offence." He says that when a man is once fairly found not guilty upon any indictment he may plead such acquittal in bar of any subsequent accusation "for the same crime": and that the plea of *autrefois convict* depends upon the same principle. Also he points out (p. 330) that a conviction of manslaughter is a bar to an indictment of murder. "for the fact prosecuted is the same in both, though the offences differ in colouring and in degree." He adds: "It is to be observed, that the pleas of *autrefois acquit* and *autrefois convict*, or a former acquittal, and former conviction, must be a prosecution for the same identical act and crime."

In Hale's Pleas of the Crown (1778 ed.), Vol. 2, p. 240, it is pointed out that pleas in bar of the indictment of felony or treason are of two kinds, i.e., (i) such as are purely matters of record, and (ii) such as are partly matters of record and partly matters of fact. The plea of pardon would be of the former kind. Hale gives four illustrations of pleas of the latter kind: "1. *1307 *Autrefois acquit* of the same felony. 2. *Autrefois attain* or convict of the same felony. 3. *Autrefois attain* of another felony. 4. *Autrefois convict* of another felony and had his clergy." In a plea of *autrefois acquit* the matter of record would include the former indictment and acquittal: the matter of fact would be that the prisoner is the same person that was acquitted and "that the fact is the same of which he was acquitted, and whereof he is now indicted."

Hale proceeds to give illustrations as to what would and what would not be regarded as the same felony as that whereof the party was acquitted. Thus if A and B were indicted as principals in the robbing or killing of D and if B was convicted as principal but A was acquitted, then if A was later indicted as an accessory after the fact he could not then rely on his former acquittal because the two offences would not be the same. If, however, A was later indicted as an accessory before the fact he could plead *autrefois acquit* "because it is in effect the same offence." (This latter view was not shared by other writers.)

So if a man was indicted for the robbery or murder of John a Stiles and acquitted and was later indicted for the robbery of John a Nokes he could plead *autrefois acquit* if he could show that notwithstanding the variance it was in fact the same man. Further (see pp. 245-246): "If A commits a burglary in the county of B and likewise at the same time steals goods out of the house, if he be indicted of larceny for the goods and acquitted, yet he may be indicted for the burglary notwithstanding the acquittal. and *è converso*, if indicted for the burglary and acquitted, yet he may be indicted of the larceny, for they are several offences, tho committed at the same time. and burglary may be where there is no larceny, and larceny may be where there is no burglary. Thus it heath happened, that a man acquitted for stealing the horse heath yet been arraigned and convict for stealing the saddle, tho both were done at the same time." Hale proceeded to point out (at p. 246) that if a man is acquitted generally on an indictment of murder, *autrefois acquit* waylay be a good plea to an indictment of manslaughter of the same person. It would be the same death: the fact would be the same. The charges of murder and manslaughter only differ in degree.

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 *1308 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?

In Hawkins's Pleas of the Crown (8th edition, published in 1824), Book II, at p. 515, it is said: "The plea of *autrefois acquit* is grounded on this maxim, that a man shall not be brought into danger of his life for one and the same offence, more than once.

From whence it is generally taken, by all the books, as an undoubted consequence, that where a man is once found 'not guilty' on an indictment or appeal free from error, and well commenced before any court which hath jurisdiction of the cause, he may, by the common law, in all cases whatsoever plead such acquittal in bar of any subsequent indictment or appeal for the same crime." Hawkins makes it clear that a mere variance between the record of a former acquittal and the later indictment will not defeat the plea if both indictments are for the very same felony. Hawkins further says (see p. 518): "Also it seems a general rule, that a bar in action of an inferior nature will not bar another of a superior. Yet it seems, that an acquittal in an indictment of murder will be a good bar of an indictment of petit treason, because both offences are in substance the same. But it is clear, that an acquittal of one felony is no manner of bar to a prosecution for another in substance different, whether committed before or at the same time with that of which he is acquitted."

Some of the cases cited by Hawkins must be read in the light of the later guidance given in *Rex v. Vandercomb and Abbott*,²¹⁰ which was decided in 1796. An indictment charged the two prisoners with having burgled a house and stolen certain articles therein. The facts to sustain that charge were not proved and the jury by the direction of the court acquitted the prisoners. The grand jury had not been discharged and the prisoners were detainee in custody in order to have another indictment preferred against them. Two new indictments were then preferred. One charged them with having burgled the house with intent to steal. The other charged them with having stolen articles in the house, *1309 stating other articles than those stated in the former indictment, or the same articles differently described and laid as to part of them to be the property of different persons than what were included in the former indictment. To the first of the two new indictments the prisoners pleaded autrefois acquit. To the plea there was a demurrer and to the demurrer a joinder. The questions raised were argued in the Exchequer Chamber before all the judges of England. The prisoners' plea failed. It was quite clear that the burglary charged in the new indictment was precisely the same burglary as that charged in the previous indictment: "there was only one act done." It was pointed out, however, that burglary was of two sorts, first, breaking and entering a dwelling-house in the night time and a stealing goods therein; secondly, breaking and entering a dwelling-house in the night time with intent to commit a felony, although the meditated felony be not committed. The judges therefore said²¹¹ : "In the present case, therefore, evidence of the breaking and entering with intent to steal, was rightly held not to be sufficient to support the indictment, charging the prisoner with having broke and entered the house, and stolen the goods stated in the first indictment; and if crimes are so distinct that evidence of the one will not support the other, it is as inconsistent with reason, as it is repugnant to the rules of law, to say that they are so far the same that an acquittal of the one shall be a bar to a prosecution for the other." Having referred to certain cases the judges said²¹² : "These cases establish the principle, that unless the first indictment were such as the prisoner might have been convicted upon by proof of the facts contained in the second indictment, an acquittal on the first indictment can be no bar to the second." (The charges which can be preferred under the provisions of the *Larceny Act, 1916* , need not for present purposes be considered.)

My Lords, the law of England was, therefore, clearly stated. 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. Applying to the present case the law as laid down, the question is whether proof *1310 that there was robbery with aggravation would support a charge of murder or manslaughter. It seems to me quite clear that it would not. The crimes are distinct. There can be robbery without killing. There can be killing without robbery. Evidence of robbery does not prove murder or manslaughter. Conviction of robbery cannot involve conviction of murder or manslaughter. Nor does an acquittal of robbery or manslaughter necessarily involve an acquittal of robbery. Nor on a charge of murder or manslaughter could a man be convicted of robbery. 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.

The law was thus stated by Archbold (*Pleading and Evidence in Criminal Cases*, 2nd ed. (1825), at p. 53): "When a man is indicted for an offence, and acquitted, he cannot afterwards be indicted for the same offence, provided the first indictment were such that he could have been lawfully convicted on it; and, if he be thus indicted a second time, he may plead autrefois acquit, and it will be a good bar to the indictment. The true test by which the question, whether such a plea is a sufficient bar in any particular case, may be tried, is, whether the evidence necessary to support the second indictment, would have been sufficient to procure a legal conviction upon the first."

An illustration of the application of the principle would be where after an acquittal upon an indictment for manslaughter there was an indictment for murder in respect of the same killing. In my view, the acquittal on the first indictment would be a bar to the second. It would be the same if the first indictment resulted in a conviction. In the report of *Wrote v. Wiggles*,²¹³ referring

to *Holtcroft's* case,²¹⁴ it is said that: "it was resolved without difficulty in *Holtcroft's* case,²¹⁵ that if a man commits murder, and is indicted and convicted or acquitted of manslaughter, he shall never answer to any indictment of the same death, for all is one and the same felony for one and the same death, although murder is in respect of the circumstances of the forethought malice more odious." See also Hale's Pleas of the Crown, Vol. II, p. 246. In *Reg. v. Tancock*²¹⁶ a man was *1311 indicted for and convicted of manslaughter and after that conviction a coroner's jury returned a verdict of wilful murder and upon that inquisition the man was arraigned for murder. He pleaded autrefois convict. Denman J.²¹⁷ thought that no jury would convict of murder and he directed the jury to find the plea proved. He did, however, say that had he thought that the facts would have supported a conviction for murder he would have let the man be tried for murder and would have reserved the point for the Court of Crown Cases Reserved as to whether following a conviction for manslaughter there could be a trial for murder. My Lords, I would think that the weight of authority would compel the answer that that could not be.

The test above referred to is also 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. In the present case it was in no way necessary to prove that anyone had been killed in order to prove a charge of robbery with aggravation. Though the evidence which was given on the trial of the second indictment did in fact inform the jury that a man had been killed the killing was no necessary element in the crime of robbery with aggravation, and the learned judge in his summing-up to the jury emphasised that they were not concerned with any charge of murder. The crime of robbery with aggravation could not be said to be the same as or substantially the same as or in effect the same as the crime of murder or manslaughter.

My Lords, the authorities to which I have referred show that the plea of autrefois acquit has availed if the charge contained in a later indictment is one of which a man could have been convicted on the trial of an earlier indictment. It was recognised, for example, by Hale that an acquittal of murder involved that there could be no later charge of manslaughter in respect of the same death. It was shown in 1611 in *Mackalley's Case*²¹⁸ that on an indictment for murder there could at common law be a conviction for manslaughter. The circumstances are today numerous in which on a trial for one offence there may be a conviction of an offence of less gravity. At common law on an indictment for an offence of a compound nature there might be a conviction of one of the criminal elements of which the offence was composed. There could be such a conviction if the words of the indictment were wide enough. As was said in *Rex v. Hollingbery*²¹⁹: "In *1312 criminal cases it is sufficient for the prosecutor to prove so much of the charge as constitutes an offence punishable by law." But at common law there cannot be a conviction of an offence which is quite different from the charge in the indictment. There are, however, many statutory provisions which enable verdicts of guilty of offences differing from those charged to be returned. But neither at common law nor under any statutory provision could there be a conviction of robbery on a charge of murder.

The fundamental principle of the plea of autrefois acquit as laid down by the judges of England in 1796, and as stated by writers earlier than that date, has been consistently followed. It was thus stated in 1848 in *Broom's Legal Maxims* (2nd ed.), pp. 257-258: "... and this plea is clearly founded on the principle, that no man shall be placed in peril of legal penalties more than once upon the same accusation - *nemo debet bis puniri pro uno delicto*. Thus, an acquittal upon an indictment for murder may be pleaded in bar of another indictment for manslaughter: and an acquittal upon an indictment for burglary and larceny may be pleaded to an indictment for the larceny of the same goods; because, in either of these cases, the prisoner might, on the former trial, have been convicted of the offence charged against him in the second indictment. On the other hand, an acquittal upon an indictment for a felony is no bar to an indictment for a misdemeanour, and this holds *è converso*. Nor is an acquittal on an indictment for larceny any bar to an indictment for the same offence charged as a false pretence; though, on account of the proviso in Stat. 7 & 8 Geo. 4, c. 29, s. 53, an acquittal for the latter offence is a bar to an indictment for the same act charged as a larceny. An acquittal on an indictment for having been present aiding and abetting in a felony, is no bar to an indictment charging the party as an accessory before the fact, because the offences described in the two indictments are distinct in their nature. The true test by which to decide whether a plea of autrefois acquit is a sufficient bar in any particular case is, whether the evidence necessary to support the second indictment would have been sufficient to procure a legal conviction upon the first."

It is, of course, clear that there may now be a joinder of felonies and misdemeanours in one indictment and by statutory provision there may in certain cases be convictions of misdemeanours on charges of felonies. Under the [Indictments Act, 1915](#), charges may be joined in the same indictment if they are *1313 founded on the same facts or form, or are part of, a series of offences of the same or a similar character. Whenever charges can be joined they should be joined.

The general principle of autrefois acquit was illustrated in 1840 in the case of *Reg. v. Gould*.²²⁰ Gould was charged with burglary. There had been a previous charge against him of murder. What had been suggested against him was that in the course of burglary and in furtherance and prosecution of burglary he had murdered a Mr. Templeman. He was acquitted. At that date

it would have been possible on an indictment of murder to convict not only of manslaughter but even of assault "where the crime charged shall include an assault" (see section 11 of the Offences against the Person Act, 1837 (7 Wm. 4 & 1 Vict. c. 85)). On the second indictment - for burglary - he was convicted. The conviction was upheld. There was no charge of burglary with violence. Parke B.'s view ²²¹ was that "if he had been indicted for burglary with violence, as he might have been convicted of manslaughter or even of assault on the indictment for murder, on which he had been acquitted altogether, in my opinion, that acquittal would have been an answer to the allegation of violence if it had been inserted in the present indictment."

Had there been a charge of robbery with violence the evidence necessary to support such a charge would have been sufficient to convict of assault. But he had been acquitted of assault because the acquittal of murder was in the circumstances also an acquittal of manslaughter and of assault.

The case of *Reg. v. Bird* ²²² turned mainly upon the construction of the words "where the crime charged shall include an assault against the person" which were contained in section 11 of the Act of 1837 (which was repealed in 1861). The two accused were charged with the murder of a young woman who died on January 4, 1850. There were a number of counts in the indictment alleging that on various dates after November 5, 1849, the two accused had struck and beaten the young woman and so had caused her death. At the trial evidence was given of various assaults in the months of November and December but the evidence showed that the death was caused exclusively by one particular blow on the head which had been inflicted shortly before the death on January 4, 1850. There was no evidence to ^{*1314} show that that blow had been struck by either of the accused and they were acquitted. The wording of section 11 was "where the crime charged shall include an assault against the person, it shall be lawful for the jury to acquit of the felony, and to find a verdict of guilty of assault against the person indicted, if the evidence shall warrant such finding." For an assault so found there could be a sentence of three years' imprisonment. The two accused, after their acquittal, were then indicted on a charge of having assaulted the young woman on November 10, 1849, with intent to wound and with intent to do grievous bodily harm. They pleaded *autrefois acquit*. They were convicted. There was a case stated for the Court of Crown Cases Reserved. It was first argued before five judges. It was then re-argued before 14 judges in the Court of Exchequer Chamber. Eight of the judges affirmed the conviction while six thought that the plea of *autrefois acquit* should have succeeded. At the second trial the plea of *autrefois acquit* failed because the jury were told that they could convict if they were satisfied that there were several distinct and independent assaults some or any of which did not in any way conduce to the death of the deceased. The great debate before the judges was, therefore, whether there could have been a conviction of assault at the trial on the murder charge. Did the general acquittal at the first trial operate as a bar to a prosecution for each and every assault? Could there have been a conviction of assault if the assaults were not connected with and did not cause the death? In the circumstances did the murder "include" the assaults? In order that section 11 should apply must the assaults be connected with the death? Must they be connected with the circumstances relied upon as constituting the felony? My Lords, with the questions of construction then raised there need not now be any concern, but the case illustrates that it was well settled in 1850 that on a plea of *autrefois acquit* it can be shown what evidence was given at an earlier trial.

There can be no evidence to show what the charge in the previous indictment really was. In *Bird's* case ²²³ it was a question of fact (for the jury) whether the assault which was the subject of the second indictment was the same as one of the assaults forming the basis of the murder charge, but it was a question of construction and, therefore, of law for the judge whether on the indictment for murder there could have been a verdict of guilty of assault. There ^{*1315} does not seem to have been any suggestion that the second indictment could not be preferred or could not result in conviction merely because it related to facts which had already been examined or because it required the repetition of evidence previously given.

In *Reg. v. Elrington* ²²⁴ in 1861 there was an indictment containing three counts: (1) assault causing grievous bodily harm; (2) assault (the same assault) causing actual bodily harm; (3) common assault (the same assault). Elrington pleaded that in respect of the same assault an information and complaint against him had previously been heard by justices of the peace and had been dismissed and that the justices had signed a certificate of dismissal. Section 28 of 9 Geo. 4, c. 31, provided that in such circumstances a person should be "released from all further or other proceedings, civil or criminal, for the same cause." Cockburn C.J. held that the express words of the statute enabled Elrington successfully to plead it in bar to the indictment and Blackburn J. agreed. Though Cockburn C.J. expressly decided the matter on the wording of the statute, he added when dealing with an argument of counsel ²²⁵ : "... on the other hand, 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." In speaking of "a series of charges" the Chief Justice must have been referring to charges preferred at different dates, for there clearly could have been no objection to the inclusion in one indictment of the three counts that were preferred against Elrington. Series of charges are constantly and entirely properly preferred. The Chief Justice must have been referring to the established principle of *autrefois acquit* - and equally the established principle of *autrefois convict*. He must have been referring to the well recognised test, that is, whether the evidence necessary to

support the second indictment would have been sufficient to procure a legal conviction upon the first. In argument he had said to counsel ²²⁶ : "Suppose a man indicted and tried before a jury for a common assault were acquitted, if the prosecutor were afterwards to indict him for a felonious assault, on the same facts, could he not plead *autrefois acquit*?" and he had pointed out that Coltman J. had in *Reg. v. Walker* ²²⁷ said that the plea would avail. In ^{*1316} argument also the Chief Justice had referred to *Reg. v. Stanton*, ²²⁸ which was an indictment for a felonious assault and wounding, it having transpired in the course of the trial that the prisoner had been previously convicted before two justices for the same assault, and where Erle J. said: "In my opinion the conviction would have been an estoppel to the indictment for the felonious assault and wounding, if pleaded, and although it has not been pleaded I am bound to consider the charge as having been already adjudicated upon, and the prisoner as having undergone the punishment allotted for it."

Reg. v. Walker ²²⁹ had been decided in 1843. There were two indictments against the prisoner. One related to stabbing a certain person; the other related to stabbing a different person. Each indictment had three counts, namely, (1) stabbing with intent to maim, (2) stabbing with intent to disable, (3) stabbing with intent to do grievous bodily harm. The prisoner had previously been taken before two magistrates under section 27 of 9 Geo. 4, c. 31. Both prosecutors (the stabbed persons) had given evidence before the magistrates and as the two assaults were included in one and the same transaction the prisoner had been fined in one joint sum of £5 for the two assaults. The assaults had consisted of stabbings with a knife and the indictments related to the same stabbings in respect of which the prisoner had been fined by the magistrates: to the indictments the prisoner pleaded *autrefois convict* and to his plea there was a demurrer. It was argued that the magistrates had no jurisdiction in any case of felony and only had jurisdiction under section 27 to deal with common assault. Under section 28 it was provided that if a person against whom a complaint for common assault was preferred either obtained a certificate of dismissal "or having been convicted shall have paid the whole amount adjudged to be paid under such conviction, or shall have suffered the imprisonment awarded for non-payment thereof, in every such case he shall be released from all further or other proceedings, civil or criminal, for the same cause." It was argued that "the same cause" must be the common assault referred to in section 27 and that there could not be a release for a felony over which the magistrates had no jurisdiction. It was, however, provided by section 29 that if the justices "shall find the assault or battery complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is, from ^{*1317} any other circumstance, a fit subject for a prosecution by indictment, they shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as they would have done before the passing of this Act ..." The plea of the prisoner was held to be good. Coltman J. said ²³⁰ : "I am of opinion that the justices had jurisdiction in this case. On a complaint for a common assault they were to determine whether such assault was accompanied with any felonious intention; on that question they have adjudicated, and their decision is final. They are like any other court of competent jurisdiction. ... Suppose a party had been acquitted by a jury of an assault, and he was afterwards indicted for the felony which involved that assault; it is clear, if he did not make the assault, he could not be guilty of that which includes and depends upon the assault. There is no difference in such a case whether the party was acquitted or convicted."

Again the same test appears and was applied. Would the evidence which was necessary to support the indictments be sufficient to convict of the earlier charge? If the prisoner had been acquitted by the magistrates he could not have been later charged with the felony. To prove an assault with intent would involve proving an assault: but he would have been acquitted of an assault. Furthermore, a court having jurisdiction to decide the matter would have decided that there was no felonious intent. The same reasoning applied where there had been a conviction before magistrates. The prisoner could not later be convicted of the felony. That would be for two reasons: (1) that the felony would involve the assault: it would include and depend upon the assault: and he had already been convicted of the assault; (2) a court having jurisdiction to decide the matter would have held that there was no felony.

That was a case, therefore, which illustrated both how the principle of *res judicata* applies in criminal cases and how the principle of *autrefois acquit* applies.

Reg. v. Stanton ²³¹ in 1851 was another case affected by the provisions of 9 Geo. 4, c. 31. Stanton was indicted at assizes for a felonious assault: he was acquitted of the felony but found guilty of a common assault. During the trial it appeared that Stanton had previously been summoned before two magistrates in respect of the same assault and had been fined and, in default of payment ^{*1318} of the fine, had been imprisoned. Erle J. asked why the conviction by the magistrates had not been pleaded in answer to the indictment in pursuance of the statute 9 Geo. 4, c. 31. Erle J. then used the words which I have already quoted, namely ²³² : "In my opinion the conviction would have been an estoppel to the indictment for the felonious assault and wounding, if pleaded, and although it has not been pleaded I am bound to consider the charge as having been already adjudicated upon, and the prisoner as having undergone the punishment allotted for it." He bound the man over in his own recognisances to keep the peace.

The principle which governed the decisions in these cases was applied in *Reg. v. Miles*.²³³

By the time that *Reg. v. Morris*²³⁴ was heard in 1867 the statute 9 Geo. 4, c. 31, had been replaced by 24 & 25 Vict. c. 100: section 45 of the latter Act was in similar terms to section 28 of the earlier Act. The accused had been summoned before magistrates at the instance of L. for assaults upon L. The accused was convicted and was sentenced to and underwent punishment. L. then died from injuries resulting from the assaults. The accused was then indicted for manslaughter. There was apparently a doubt whether the death was the result of the injuries inflicted by the accused. There was another man concerned and there was a question whether or not the two had acted in concert. There was no plea of *autrefois convict*. The matter went to the jury and the accused was convicted. The judge then reserved for the opinion of the Court of Crown Cases Reserved the question of law as to whether as a result of section 45 the conviction for the assaults afforded a defence to the charge of manslaughter. Were the manslaughter proceedings "for the same cause"? Kelly C.B. thought that they were but the rest of the judges thought otherwise. Martin B. said that a new offence arose when the man died: he thought that the cause on which the justices adjudicated was not the same as that for which he was convicted: he felt that the words "for the same cause" in the section meant the same as those words meant in the plea of *autrefois acquit*. The case really turned upon the construction of section 45, but it illustrates that in the maxim "*nemo debet bis vexari pro eadem causa*" the reference is to *1319 the same offence. It could be said, I think, that the felonious nature of the assault arises from the retrospective effect of the death.

In a case tried on circuit in 1890, *Reg. v. Friel*,²³⁵ an accused had been summarily tried for assault and had been convicted. The person assaulted subsequently died of injuries resulting from the assault. The accused was then indicted for manslaughter and pleaded "*autrefois convict*." The plea failed and Williams J. refused to reserve a case for the Court for Crown Cases Reserved. He said²³⁶: "The indictment for manslaughter is not a charge in a new form based on the facts supporting the former charge, nor is it the former charge with the addition of matters of aggravation or of newly alleged consequences. It is a charge based on new facts; and the circumstance that some of those facts have been made the basis of a former charge of a different class is immaterial. The difference is not of degree merely. The characteristic new fact here is the death."

In *Rex v. Thomas*²³⁷ it was held by the Court of Criminal Appeal that where a person has been convicted of wounding, with intent to murder and the person wounded subsequently dies of the wounds inflicted, a plea of *autrefois convict* is not a good answer to a subsequent indictment for murder.

Reference was made in *Reg. v. Morris*²³⁸ to the earlier case of *Reg. v. Salvi*²³⁹ which was decided in 1857. In that case there was a plea of *autrefois acquit*. The accused was indicted for murder. He had previously been acquitted on a charge of wounding with intent to murder. The plea failed. Pollock C.B. said²⁴⁰: "The acquittal of the whole offence is not an acquittal of every part of it, it is only an acquittal of the whole." As murder could be committed without there being an intention to murder, the previous acquittal was no bar.

In *Wemyss v. Hopkins*²⁴¹ there was a case stated by justices. There had been an assault which constituted an offence under each of two statutes. A complaint was preferred under one statute. There was a conviction and fine. Some six weeks later a complaint was preferred under the other statute. On conviction there was a further fine. The question that arose was whether the first conviction was a bar to the second. It was *1320 held that it was. As the cases had been in a court of summary jurisdiction, the plea of *autrefois convict* could not as such be presented. But the principle applied. The case was decided "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 judicatam*, that is, the conviction shall be a bar to all further proceedings for the same offence, and he shall not be punished again for the same matter" (see *per* Blackburn J.²⁴². Lush J. pointed out²⁴³ that the offence of the appellant was one for which he might be punished under either of two statutes and referred to the "fundamental principle" that "no person shall be prosecuted twice for the same offence."

It is to be noted that it is provided by section 33 of the Interpretation Act, 1889, that: "Where an act or omission constitutes an offence under two or more Acts or both under an Act and at common law ... the offender shall, unless the contrary intention appears, be liable to be prosecuted under either or any of those Acts or at common law, but shall not be liable to be punished twice for the same offence."

*Reg. v. King*²⁴⁴ was not a case where the principles of *autrefois convict* applied. In that case there was an indictment charging the prisoner (*inter alia*) with obtaining credit for certain goods by fraud and there was a separate indictment charging him with

larceny of the same goods. After conviction upon the first indictment he was put upon his trial upon the second. On a case stated the Court of Crown Cases Reserved quashed the second conviction. The report is not very clear. Hawkins J. said ²⁴⁵ : "The man had clearly been convicted of a misdemeanour in respect of obtaining credit for the same goods which were the subject of the charge of larceny; and it is against the very first principles of the criminal law that a man should be placed twice in jeopardy upon the same facts: the offences are practically the same, though not their legal operation." Cave J. said ²⁴⁶ : "The second question is, whether the defendant, having been convicted on the charge of false pretences, could on the same facts be convicted of stealing. There is only one answer: he clearly could not."

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If the correct interpretation of the somewhat brief references to the facts is that the accused obtained some goods by means of false pretences and obtained credit for those goods by fraud and if the jury so found, then it would seem to follow that he had not stolen the goods. Therefore, it was a case which was governed by the principle of *res judicata*. The finding in the first trial could not be challenged or upset in the second. I would have thought that the judge at the second trial ought to have directed the jury, once all the facts were established, to acquit on the ground that the adjudication at the first trial was conclusive and would preclude a contrary adjudication.

It was recognised by Lord MacDermott, in giving the judgment of the Board in *Sambasivam v. Public Prosecutor, Federation of Malaya*, ²⁴⁷ that a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is binding and conclusive in all subsequent proceedings between the parties to the adjudication. "The maxim '*res judicata pro veritate accipitur*' is no less applicable to criminal than to civil proceedings."

This is in tune with what has been laid down in a number of important judgments in Australia. Thus in *Mraz v. The Queen (No. 2)* ²⁴⁸ it was stated in the judgment of the High Court that the principle of issue estoppel is "to treat an issue of fact or law as settled once for all between the parties if it is distinctly raised and if the judgment pronounced implies its determination necessarily as a matter of law." So, too, in *Brown v. Robinson* ²⁴⁹ it was said in reference to issue estoppel that it depends upon an issue or issues having been distinctly raised and found in a former proceeding: "Once this is done, then, so long as the finding stands if there be any subsequent litigation between the same parties no allegations legally inconsistent with the finding may be made by one of them against the other." A similar approach is shown in the case of *Sealfon v. United States*. ²⁵⁰

Though the principle of *res judicata* applies to criminal cases as to civil cases the conclusions in criminal cases tried on indictment are expressed either by verdicts of Guilty or Not Guilty. The result is that issues are not isolated and analysed as they ***1322** are in a judgment which specifies findings and records reasons. In very many cases, therefore, it is not possible to know or to deduce whether a verdict involves a particular conclusion or determination. That is the position in the present case. The Court of Criminal Appeal quashed the conviction. They quashed it for the reasons which are contained in their judgment. The appellant cannot, however, be in any better position than he would be in if the jury had said Not Guilty. If they had, it would not have been possible to deduce the basis on which they had so found. No more could be said than that for one reason or another the accused was not guilty of murder and not guilty of manslaughter.

The words of Hawkins J. in *Reg. v. King* ²⁵¹ to the effect that a man should not be placed twice in jeopardy upon the same facts must be considered in the context of what was then being decided, and cannot be given a literal meaning as an expression of wide principle. Nor ought they to be interpreted in a sense which would run contrary to the stream of authority. Nor should they be interpreted as suggesting that some facts forming the basis of an earlier case may not ever form the basis of a later one. In *Rex v. Barron* ²⁵² there were two indictments against the accused. One charged him with sodomy with a boy: the other indictment charged him with gross indecency with a male person (the same boy). Only one set of depositions had been taken in respect of both charges. The accused was tried upon the first indictment and convicted. The other indictment remained on the file. There was an appeal to the Court of Criminal Appeal who quashed the conviction on the ground of some wrongful admission of evidence. It was ordered by the Court of Criminal Appeal that the accused take his trial upon the other indictment. When the trial came on there was a plea of *autrefois acquit*. The plea failed. The accused then pleaded guilty and was sentenced and upon appeal to the Court of Criminal Appeal the question which was considered was whether the plea of *autrefois acquit* should have succeeded. The appeal failed though the court pointed out that the previous order of the court that the accused should take his trial upon the second indictment did not in any way preclude him from relying upon a plea of *autrefois acquit* if it could properly be upheld. But it could not. In giving the judgment of ***1323** the court Lord Reading C.J. ²⁵³ expressed very clearly the accepted principle upon which the plea of *autrefois acquit* is based, namely, "that the law does not permit a man to be twice in peril of being convicted of the same offence. If, therefore, he has been acquitted, i.e., found to be not guilty

of the offence, by a court competent to try him, such acquittal is a bar to a second indictment for the same offence. This rule applies not only to the offence actually charged in the first indictment, but to any offence of which he could have been properly convicted on the trial of the first indictment." Lord Reading pointed out that the test was not whether the facts relied upon were the same in the two trials but whether the acquittal on the charge of sodomy necessarily involved an acquittal on the charge of gross indecency. Clearly it did not. Furthermore, it had not been open to the jury at the first trial to convict of gross indecency. Nor were the two offences the same or substantially the same as each other.

The case very clearly illustrates that the circumstance that all or very much of the evidence given on a second trial corresponds with that given on a first trial is not by itself a basis for the success of a plea of *autrefois acquit*. *Mutatis mutandis* the case has striking correspondence with the case now being considered.

The principles now being discussed are further illustrated by the decision in the earlier case of *Rex v. Norton*.²⁵⁴ The accused was indicted for the offence of carnal knowledge of a girl under the age of 13. There was a second indictment which charged him with feloniously wounding her by striking her on the head with a stone. The blow, which was the subject of the charge in the second indictment, was struck in the course of the commission of the sexual offence charged in the first. There was first a trial in respect of the first indictment. The jury disagreed. There was then a further trial. The jury convicted. The accused appealed to the Court of Criminal Appeal. On the ground that certain evidence had been improperly dealt with at the trial and of misdirection and because the proviso could not be applied, the court allowed the appeal and set aside the conviction. The court remanded the appellant in custody to be tried on the second indictment. He was so tried. Being convicted, he appealed to the Court of Criminal Appeal and it was argued that he was entitled to succeed on a plea of *autrefois acquit*. It was said *1324 that he had been in peril and that the identity of the culprit was the point at issue in respect of each charge. The appeal failed, and it was said that the only possible view which might have supported it would have been if the evidence as to the injury had shown that it was essential to the commission of the sexual offence. As things were, the assault was a distinct act from the carnal knowledge. Though evidence that had been given in respect of the first indictment must have been given on the trial of the second indictment, the charges were different. On the trial of the first the accused could not have been convicted of the offence charged in the second. Furthermore, the evidence necessary to support the charge in the second indictment would not have been sufficient to procure a legal conviction of the charge in the first.

In *Reg v. Kupferberg*²⁵⁵ an acquittal on a charge of conspiring to contravene a regulation was held not to found a plea of *autrefois acquit* on a charge of aiding and abetting their contravention. A. T. Lawrence J. said: "For a plea of *autrefois acquit* to be maintainable, the offence of which the accused has been acquitted and that with which he is charged must be the same in the sense that each must have the same essential ingredients. The facts which constitute the one must be sufficient to justify a conviction for the other." The phrases "the same essential ingredients" and "the facts which constitute" are to be noted. They denote and, in my view, correctly denote an entirely different situation from that which merely involves that the same facts may be relevant in respect of two charges, or that some evidence which is given in one case may again be given as being relevant in another.

In *Rex v. Kendrick and Smith*²⁵⁶ the two accused were convicted of charges of threatening to publish photographic negatives with intent to extort money (contrary to section 31 of the Larceny Act, 1916), but on charges, contained in the same indictment, of uttering letters demanding money with menaces (contrary to section 29 of that Act) the jury disagreed. On a retrial on those charges pleas of *autrefois convict* were filed. They failed. The accused were found guilty and their appeal to the Court of Criminal Appeal was on the basis that their pleas of *autrefois convict* should have succeeded. The appeals failed. In giving the judgment of the court Swift J. said²⁵⁷: "It is quite clear *1325 that, to enable an accused person to rely on that plea" (*autrefois convict*), "the offence with which he is charged on the second occasion must be the same offence, or practically the same offence, as that with which he was charged on the first occasion. It is not enough to say that the evidence tendered on the second charge was the same evidence as that offered to prove the first charge. It is not the evidence which is material to the charge that grounds the plea, but the offence which is charged." Swift J. pointed out that it was impossible to say that the two offences were the same or substantially the same. It is to be observed that in that case the charges were being tried together and that they were separate charges. The charge under section 29 was the graver charge. Swift J.²⁵⁸ touched on the questions whether "if you prove a case under section 29, you must prove case under section 31": he said "but I do not decide that this is so."

That there is no rule or principle to the effect that evidence which has first been used in support of a charge which is not proved may not be used to support a subsequent and different charge is further illustrated by the case of *Rex v. Miles*.²⁵⁹ On one indictment the accused was charged with larceny. On that indictment he was acquitted. (On well recognised principles that acquittal would (since the *Criminal Procedure Act of 1851*) include an acquittal for an attempt.) The case had depended upon

the evidence of two witnesses who said that they saw the accused in a lane and saw him take money from a person's pocket. The second indictment subsequently tried was for an offence under [section 7 of the Prevention of Crimes Act, 1871](#), and had as one of its constituent elements that he had been found in a public place with the intention of committing a felony. (The words of the section are "that he was about to commit" or "was waiting to commit.") The felony alleged to be contemplated was described in the second indictment exactly as in the first. The two witnesses who had given evidence on the trial of the first indictment gave the same evidence again on the second trial as they had given on the first. An appeal against conviction on the second indictment was dismissed. My Lords, I think that the decision was correct. The offences were different. On the first indictment there could not have been a conviction for the second offence. On the second indictment the necessary proof did not [*1326](#) involve guilt of the first offence. The case shows that it would be wrong to suppose that the maxim *nemo debet bis vexari pro eadem causa* means that the same incident or event or story may not be under investigation in more than one trial or that evidence once given at one trial may not again be given at a later trial.

The case of *Reg. v. Ollis* [260](#) was another case where evidence that had been given at one trial of the accused was again given at a later trial of the accused. The question that was argued was as to the admissibility of the evidence when given at the second trial. There was a difference of opinion among the judges who sat in the Court of Crown Cases Reserved, six being of opinion that the evidence was admissible and two being of the contrary opinion. Grantham J. (one of the majority) said [261](#): "The real test is, was the first charge the same as that on which the prisoner is being charged again, or, was the evidence necessary to support the second indictment sufficient to prove a legal conviction on the first? If not, the evidence on the first charge can be used again, because it is being used in a different case, and on a different charge."

The case of *Reg. v. O'Brien* [262](#) was another case in which the evidence given in support of a second indictment corresponded with that given on the trial of a first indictment where an acquittal had resulted.

The considerations which I am examining are illustrated in *Reg. v. Gilmore*. [263](#) The accused was charged with throwing poles onto a railway track with intent to endanger the safety of persons travelling and with intent to injure and obstruct the engine. The offences charged were felonies pursuant to certain statutory provisions. The accused was acquitted. He was afterwards charged, upon the same facts, with an offence which was a misdemeanour pursuant to other provisions of the same statutes: the intent which was necessary to prove the felonies was not an ingredient of the misdemeanour. A plea of *autrefois acquit* failed. The accused could not have been convicted of the lesser offence upon the trial of the first indictment. Huddleston B. said [264](#) that the plea of *autrefois acquit* proceeds upon the well recognised maxim *nemo debet bis vexari pro eadem causa*, and said "the authorities clearly show that an accused person who relies upon [*1327](#) a previous acquittal must make out satisfactorily that he has "been acquitted of the identical charge before, or that he could upon the trial of the first indictment have been lawfully convicted of the offence which was charged in the second indictment." The case is in line with the strong stream of authority which shows that the words *pro eadem causa* do not refer to facts but refer to offences.

It was submitted that the evidence given on the robbery charge was such as would be sufficient to warrant a conviction of manslaughter and that, inasmuch as a killing occurred at a time when four people were joining in a robbery, a conviction of the appellant of a robbery would involve that he was also guilty at least of the offence of manslaughter. My Lords, I cannot accept this. The submission ignores the test which, as I have endeavoured to show, has been for so long and so consistently laid down and accepted. The test is whether the essential ingredients of the robbery charge or the evidence necessary to sustain it would suffice to prove a charge of murder or manslaughter. The answer seems to me to be clearly no. As I have already stated, armed robbery does not involve or necessitate any killing. If a killing takes place there may be the offence of robbery together with the offence of murder (or manslaughter). If four men join in a robbery and a killing takes place it could be that as to one or more of them there is guilt of murder (or manslaughter) as well as robbery but that as to the others or other there is only guilt of robbery. In the present case, on the second indictment there was no need to prove that anyone had been killed. No one was asserting or seeking to establish that the appellant had been guilty of murder or manslaughter. So far as manslaughter is concerned, the suggestion that the appellant might have been not guilty of murder but guilty of manslaughter does not appear to have been canvassed at the trial on the murder charge. The appellant's then submission to the jury, as already pointed out, was, first, that he had not been present at all, but, secondly, that if he had been present he was only guilty of robbery but not of murder because he was not in any way a party to the killing. It would be strange if the appellant could now successfully assert that his acquittal of murder involved his acquittal of robbery. The point taken at the murder trial was that three men had gone into the office and that there was a fourth man outside. It was urged for the appellant that, if it was proved that he was one of the three who had gone into [*1328](#) the office, there was no proof that any of those three intended to do more than frighten people with unloaded guns, that there was no evidence that the guns in the office were loaded, and no evidence that any of the men in the office knew that the man outside had a loaded gun or intended to use it. The learned judge did not give any direction in regard

to manslaughter. No one apparently thought that the evidence warranted any other possibilities than that (1) there should be a verdict of guilty of murder, or (2) that there should be a verdict of not guilty of murder - which verdict the jury could reach either because it was not established that the appellant was present or because, if that was established, it was not established that the appellant was a party to any common resolution or intention either to kill or to cause grievous bodily harm. My Lords, it does not appear to me to be shown that the evidence given on the trial of the second indictment was such as to prove the appellant guilty of manslaughter. There is no mention of manslaughter in the grounds of appeal to the Court of Criminal Appeal. In the careful judgment of the Court of Criminal Appeal there is no discussion of this matter at all, nor was it thought necessary to place before your Lordships other than very limited parts of the evidence given on the robbery charge and limited extracts from the summing-up. In the nature of things, there was no suggestion made by the prosecution that the appellant was a party to any killing and there was no investigation as to the circumstances of the killing. The only effective issue at the trial was whether it was proved that the appellant was present as one of those who took part in the robbery. The learned judge emphasised in his summing-up to the jury that they were solely concerned with that matter and not with any charge of murder. Though the killing was mentioned, it formed no part of the essential ingredients of the charge of robbery and presumably no direct evidence of any killing was given. The learned judge was careful to explain to the jury that Kelly's statement was not evidence and that a reference to it was no proof of the truth of anything stated in it and that it only came into the case by way of introduction of evidence as to what the appellant himself had said. There was evidence that when Kelly's statement had been read to the appellant he said, "Look, I went a-thieving with them on that occasion. I never had a gun and I never did the murder. You know what bloody fool did." Though it was the case of the prosecution that the appellant was armed with an offensive weapon and was with others, I cannot *1329 suppose that there was any cross-examination directed to showing that the appellant was guilty of murder or manslaughter. Had there been, it would have been objected to and would have been disallowed as being irrelevant and inadmissible and objectionable.

In *Sambasivam v. Public Prosecutor, Federation of Malaya* ²⁶⁵ the prosecution relied on a statement of the appellant which both went to prove him guilty of a charge of which he had been acquitted at a previous trial and also went to prove him guilty of an offence which was the subject of a later trial. It was held that a failure to inform assessors at the later trial that the appellant had been acquitted of the charge preferred at the previous trial rendered the second trial unsatisfactory. In the present case the statement of the appellant contained a repudiation of complicity in murder and no one was impugning the validity and the finality of the verdict of acquittal of murder and consequentially of manslaughter.

My Lords, it seems to me to be sufficient to say that the proof which was necessary and relevant to justify a conviction on the robbery charge would not prove guilt either of murder or of manslaughter.

Had it been essential to consider whether on the murder trial a direction as to manslaughter should have been given (and apparently no one thought so) then it would be necessary to consider all the evidence and to consider what was within and what was outside the scope of any concerted action. The mere fact that the killing was mentioned at the robbery trial did not involve that guilt of manslaughter was being asserted or could be proved. The case that had been advanced at the murder trial was that all the men concerned were guilty of murder because they were united in a common resolution or intention to use violence of such a nature as an ordinary man would foresee was likely to cause serious bodily injury and that the man who in pursuance of that common intention and resolution did the shooting was guilty of capital murder. There may be cases where there is a mere variation in the manner of execution of an agreed plan. There may be cases where there is a total and substantial variation from some agreed plan. In *Rex v. Wesley Smith*, ²⁶⁶ it was held in the Court of Criminal Appeal that when in the course of a concerted attack by several persons without any intention of killing or doing grievous bodily harm, one participant develops *1330 an intention to kill or to do grievous bodily harm and in fact kills, then a second participant in the attack, who did not develop any such intention, will nevertheless be guilty of manslaughter, if the act causing death was within the scope of the concerted action, but it was said that the use of a loaded revolver, the possession of which was unknown to the other, might be a possible example of what would have been outside the scope of the concerted action so that there would be no guilt of manslaughter. That case was followed in the Court of Criminal Appeal in *Rex v. Betty*. ²⁶⁷ For the reason that I have given, I do not find it necessary to pursue these matters or to express any opinion in regard to them.

It was submitted on behalf of the appellant that it was not open to the prosecution at the second trial to adduce evidence in support of the robbery charge which had been first adduced at the first trial in support of the charge of murder. The weight of long accepted authority tells against the submission. Quite apart from this, it does not seem to me that either principles of fairness or the requirements of justice compel its acceptance. A further submission was to the effect that the learned judge at the second trial ought to have allowed full reference to be made of the course of events at the first trial. It seems to me that the learned judge was guided by a desire to exclude any evidence that might be prejudicial and to exclude any evidence that was not relevant to the issues which were raised. I see no error in the course that he directed.

For the reasons that I have given, I consider that the judgment of the Court of Criminal Appeal was correct and I would dismiss the appeal.

LORD HODSON.

My Lords, this appeal centres round the principle which is firmly established in our law but, as the authorities show, is not easy of consistent application, namely, the principle enshrined in the Latin maxim - *Nemo debet bis vexari pro eadem causa*. The classic statement of the principle is to be found in Hawkins' Pleas of the Crown, ch. 35, section 1, and is as follows: "That a man shall not be brought into danger of his life for one and the same offence, more than once. From whence it is generally taken, by all the books, as an undoubted consequence, that where a man is once found 'not guilty' on an indictment or appeal free from error, and well commenced *1331 before any court which hath jurisdiction of the cause, he may, by the common law, in all cases whatsoever plead such acquittal in bar of any subsequent indictment or appeal for the same crime."

What is meant or involved in the words "the same crime"? It is in the answer to this question that so much difficulty has arisen and so much argument has been entertained down to the present day not only in this country but in other countries where the common law prevails.

It is clear that the plea may be raised at any time either as a plea in bar to the second indictment or at any stage in the proceedings. In this case the appellant raised the plea in bar to the indictment of robbery after the Court of Criminal Appeal had quashed his conviction for murder and directed judgment and verdict of acquittal to be entered. He failed in his plea but raised it again on his trial for robbery before Nield J. and again before the Court of Criminal Appeal on his unsuccessful appeal to that court. It has not been contended before your Lordships that he was then or is now too late to take the point that he was by reason of the result of the first trial *autrefois* acquitted of the robbery. The point may not arise until the second trial has taken place where, as in *Sambasivam v. Public Prosecutor, Federation of Malaya*,²⁶⁸ the prosecution on a second trial rely on a statement made by the accused not put in evidence at the first trial which impugns the verdict of acquittal pronounced in the first trial. In that case Lord MacDermott, delivering the judgment of the Board, pointed out that the verdict of acquittal is binding and conclusive in all subsequent proceedings between the parties to the adjudication.

It is clear that on the narrowest interpretation of the principle the appellant has not been convicted of the same offence as that for which he was previously acquitted, for robbery is not literally the same offence as murder. If the offence is the same in the narrow sense the accused has, in order to establish his plea, to do no more than establish his own identity and establish, if necessary, the place and time of the crime of which he has already been acquitted. This may not be apparent from the record, and from early times it has been recognised that it will often be necessary to rely on evidence "which would show what crime was the subject of the inquiry and would identify the charge and limit and confine the generality of the indictment to a particular *1332 case" *per* Parke B. in *Reg. v. Bird*.²⁶⁹ Parke B. was careful to limit the use to which the evidence could be put and to say that whether the jury believed or disbelieved the evidence and the inference drawn is immaterial.

The Crown does not seek to restrain the plea of *autrefois* to the narrow sense but, while admitting extensions of the principle, maintains that those extensions are confined within ascertainable limits. Thus where there is 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.

In *Reg. v. Elrington* Cockburn C.J. said²⁷⁰ : "... 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." The Chief Justice must have been referring to the extension of the narrow principle of *autrefois* to which I have referred. This may be called the ascending scale principle and is subject to an exception in the case of a subsequent charge for murder, at any rate if the death occurs after the acquittal or conviction on the lesser charge. The explanation of the exclusion of murder may be that the supervening death is a new fact which necessitates a trial in the interests of justice. The law has, however, been clearly established that the defence of *autrefois* is not available where the subsequent charge is murder or manslaughter. See *Reg. v. Morris*²⁷¹ and *Reg. v. Salvi*,²⁷² note, *Rex v. Thomas*.²⁷³ It makes no difference whether there has been a previous acquittal or a previous conviction, although when there has been a previous acquittal of the lesser charge the rule of *autrefois* if logically followed would be expected to apply. Your Lordships are not concerned with the kind of case which I have just been discussing except as an illustration of the way in which the law

has endeavoured to apply the basic principle and of the difficulties which lie in the way. The appellant does, however, claim that he falls within that part of the principle of *autrefois acquit* which lays down that his previous acquittal necessarily involves a finding on one of the essential elements of the present offence so that he could not be convicted of the present *1333 offence without involving a contrary finding on that essential element; see *Rex v. Barron* ²⁷⁴ and *Rex v. Kupferberg*. ²⁷⁵

The appellant puts his case in this way. Having been acquitted of murder by the Court of Criminal Appeal, which set aside his conviction and substituted an acquittal, an acquittal of manslaughter follows, since on the indictment for murder a verdict of manslaughter would have been open to the jury. On the second indictment which related to the same occasion he was charged with being armed with offensive weapons, to wit firearms, and being together with other named persons he robbed one Davis of money the property of the Royal Arsenal Co-operative Society, Ltd. He argues that the supervening death of the murdered man cannot be separated from the robbery charge and that conviction of robbery as alleged against him involves a contrary finding to the acquittal of manslaughter. In other words, if he was guilty of robbery he must have been guilty of the manslaughter of which he has been acquitted. Therefore he says his plea of *autrefois acquit* should be allowed. I am unable to accept his contention although, on the face of it, it gains support from a dictum of Parke B. in *Reg. v. Gould* ²⁷⁶ to the effect that if a man is acquitted of murder and then charged with burglary with violence the acquittal would be an answer to the charge of violence. That case has the important distinction that in the first indictment the accused was charged with assault as well as murder so that it might well be said that the acquittal of assault negated the violence essential to the proof of the second offence.

The two offences, murder or manslaughter, on the one hand, and armed robbery, on the other, are not the same, and the second charge could be proved without reference to the death of the murdered man who met his death on the occasion of the robbery. Even if the same evidence is given to prove separate offences it is well settled that whether or not the facts are the same in both trials is not the true test; the test is whether the acquittal on the first charge necessarily involved an acquittal on the second: *Rex v. Kendrick and Smith* ²⁷⁷ and the earlier case of *Rex v. Barron*. ²⁷⁸

Thus, so far as *autrefois acquit* is concerned the appellant must fail unless he can persuade your Lordships to make a further extension of the principle which justice requires. This *1334 he has sought to do by reliance on issue estoppel, which has been referred to of recent years more often in other countries than our own but is an aspect of the law which, I think, lies behind the application of the principle *autrefois acquit*. It was recognised pro tanto in the *Sambasivam* case ²⁷⁹ and the appellant is entitled, if he can, to bring himself within it.

Although differentiating issue estoppel from *res judicata* and *autrefois acquit* as well as *autrefois convict*, Dixon J. (as he then was) dealt with the matter at some length in *Rex v. Wilkes*. ²⁸⁰ He summarised the matter in this way: "There must be a prior proceeding determined against the Crown necessarily involving an issue which again arises in a subsequent proceeding by the Crown against the same prisoner. The allegation of the Crown in the subsequent proceeding must itself be inconsistent with the acquittal of the prisoner in the previous proceeding. But if such a condition of affairs arises I see no reason why the ordinary rules of issue estoppel should not apply."

Upon this the appellant urges that his defence to the murder was that he was not present at the crime. Although convicted by the jury the acquittal which he obtained from the Court of Criminal Appeal involves, he says, that he was elsewhere when the crime was committed, as he had all along contended. Hence it is argued that, as the crime of robbery was committed on the same occasion as that on which the murder was committed, he should succeed on the appeal.

This argument breaks down because one cannot in this case say that the only issue before the jury on the murder trial was whether or not the appellant was there. The issue of intent to murder was also an issue in the case and there is no way of establishing any separate issue in his favour, either by looking at the verdict of the jury or by looking at the judgment of the Court of Criminal Appeal which reversed that verdict. The reversal was not of any specific issue or finding of fact but of the verdict of guilty of murder, and more than that cannot be read into it.

One further point has been raised by the appellant, namely, that the court in the exercise of its undoubted power to prevent an abuse of its process has power, quite apart from the common law principles which have been discussed, to stop any prosecution. If it has this power it is said the discretion must be *1335 exercised in favour of the appellant. It is said that although your Lordships have not seen the evidence given at the second trial it was substantially the same as that given at the first and the appellant ought not to be penalised because the two offences have been tried separately. It is said that but for the rule of practice that a murder charge must be tried alone, the robbery charge would have been heard with it and the misdirection which invalidated the judgment given on the first trial would have been fatal to the whole conviction, and the jury's verdict, assuming

it was a verdict of guilty on both charges, must necessarily have been replaced by an acquittal when the matter came before the Court of Criminal Appeal. First of all, I do not think that one could make the assumption asked, but in any event I am satisfied that there is no such wide discretion to stop a prosecution as the appellant seeks to establish. There is no trace in the early cases such as *Reg. v. Elrington*²⁸¹ and *Wemyss v. Hopkins*²⁸² of the existence of such a discretion. Judges such as Cockburn C.J. and Blackburn J. treated the question of autrefois as one of common law principle well established. It had, I think, clearly outgrown the sphere of discretion, even if it originated therein, and is treated as one of common law principle almost without exception in the decided cases. There is a reference to the judge having a discretion in *Rex v. Miles*,²⁸³ where it is said: "The judge has a discretion ... and if, when a man has been acquitted, he considers the acquittal should make an end of the whole case, he can express his opinion." This is not the language of a judge who thought he had the power in his discretion to stop the case. In *Rex v. Barron*²⁸⁴ Lord Reading C.J. said that the trial judge in *Rex v. King*²⁸⁵ (a case of autrefois convict) had wrongly exercised his discretion to allow an indictment for larceny to stand, the accused having been found guilty on an indictment charging him with false pretences. I think that the learned Chief Justice may well not have intended to use the words "judicial discretion" to describe an unfettered power but that, if he did, it was an unguarded expression and not in line with the current of authority. The true position is, I think, stated by Lord Goddard C.J. in *Reg. v. Chairman, County of London Quarter Sessions, Ex parte Downes*²⁸⁶ when he explained the circumstances in which an indictment could be quashed and *1336 the limits on the power of the court to prevent an indictment duly instituted being prosecuted.

The inherent power of the court to control its own process, civil or criminal, should not prevent access to the courts when a lawful claim is presented. So to hold would involve grave interference with the liberty of the subject to have access to the courts, which I should be surprised to find to be warranted by authority. If a writ or statement of claim discloses no offence the court has inherent power to dispose of the matter in limine, for it is then entitled to say that its process is being abused. Neither do I dispute that once proceedings are lawfully instituted the court can use its power to prevent its process being abused. Many instances occur to my mind. A litigant sometimes maliciously obtains the issue of subpoenas to all sorts of people holding positions of authority in the state without being able to show that these eminent persons can give relevant evidence in the suit. In such a case a subpoena may be set aside. Embarrassment to litigants may be and often is avoided by the use of this power. As my noble and learned friend, Lord Devlin, has pointed out, the Judges' Rules for the protection of accused persons are examples of the use of this power. I do not myself think that they are open to criticism as exceeding the limits of the power to prevent abuse of process. In *Rex v. Jones*²⁸⁷ the Court of Criminal Appeal laid down a rule of practice that in a case of murder the indictment ought not to be complicated by an alternative count of such a character as robbery with violence. In that case the appellant had been convicted on two counts in the same indictment, one of murder and one of robbery with violence. He was sentenced to death upon the charge of murder and to ten years' penal servitude upon the charge of robbery with violence, which produced an incongruous situation. So, too, in *Rex v. Large*²⁸⁸ a like direction was given in a manslaughter case. The rule has not been treated as inflexible. Glyn-Jones J., in *Rex v. Smith*,²⁸⁹ in the exercise of his discretion, joined a count for manslaughter and counts for other offences in an indictment preferred by his direction under section 2 (2) (b) of the Administration of Justice (Miscellaneous Provisions) Act, 1935. These are legitimate uses of the judicial power and not rules of law. The fact that the rule of practice initiated by the court in *Rex v. Jones*²⁹⁰ was followed in this case and, as it now turns out, may have been to the disadvantage of the accused, having regard to the misdirection given at the first trial and its consequences, does not involve that the appeal should be allowed on the ground that a separate trial was ordered in the wrongful exercise of a judicial discretion. Separate trials are familiar examples of matters dealt with by the exercise of judicial discretion, which, generally speaking, should be left to the control, where necessary, of the Court of Criminal Appeal.

To exclude a litigant with a prima facie case, whether prosecutor or civil claimant, from the courts seems to be a very different thing and not justifiable unless an Act, of Parliament so provides, for example, the [Supreme Court of Judicature \(Consolidation\) Act, 1925, section 51](#), replacing the Vexatious Actions Act, 1896.

I accept that the history of the development of our law justifies the contention that all rules of common law which emanate from the breast of the judges may in a sense be said to be discretionary in origin, but I cannot concede that there ought to be given to the judge a discretion, which, in my opinion, he has not hitherto been allowed, to interfere with anything that he personally thinks is unfair. If one disclaims such a proposal but seeks to substitute a discretion to determine, in accordance with principle, whether or not a prosecution should be stopped, I do not know what principle can be applied. In the case now under consideration different judges will, as the history of the case shows, have different views as to what is unfair, and I should find the discretion, if there is one, immensely difficult to exercise at all, nor should I know how to exercise it judicially.

If there were such a discretion, I do not understand why so many cases have been decided and so much learning has been expended in considering the doctrine of *autrefois convict* and *autrefois acquit*. Has all this been waste of judicial time? It would seem so, if all the judge had to do was to exercise his discretion as to whether or not a second indictment in such a case as this should be allowed to proceed.

After all, the cases, although they may not all be consistent and may be difficult to justify on the basis of *autrefois acquit* or *autrefois convict*, seem to me to cling at least to the central principle that a second trial is permissible on a charge, other than that dealt with at the first trial, arising out of the same **1338* facts and involving an issue not disposed of at the first trial: see *Rex v. Kendrick and Smith* ²⁹¹ for a recent illustration of the principle. If there were a discretion to prevent the prosecution proceeding with the second trial it would surely have been exercised in some of these cases, one way or the other. On the contrary, the matter of discretion was never raised except in *Rex v. Barron*, ²⁹² where one would have thought the considerations applicable in this case were present, the first trial being for sodomy and the second on the same facts for gross indecency. It was not, however, decided that the second trial should have been stopped because it was unfair to the prisoner. The appeal was dismissed. Many of those cases indeed to which my noble and learned friend, Lord Morris of Borth-y-Gest, has referred must be at least of doubtful authority if the whole field can be covered by the use of a discretionary power.

The common form of order used in this case, that the second indictment is to remain on the file, not to be proceeded with without the leave of the court, is, in my opinion, ineffective if it does more than delay the trial of the second indictment until the first case has been completed. It may be justified on procedural grounds until an appeal has been disposed of but cannot exclude the prosecutor from his right to proceed with a lawful case.

In conclusion, I see no way in which the principle of *autrefois acquit*, in any form recognised by law, can be applied to this case, nor do I think that, in these circumstances, there is any general judicial discretion which could be invoked to bring about the same result.

I would dismiss the appeal.

LORD DEVLIN.

My Lords, on November 17, 1962, four robbers made an armed raid on the premises of the Co-operative Society at Mitcham, and in the course of the raid a man was shot dead. Four men, including the appellant, were arrested and charged with murder. They were tried at the Old Bailey before Roskill J. and on March 12, 1963, were convicted. The appellant's main defence, which was rejected, was that he was not one of the four men. A second indictment charging all four with the robbery was ordered by Roskill J. to remain on the file, not to be proceeded with without the leave of the Central Criminal Court or of the Court of Criminal Appeal.

The appellant, Connelly, appealed to the Court of Criminal Appeal, **1339* and on April 5, 1963, his appeal was allowed on the ground of misdirection on fact. Accordingly, the court, as required by *section 4 (2) of the Criminal Appeal Act, 1907*, quashed the conviction and directed a judgment and verdict of acquittal to be entered. The court, after hearing argument, gave leave for the second indictment to be proceeded with.

On May 8, 1963, this indictment of robbery came before Stephenson J. at the Old Bailey. The appellant entered a plea of *autrefois acquit*. Stephenson J. directed the jury to reject the plea, but he indicated that he would, in the exercise of his discretion, which at that time the Crown conceded that he had, order that the indictment should not be proceeded with. In the course of further argument on May 17 the Crown withdrew their concession and Stephenson J. came to the conclusion that it was rightly withdrawn and that he had in law no discretion to exercise.

The trial for robbery proceeded before Nield J. at the Old Bailey. The plea in bar was argued again, and Nield J. considered and followed the reasoning of Stephenson J., but he indicated that, if he had had a discretion, he would not have exercised it against the Crown. The appellant, Connelly, then put forward the same defence, namely, that he was not one of the four men, and again it was rejected by the jury. On June 24 he was convicted of robbery and sentenced to 15 years' imprisonment.

From this conviction he appealed to the Court of Criminal Appeal. His main ground of appeal was that the plea of *autrefois acquit* was good in law, but he contended alternatively that Stephenson J. was wrong in law in thinking that he had no discretion

to stay the indictment. On September 30 his appeal was dismissed. The Court of Criminal Appeal certified that the point which he had taken was one of general public importance and gave leave to appeal to this House.

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 **1340* 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 characteristics of an offence and not to the facts on which it is based: see *Rex v. Kendrick and Smith*.²⁹³ 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.

The appellant advanced two other arguments which admittedly fall outside the strict doctrine of *autrefois* but which raise analogous points. One was a contention based on the important decision of the Privy Council in *Sambasivam v. Public Prosecutor, Federation of Malaya*.²⁹⁴ The other was based on the doctrine of issue estoppel which, while it appears to have been accepted in the criminal law of Australia and of the United States, has not so far been recognised in the criminal law of England.

Sambasivam's case²⁹⁵ was an appeal from the Supreme Court of Malaya. The appellant was charged with two offences, first carrying a firearm, and, secondly, being in possession of ammunition. He was acquitted on the second charge and a new trial was ordered on the first. At the new trial a statement which purported to have been made by the appellant but which he denied making and which had not been put in evidence on the first trial, was relied on by the prosecution. In the statement the appellant said that he was carrying a firearm and was in possession of ammunition. The Board had to consider the effect upon the alleged admission of the fact that the appellant had already been **1341* acquitted of being in possession of ammunition. Lord MacDermott said²⁹⁶: "The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim 'Res judicata pro veritate accipitur' is no less applicable to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any step to challenge it at the second trial."

In the opinion of the Board the application of this principle might well have been made a ground for excluding the statement in its entirety, for it could not have been severed satisfactorily. But no objection was taken to it at the trial and the Board was content to say that it should not have been left to the assessors without an intimation that the prosecution could not assert, or ask the court to accept, a substantial and important part of what it said. As this direction was not given, the Board set aside the conviction reached at the second trial.

This case can be treated, as my noble and learned friend, Lord Morris of Borth-y-Gest, has treated it, as an instance of the application of the principle of *res judicata* to the criminal law. For my part, I see difficulties about that, which I shall elaborate when I consider the argument on issue estoppel. I should prefer to regard it as an extension of the principle of *autrefois* which becomes necessary as soon as it is accepted - as it has been, for example, by Lord Goddard C.J. in *Flatman v. Light*²⁹⁷ - that there is no technicality about the plea of *autrefois* and that it can be taken at any stage. On this footing the proposition is that the plea can arise whenever, in order to prove the offence alleged on the second indictment, the prosecution is obliged to prove that the accused has committed an offence of which he has previously been either convicted or acquitted. This proposition was

accepted by the Solicitor-General with the proviso - to cover the case of *Reg. v. Morris*²⁹⁸ and the other cases which followed it - that at the time of the first trial the offence must be complete.

**1342*

The appellant attempted to bring his case within this proposition but did not, in my opinion, succeed. The prosecution at both trials proved a statement in which on the face of it the appellant admitted robbery and denied murder. What he meant by his denial was that he had taken, as he thought, no part in the shooting; doubtless he did not appreciate that his participation in a crime in the course of which the infliction of grievous harm was contemplated was enough in law to make him party to the murder. The statement does, in spite of the denial, contain evidence of murder and was used by the prosecution in that way at the first trial. The appellant submitted to the House that it ought to have been excluded at the second trial since it was evidence to prove murder as well as robbery.

This is to misunderstand the nature of the proposition. Under it the prosecution were precluded from relying on the fact of murder as part of their proof of robbery. If they tendered in evidence facts which went beyond robbery and proved murder, some of that evidence would prima facie be inadmissible, not under the proposition but because irrelevant to the proof of robbery. Some part of the appellant's statement was undoubtedly irrelevant, for example, the references to the shooting and the death of the man shot. When a statement is partly relevant and partly irrelevant, its admissibility has to be considered in the usual way, as was done in *Sambasivam's* case.²⁹⁹ If the statement can be severed it should be; and if it cannot, the judge must consider whether the irrelevancies are so prejudicial to the accused that the statement ought to be excluded altogether. In my opinion, the irrelevant matter in this statement was not prejudicial to the accused. Evidence that a man had been shot by one of the robbers other than the appellant could not have made the jury any more or less likely to have rejected his defence that he had no part in the robbery and was not present at all. There could therefore be no question of excluding the whole statement. Parts might perhaps have been excluded, if objected to, but anyway there was no grave error here such as should now cause your Lordships to quash the conviction.

The appellant's point that he might at the first trial have been convicted of manslaughter seems to me to fail upon the same ground. He argues that if the jury thought that he was participating in the robbery but that it was not part of the concerted plan that there should be shooting, they could and should have **1343* convicted him of manslaughter on the footing that he was taking part in an unlawful act out of which death resulted. Manslaughter was not left to the jury and I doubt very much whether it was a possible verdict. But assuming that it was, the only result would be to amplify the proposition that I have previously stated. The prosecution would be precluded from relying either on the fact of murder or on the fact of manslaughter as part of their proof of robbery. It is unnecessary for them to rely on either; references to the shooting and the death of the man shot are irrelevant to the proof of robbery, whether the death amounted to murder or manslaughter.

*Reg. v. Ollis*³⁰⁰ is also in point as a case which illustrates the limits of the proposition and of the extent to which a previous acquittal can be used. In this case the prisoner was charged on two indictments with offences of obtaining money by means of worthless cheques from different persons. He was acquitted on the first indictment. On the trial of the second indictment the person whom he was alleged to have defrauded on the first indictment was called to give evidence of the transaction in order to assist in the proof of guilty knowledge on the second indictment. Objection was taken to this evidence on two grounds, the first being that irrespective of the acquittal on the first indictment the evidence was inadmissible and the second being that, if otherwise admissible, it ought to have been excluded because of the acquittal. There was a difference of opinion in the Court of Crown Cases Reserved on the first ground, the majority holding the evidence to be admissible. All nine judges overruled the objection on the second ground. Lord Russell C.J. said³⁰¹ : "It is clear that there was no estoppel; the negating by the jury of the charge of fraud on the first occasion did not create an estoppel; nor is there any question arising upon the maxim 'Nemo debet bis puniri pro uno delicto.' The evidence was not less admissible because it tended to show that the accused was, in fact, guilty of the former charge." Darling J. said³⁰² : the defendant was not 'bis vexatus,' for I feel sure that those words are not to be understood as meaning that a man is not to be more than once annoyed by the same evidence."

I turn now to consider the doctrine of issue estoppel. The difference between issue estoppel and the autrefois principle is that, while the latter prevents the prosecution from impugning the **1344* validity of the verdict as a whole, the former prevents it from raising again any of the separate issues of fact which the jury have decided, or are presumed to have decided, in reaching their verdict in the accused's favour. This form of estoppel is, of course, well known to the civil law where separate issues of fact are frequently decided by a judge or by a jury on a special verdict. There is no trace so far of its application to criminal matters. I do not propose to detain your Lordships with an elaborate examination of *Reg. v. Bird*³⁰³ and *Reg. v. Ollis*³⁰⁴ which were said at least to foreshadow it. Since my judgment does not turn on whether or not the doctrine should be adopted, I shall

content myself with stating that those decisions when analysed and the judgment of R. S. Wright J. in the latter case when read as a whole do not in my opinion assist at all. But, as I have said, issue estoppel in criminal matters has been recognised by the highest courts in Australia and in the United States: see *Mraz v. The Queen (No. 2)* ³⁰⁵ and *Sealfon v. United States*. ³⁰⁶

The main difficulty about its application to criminal trials is that as a rule there is no determination by the jury of separate issues; and so their conclusion on any issue can be reached only by an analysis of the general verdict. How subtle this analysis can be is shown in the *Mraz* case. ³⁰⁷ In the present case the situation is even more complicated because the jury convicted the appellant and so must have found all the issues against him. It is argued, however, that the substitution by the Court of Criminal Appeal of the verdict of Not Guilty means that the jury must be deemed to have acquitted him. If they had in fact acquitted him, they could have done so either because he was not proved to be a robber or because, being a robber, he was not a murderer because not privy to the use of force. The latter point was taken by the appellant, not very convincingly, at the first trial; and if it were deemed to be the ground of the acquittal, issue estoppel would be no use to the appellant. But, it is argued, the jury in fact convicted the other men of murder. So they must have been satisfied that all the robbers, whoever they might be, were also murderers. Therefore, if they had acquitted the appellant, it could only have been on the ground that he was not one of the robbers.

But, my Lords, the jury did not in fact acquit him at all. *1345 This seems to me to be quite fatal to the application of issue estoppel in this case. You cannot ascertain how an issue was determined by mixing the formal with the factual. The justification for issue estoppel is that it enables the court to go behind the form of the verdict and in the light of the evidence and the submissions in the particular case find out what issues the jury actually determined. The formal verdict entered by the Court of Criminal Appeal, if pierced, reveals only that there was a misdirection of fact. Actual determination of issues is what is required for issue estoppel. In the *Mraz* case ³⁰⁸ the High Court of Australia in its process of analysis made use of the finding of the jury in a verdict that has been quashed. In the present case I should prefer to say that there was no determination at all of the issue of identity. The Court of Criminal Appeal certainly made none and the determination of the jury, being made under a misdirection, must be ignored as defective.

In my opinion, therefore, if issue estoppel is applicable in criminal trials, it does not assist the appellant here. But I must say that, while acknowledging the high authority of the cases I have noted and the desirability of uniformity in such a matter with decisions in Australia and the United States, I entertain serious doubts about the value of the doctrine to the criminal law. I can see the necessity for giving the accused some protection beyond the plea of *autrefois*. If there were no other way of giving it to him issue estoppel might be made to serve. But I hope to satisfy the House that the court has power without the importation of new doctrine to give such protection in cases where the accused might otherwise be harassed by a second trial.

Altogether there seem to me to be a number of difficulties about the introduction of issue estoppel into the criminal law. The first, the necessity for analysis, I have already mentioned. It introduces an element of chance. Assume that the appellant was actually acquitted of murder and that he had been tried alone. Analysis would then have shown nothing. It is only the fact that he was tried with others that enables the appellant to put forward an analysis in this case. The truth is that for estoppel on issues to work satisfactorily, the issues need to be formulated with some precision. In civil suits this is usually done as a matter of record: in the criminal process it is not. If issue estoppel is going to be introduced into the criminal law, *1346 the proper basis for it is a system of special verdicts on separate issues. But that would be to introduce a profound change into the working of our law which I am not prepared at present to countenance.

Then, since estoppel is available to both parties in civil law, there is the question whether it should be made available to the prosecution in criminal law. No one so far has advocated that it should. But is it necessary in the interests of justice to give the defence this unreciprocated advantage? The defence rightly enjoys the privilege of not having to prove anything; it has only to raise a reasonable doubt. Is it also to have the right to say that a fact which it has raised a reasonable doubt about is to be treated as conclusively established in its favour? I need say no more about these questions which it is unnecessary for me to answer since I think that the point fails in any event.

The appellant's final contention was that the court has a general discretionary power to quash or stay an indictment when to try it 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 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. would have prevented it, if he had thought that he had 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 chance 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*³⁰⁹ - has laid it down that no count for another offence is to be included in an indictment for murder. The short answer is, therefore, that 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 - *1347 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*³¹⁰ 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 case can be considered there is raised for your Lordships' 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 court's 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 a 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 a part of the English criminal law, and I shall illustrate this with special reference to the framing of indictments. 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.

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. *1348 The process is still continuing, and it is easy to think of recent examples.

The Judges' Rules were formulated first in 1912, the latest revision being in the present year, in order to protect the accused against the result of unfair questioning. It was questioning within the law as it then stood. In the present case it has been argued that the well-established rule of *autrefois* gives to the accused all the protection to which he is entitled against double jeopardy. It might equally well have been argued that the well-established rule that confession must be voluntary gave the accused all the protection to which he was entitled against unfair questioning. If that argument had prevailed, there would have been no Judges' Rules.

Another example is the power the courts have assumed to insist that notice of additional evidence must be given of all witnesses who have not made depositions. This was described by Lord Goddard C.J. in *Reg. v. Chairman, County of London Sessions, Ex parte Downes*³¹¹ as a requirement of modern practice. Then there is the rule that the defence must be supplied with the names of any material witnesses interviewed by the prosecution whom it does not intend to call: *Rex v. Bryant*.³¹² Likewise the rule that the defence must be given a copy of any report, made by the prison doctor about the state of mind of an accused person in custody: *Rex v. Casey*.³¹³ In 1955 the judges of the Queen's Bench gave a practice direction which required, *inter alia*, that particulars of a prisoner's previous convictions must be given to the defence so that counsel could know whether or not he could safely put his client's character in issue: see *39 Cr.App. R. 20*. This was supplemented by a further rule that the defence must be told of convictions affecting the credibility of the prosecution's witnesses: *Reg. v. Collister*.³¹⁴ All these are rules of practice which no one disputes the power of the court to make and enforce.

I propose now to examine in some detail the power which the courts exercised before the *Indictments Act, 1915*, to control the *prima facie* right of the prosecutor to put as much as he liked into one indictment. The relevant authorities will be found in any old edition of Archbold's Criminal Pleading; I have consulted the 20th edition (1886), pp. 77 to 82. The chief authorities

are [*1349](#) cited and reviewed in *Rex v. Lockett*.³¹⁵ There are also some valuable passages in speech by Lord Blackburn in *Castro v. The Queen*.³¹⁶

There was before 1915 only one rule of law that prevented the prosecutor from including as many crimes as he liked in one indictment. This was the rule that forbade him from including both felonies and misdemeanours. The objection to that seems to have been purely formal, the right of challenge and the form of oath administered to jurors being different in felony and misdemeanour. In the case of felony the judges laid down a rule of practice forbidding the prosecution to include more than one felony in any indictment. It is best put in the words of Buller J. in *Young v. The King*.³¹⁷ He said: "... if it appear before the defendant has pleaded, or the jury are charged, that he is to be tried for separate offences, it has been the practice of the judges to quash the indictment, lest it should confound the prisoner in his defence, or prejudice him in his challenge of the jury; for he might object to a juryman's trying one of the offences, though he might have no reason to do so in the other. But these are only matters of prudence and discretion. If the judge, who tries the prisoner, does not discover it in time, I think he may put the prosecutor to make his election on which charge he will proceed."

Certain exceptions appear to have been recognised if the offences were clearly connected, for example, forgery and the uttering of the forged document. As a general rule it was almost invariably applied. But the contention that the accused had an absolute right to have it applied was negated in *Rex v. Lockett*.³¹⁸ where it was held to be discretionary. Isaacs C.J., said: "... it is apparent that in dealing with these and similar questions which arise upon indictments we are only dealing with matters of practice and procedure devised by the judges who have presided in the past at criminal trials, for the purpose of protecting prisoners from oppression, and that they are not laid down as, and are not, rules of law, but are guides to the course which will and can in such circumstances be adopted by judges, which will entitle them, if as a matter of prudence [*1350](#) and discretion they think it right, either to quash the indictment or to call upon the prosecution to make its election."

In misdemeanour, the position was just the opposite. The general rule was that any number could be joined, but that in exceptional cases the court could in its discretion quash the indictment. In *Rex v. Kingston*.³¹⁹ Lord Ellenborough C.J., while declining to entertain the point on demurrer, said: "This would have been a good ground of application to the discretion of the court to quash the indictment for the inconvenience which may arise at the trial from joining different counts against different defenders; but where to the offences so charged in different counts there may be the same plea and the same judgment, there is no authority for saying that such joinder in one indictment is bad in point of law."

The general rule against the joinder of felonies was too rigid. Parliament considered so, and in the last half of the 19th century enacted a number of statutes exempting specific crimes from its operation. Then in 1915 the [Indictments Act](#) swept the whole thing away.

It can hardly be doubted that by 1915 a general rule of practice virtually forbidding the joinder of felonies while allowing the joinder of misdemeanours had outlived its usefulness. Importance was no longer attached to the distinction between felony and misdemeanour. The accused in cases of felony was no longer in need of the same degree of protection. The challenge had already begun to fall into disuse. The rule was made at a time when indictments, even simple ones, were lengthy and cumbersome documents which it would be difficult for a prisoner, who frequently had to defend himself, to understand. He was not then entitled to see the depositions which would have told him clearly what was the case against him. At the present time, when nearly all accused are legally aided and when the indictment is by no means the only information on which he has to prepare his defence, an absolute rule against joinder of felonies would be quite antiquated. But it was a good rule at the time when it was made and it was made by virtue of the judicial power to protect defendants from injustice and oppression. If the court has power to see that a defendant is not oppressed by having too much put against him in one indictment, it must surely also have power to see that he is not oppressed by having the case against him spread over too many indictments.

[*1351](#)

The relevant provisions of the [Indictments Act](#) are as follows: [Section 4](#) . "Subject to the provisions of the rules under this Act charges for more than one felony or for more than one misdemeanour, and charges for both felonies and misdemeanours, may be joined in the same indictment, but where a felony is tried together with any misdemeanour, the jury shall be sworn and the person accused shall have the same right of challenging jurors as if all the offences charged in the indictment were felonies."

[Rule 3 of Schedule I](#) provided: "Charges for any offences, whether felonies or misdemeanours, may be joined in the same indictment if those charges are founded on the same facts, or form or are a part of a series of offences of the same or a similar character."

It took some time for these provisions to become established in practice. In a series of four cases about 1925, following rapidly on each other, *Rex v. Taylor* ³²⁰; *Rex v. Clarke* ³²¹; *Rex v. Tyreman* ³²² and *Rex v. Smith*, ³²³ the Court of Criminal Appeal said that rule 3 was being habitually ignored. It directed that full effect should be given to it and threatened to disallow the costs of second indictments.

Before that one notable exception had been established. In *Rex v. Jones* ³²⁴ the Court of Criminal Appeal said that in a case of murder the indictment ought not to contain a count of such a character as robbery with violence. Giving the judgment of the court, A. T. Lawrence J. said: "The charge of murder is too serious a matter to be complicated by having alternative counts inserted in the indictment. In the opinion of the court the *Indictments Act, 1915*, did not contemplate the joinder of counts of this kind. The proper course in a case like this is to have two indictments so that the second charge may be subsequently tried if the charge of murder fails and it is thought desirable to proceed upon the second charge."

In *Rex v. Large* ³²⁵ the court said that the same practice should be followed with a charge of manslaughter.

Rex v. Jones ³²⁶ has generally been accepted as a rule of practice and is referred to as such in *section 6 (2) of the Homicide Act, 1957*. It is a clear example, repeated in 1939, of the exercise **1352* by the court of its power to protect an accused from prejudice or embarrassment. It can hardly be doubted that in 1918 the court was, notwithstanding the *Indictments Act, 1915*, exercising in a limited way and for the benefit of the defence the same sort of power as it had always exercised before 1915. It seems to me that if the court had power in 1918 and 1939 to say that, notwithstanding the permission of Parliament, there must be no joinder of counts, this House must have power in 1964 to say that that is a mistaken or obsolete view and that there is power to stay second indictments in cases in which rule 3 ought quite clearly to have been used and has not been.

I know of no authority for saying that the power has been in any way diminished and there is indeed good authority for saying that the discretion would apply as much in the one case as in the other. In *Rex v. Barron* ³²⁷ (the case is fully dealt with in the speech of my noble and learned friend, Lord Pearce) Lord Reading C.J. clearly thought it proper that a "judge should not, as a matter of fairness and in the exercise of a proper judicial discretion, have allowed the second trial to take place. ..." This dictum, which was in a considered judgment, was delivered three months after the dictum, which I have already cited, on the nature of the judicial discretion in criminal matters, which Lord Reading (then Isaacs C.J.) had delivered in *Rex v. Lockett*. ³²⁸ It shows clearly that Lord Reading considered that a discretion could be used to disallow a second indictment just as well as to separate the charges in one indictment. There is a dictum which I consider to be to the same effect in *Rex v. Miles*. ³²⁹ Lord Alverstone C.J. while saying that there was no rule of law that prevented the appellant being tried for a different offence on the same set of facts, said: "The judge has a discretion in such a matter, and if, when a man has been acquitted, he considers the acquittal should make an end of the whole case, he can express his opinion." This dictum is said to be ambiguous. I cannot think it means no more than that a judge has a discretion to express an opinion which can be ignored.

Finally, under this head I refer to the order of Roskill J. in the present case that the second indictment was to remain on the file, not to be proceeded with without the leave of the court. This is a common form of order that is constantly being made. It is **1353* meaningless except on the hypothesis that the court has power to order an indictment not to be proceeded with.

I turn now to my second head. The doctrine of *autrefois* protects an accused in circumstances in which he has actually been in peril. It cannot, naturally enough, protect him in circumstances in which he could have been put 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 ³³⁰ when, as in this case, it quashes a 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 courts' duty to conduct their proceedings so as to command the respect and confidence of the public. For this purpose 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 may 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 justice can guarantee that every judgment is right, but it can and should do its best to secure that there are not conflicting judgments in the same matter. Suppose that in the present case the appellant had first been acquitted of robbery and then convicted of 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 re-open again and again what is in effect the same matter.

The appellant presses this point so hard as to submit that inconsistent verdicts in two trials ought to be dealt with in the ^{*1354} same way by the Court of Criminal Appeal as it deals with inconsistent verdicts in the same trial; and that on that ground the court ought in this case to have quashed the second conviction for robbery. I cannot accept that. As my noble and learned friend, Lord Pearce, observed in the course of the argument, the ground for quashing inconsistent verdicts in the same trial is not that there is no room for different conclusions on the same facts, but because, if the same body of men reach inconsistent conclusions on the same evidence, there is good ground for thinking that they were subject to confusion of thought affecting their judgment as a whole. I cannot agree, therefore, that inconsistent verdicts in two trials will necessarily produce a miscarriage of justice within the meaning of [section 4 of the Criminal Appeal Act, 1907](#). But I accept that it is something which in the interests of justice it is very desirable to avoid.

The Solicitor-General does not dispute that if the prosecution were in fact to behave in all the ways in which according to his argument they could legally behave, there would be abuses which ought to be corrected. But in his submission the danger of abuse is a matter for the Crown; the Crown itself may be trusted not to abuse its powers and if a private prosecutor is abusing his, the Attorney-General can interfere by means of a nolle prosequi.

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 great constitutional 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 come or 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*, ³³¹ 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. ^{*1355} In the course of his judgment Lord Goddard C.J. said ³³² 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. My Lords, this statement describes in general terms and quite sufficiently for the purposes of the point which the Lord 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. On the same page of his judgment Lord Goddard C.J. refers to the order that a second indictment is not to be prosecuted 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 gross 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 that 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*, ³³³ 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. 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*,³³⁴ 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. *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 that 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*.

The classic judgment on this point is by Wigram V.-C. in *Henderson v. Henderson*.³³⁵ He said: "I believe I state the rule of the court correctly, when I say, that 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." It will be observed that this rule is not rigid; the plea of *res judicata* applies except in special circumstances.

*Macdougall v. Knight*³³⁶ was a case in which the plaintiff was **1357* suing a second time on a different defamatory statement in the same pamphlet. Lord Esher, M.R., said³³⁷: "even if the plaintiff could in law split up 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*³³⁸ and *Wright v. Bennett*.³³⁹ 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 similar development in criminal procedure, had it not been that prosecutions fell largely into 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 stated by Cockburn C.J. in *Reg. v. Elrington*³⁴⁰ 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*³⁴¹ and *Reg. v. Grimwood*.³⁴² In both cases a conviction for common assault was held to be a bar to subsequent charges of wounding, including wounding with intent 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 Cockburn C.J. was adopted by Hawkins J.³⁴³ and Pollock B.,³⁴⁴ Pollock B. adding: "This is not only the law, but it is consonant with sound sense and the just treatment of defendants." As elaborated 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.

This case expands the doctrine of *autrefois* in much the same way as Wigram V.-C. expanded the doctrine of *res judicata*. A man charged with common assault is never in actual peril of **1358* 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 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 with intent 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. If I did, I should not find great difficulty in bringing the present case within 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 in 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 offence as murder any more than I can say that wounding with intent to cause grievous 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*.³⁴⁵ 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*³⁴⁶ 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. 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 law as it is in the civil.

Accordingly, my Lords, I would hold that the general rule to be observed in criminal cases (I leave aside for the moment the question whether the Court of Criminal Appeal in *Rex v. Jones*³⁴⁷ *1359 was right in thinking that an exception ought to be made where there is a charge of murder) is that set out in rule 3. This rule is in form permissive. So, of course, is the rule relating to joinder in civil cases originally introduced by the Common Law Procedure Act, 1852, s. 41. Both must, in my opinion, be read subject to the principle stated by Wigram V.-C.³⁴⁸ that "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." I think it is right to say that for many years past, in response to the observations of the Court of Criminal Appeal, Rule 3 has in practice been treated in this way except when there is a charge of murder, when because of *Rex v. Jones*³⁴⁹ the practice has been different. I must now consider whether the exceptional rule of practice laid down by *Rex v. Jones*³⁵⁰ and *Rex v. Large*³⁵¹ ought to be sustained by the House; and, if it ought not, what is the effect of that on this appeal.

In my opinion, the rule of practice in these two cases ought not to be sustained. I have given my reasons for thinking that even before 1915 the rule prohibiting the joinder of felonies had become obsolete. But until the *Indictments Act in 1915* it had been part of our procedure for well over a century, being thought necessary for the benefit of the defence; and I can understand the feeling in 1918 that the Act could not have intended its complete destruction and that murder at least as an exceptional crime should be saved out of the wreckage. A charge of murder is in its nature a very grave charge; and I do not doubt that a judge would give weight to that factor if an application were made to him by the accused under section 5 (3) of the Act to sever it from a lesser charge. But I do not think that there is any justification for a rigid rule to be applied irrespective of prejudice or embarrassment to the defence. In my opinion, the exceptional rule of practice laid down in *Rex v. Jones*³⁵² and *Rex v. Large*³⁵³ should no longer have effect.

The result of this will, I think, be as follows. As a general rule a judge should stay an indictment (that is, order that it remain on the file not to be proceeded with) when he is satisfied *1360 that the charges therein are founded on the same facts as the charges in a previous indictment on which the accused has been tried, or form or are a part of a series of offences of the same or a similar character as the offences charged in the previous indictment. He will do this because as a general rule it is oppressive to an accused for the prosecution not to use rule 3 where it can properly be used. But a second trial on the same or similar facts is not always and necessarily oppressive, and there may in a particular case be special circumstances which make it just and convenient in that case. The judge must then, in all the circumstances of the particular case, exercise his discretion as to whether or not he applies the general rule. Without attempting a comprehensive definition, it may be useful to indicate the sort of thing that would, I think, clearly amount to a special circumstance. Under section 5 (3) of the Act a judge has a complete discretion to order separate trials of offences charged in one indictment. It must, therefore, follow that where the case is one in which, if the offences in the second indictment had been included in the first, the judge would have ordered a separate trial of them, he will in his discretion allow the second indictment to be proceeded with. A fortiori, where the accused has himself obtained an order for a separate trial under section 5 (3). Moreover, I do not think that it is obligatory on the prosecution, in order to be on the safe side, to put into an indictment all the charges that might conceivably come within rule 3, leaving it to the defence to apply for separation. If the prosecution considers that there ought to be two or more trials, it can make its choice plain by preferring two or more indictments. In many cases this may be to the advantage of the defence. If the defence accepts the choice without complaint and avails itself of any advantage that may flow from it, I should regard that as a special circumstance; for where the defence considers that a single trial of two indictments is desirable, it can apply to the judge for an order in the form made by Glyn-Jones J. in *Reg. v. Smith*.³⁵⁴

It remains to determine what rule of practice should be applied in this particular case. Should it be the rule which your Lordships, if you are of my opinion, will declare as the right rule to govern future cases; or should it be the rule of practice in force at the time of the first trial? If the decision in *Rex v. Jones*³⁵⁵ had embodied a rule of law, it might well be said that *1361 the prosecution would simply be in the unfortunate position of a party who has good grounds for thinking that he is acting as the law requires him to do and then finds that the decision upon which he is relying is upset. But a rule of practice is in my opinion different. When declared by a court of competent jurisdiction, the rule must be followed until that court or a higher court declares it to be obsolete or bad or until it is altered by statute. The rule in *Rex v. Jones*³⁵⁶ was accepted by both sides without challenge as governing the position at the first trial; and in his address to the jury in the passage which my noble and learned friend, Lord Morris of Borth-y-Gest, has quoted, counsel for the defence referred to the possibility of a second trial in the event of an acquittal. The rule must be applied in the present case though not in the future, and on that ground I would dismiss this appeal.

LORD PEARCE.

My Lords, the court has an inherent power to protect its process from abuse. Lord Blackburn in *Metropolitan Bank Ltd. v. Pooley*³⁵⁷ said: "But from early times (I rather think, though I have not looked at it enough to say, from the earliest 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.³⁵⁸ said: "The power seemed to be inherent in the jurisdiction of every court of justice to protect itself from the abuse of its own procedure." Although their Lordships were there dealing with a 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 had 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 *1362 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 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 inherent power of the court. So, too, in civil matters the [Rules of the Supreme Court \(Orders 25 and 40\)](#) 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 form of the pleading and look to the substance that lay beneath it (see *Stephenson v. Garnett*³⁵⁹).

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*³⁶⁰ the defendant was convicted under a statutory offence, that being a driver of a carriage he had struck a horse ridden 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 fact founded on one and the same incident. On a case stated the second conviction was quashed. Blackburn J. said³⁶¹: "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 all 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 out³⁶² that the defendant's conduct became an act for which he could be punished under two statutes and that he could *1363 not be "convicted again for the same act under the other statute."

The words of Blackburn J. were approved in *Reg. v. Miles*³⁶³ 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 Blackburn J. said in *Wemyss v. Hopkins*.³⁶⁴ 'on the well-established rule at common law,'" and he cites the words which I have quoted above. In the same case Pollock B. said³⁶⁵ : "In substance, therefore, the plea and the evidence establish 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 were guilty of the modified crime only he could not be guilty of the same acts with the addition of malice and design." After citing *Reg. v. Walker*³⁶⁶ and *Reg. v. Stanton*,³⁶⁷ where Erle J. referred to a previous conviction for common assault as an "estoppel" to a conviction for felonious assault, he continued³⁶⁸ : "These are decisions by single judges, but they were cited and approved of by the Court of Queen's Bench in *Reg. v. Elrington*³⁶⁹ 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 a minor 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."

In *Reg. v. King*³⁷⁰ where a conviction for obtaining goods by false pretences was held a bar to a further conviction for larceny of the same goods, Hawkins J. said: "The man had clearly been convicted of a misdemeanour in respect of obtaining credit for the same goods which were the subject of the charge of larceny; and it is against the very first principles of the criminal law *1364 that a man should be placed twice in jeopardy upon the same facts; the offences are practically the same, though not their legal operation. The course adopted is altogether inconsistent with what is right and just. ..." That case was distinguished in *Rex v. Barron*³⁷¹ where the court took the narrower view that an acquittal of sodomy did not bar an indictment, on admittedly the same evidence, for indecent assault. Lord Reading C.J. expressed the opinion³⁷² that Hawkins J. did not intend to lay down as a general principle of law that a man cannot be placed twice in jeopardy upon the same facts if the offences are different, and that he was really saying that "having regard to the conviction of the defendant on the first indictment of obtaining credit for the *same* goods by false pretences and also by fraud, the judge should not, as a matter of fairness and in the exercise of a proper judicial discretion, have allowed the second trial to take place." After citing the words of Cave J. in the same case he continued: "It would appear that the decision of the court was given, either because in the exercise of his discretion the judge should not have permitted the trial for larceny, or because the verdict in the first that was based upon a view of the facts which was inconsistent with that necessary to support the further indictment."

More recently in *Sambasivam's* case³⁷³ the Judicial Committee affirmed the principle that *res judicata* applies to criminal as much as to civil proceedings and that the effect of an acquittal is not completely stated by saying that the accused person cannot be tried again for the same offence. Evidence cannot be called in a later case which would controvert the acquittal.

The above cases show that a narrow view of the doctrines of *autrefois acquit* and *convict*, which has at times prevailed, does not comprehend the whole of the power on which the court acts in considering whether a second trial can properly follow an offence which is manifestly inconsistent *on the facts* with either a previous conviction or a previous acquittal. and it is clear that the formal pleas which a defendant can claim as of right will not cover all such cases. 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 underly the pleas.

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Lord Alverstone C.J. in *Rex v. Miles*³⁷⁴ and Lord Reading in *Rex v. Barron*³⁷⁵ have treated the power that lies beyond the limits of the actual pleas as a judicial discretion. Lord Goddard C.J. in *Reg. v. Chairman, County of London Sessions, Ex parte Downes*³⁷⁶ has by clear implication, said that no such discretion or power exists. But that case was not expressly directed to this point, and I cannot accept the implication. The court has, I think, 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 those principles and creates abuse and injustice. A fortiori, when an order is made by consent of both parties that the indictment shall remain on the file and shall not be prosecuted without the leave of the court, the matter is within the court's judicial discretion. I certainly do not accept the Crown's contention, as I understood it, that the prosecution can thereafter proceed with the indictment even if the judge in a proper exercise of his discretion refuses leave.

The maxim *nemo debet bis vexari* underlies both pleas and is a strong element in both. Estoppel and consistency in the court underlie *autrefois acquit* but they have no relation to *autrefois convict*. For in the latter case no estoppel or inconsistency would result from a second prosecution. Lord Blackburn in *Wemyss's* case³⁷⁷ based *autrefois convict* on the principle *transit in rem*

judicatum; the offence has passed into a conviction and the offence has ceased to exist. That may be a satisfactory explanation except for those cases where there is a conviction for assault from which the victim subsequently dies and it has been held that a prosecution for murder can be maintained. It seems that the only way in which one can justify this departure from the normal application of the principle expressed in cases where a previous conviction for assault has barred a subsequent charge of aggravated assault, is to say that the court in adapting to the particular case its application of the general principle has, in the light of the victim's subsequent death, chosen to regard murder as so serious an offence that it will allow the second trial to proceed (see article of Mr. Colin Howard on Res Judicata in the Melbourne University Law Review, Vol. 3, p. 101). In the present case, however, your Lordships are not primarily concerned with the problems that follow a conviction.

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In *Reg. v. Gould*,³⁷⁸ *Reg. v. Bird*,³⁷⁹ *Rex v. Norton*³⁸⁰ and *Reg. v. Beach*³⁸¹ the court looked at the facts that lay behind the charges. It is argued that it should do so only for a limited purpose, namely, to find whether in law the offences were the same and not whether the factual substance of the offences was the same. Whatever the limits of the pleas themselves, it is difficult to see why the court should not regard the full reality of the case if it is in truth seeking to apply the general principles. Certainly the civil courts have not allowed the same facts to be dressed up under a new cause of action. See *Stephenson v. Garnett*³⁸² where A. L. Smith L.J. said: "I do not rest my decision upon the ground that the matter is res judicata, for I do not think it can be said that it is."

The limits of the inquiry are not, however, easy to define. Douglas J., in *Sealfon's case*,³⁸³ said: "The instructions under which the verdict was rendered, however, must be set in a practical frame and viewed with an eye to all the circumstances of the proceedings. We look to them only for such light as they shed on the issues determined by the verdict." He refers to the core of the prosecution's case." In cases of acquittal a defendant may have been acquitted on one of many grounds and it is, therefore, generally hard to find any precise issue that has been decided other than the broad issue of not guilty. But in several Australian cases the court has sought to find what are the real implications necessarily involved in the former verdict of acquittal. Where it can be shown that an issue has been decided in the defendant's favour they have held that he may rely on that decision and that it cannot be challenged afresh. *Rex v. Wilkes*³⁸⁴; *Kemp v. The King*³⁸⁵; *Mraz v. The Queen*.³⁸⁶ The principles of the cases on issue estoppel are clearly summarised by Heron and Hardie J.J. in *Brown v. Robinson*.³⁸⁷ The principle established by those cases seems to me right, but they do not help the prisoner in the present case. Here the two real issues were murder intent and identity, and the verdict of the jury was guilty.

The Court of Criminal Appeal, without considering all the grounds of appeal, held that the prisoner had not had the benefit ***1367** of a fair summing up on identity. As he might otherwise have been acquitted on that ground they quashed the conviction. Thus, the prisoner can claim the protection of a general verdict of not guilty. But this does not mean that he has been found not guilty on the issue of identity. I cannot accept Mr. Hauser's argument that by taking the verdicts of guilty on the other three defendants one can assume that the prisoner was not acquitted on intent, and that one must, therefore, attribute the verdict of not guilty to the issue of identity. It would be quite unreal to do so, and even if one were theoretically to deem the verdict of the Court of Criminal Appeal to be the verdict of the jury, then theoretically also the jury might have acquitted on intent. The issue estoppel cases are concerned to find out the practical inferences from the verdict. They afford no help to the appellant in the present case.

It might seem at first sight that the second prosecution here is a breach of the "well-established principle of our criminal law" referred to by Cockburn C.J. in *Reg. v. Elrington*³⁸⁸ and approved by Pollock B. in *Reg. v. Miles*³⁸⁹ that "a series of charges shall not be preferred." Since the time when those words were spoken the joinder of charges in an indictment has been deliberately facilitated by the Indictments Act, 1915, and there is thus the more reason for saying that in general the prosecutor should join in one indictment all the charges that he wishes to prefer in respect of one incident. It would be an abuse if he could bring up one offence after another based on the same incident, even if the offences were different in law, in order to make fresh attempts to break down the defence. In *Rex v. Jones*,³⁹⁰ however, the Court of Criminal Appeal laid down a rule that in cases of murder other charges should not be joined. So, too, in manslaughter: *Rex v. Large*.³⁹¹

With all respect, I think that rule of procedure is inconvenient. The defendant can always apply for separate trials if any unfairness might otherwise be caused to him but he should be entitled, if he wishes, to have the whole matter dealt with.

This is, however, a matter on which the court is entitled to decide its practice consistently with its principles. I agree with the general principle enunciated by Cockburn C.J., but he was dealing with an ascending scale of charges and I do not think that he was intending to hold that the cases where second prosecutions in a descending scale of charges or on different crimes ***1368**

had been allowed were wrongly decided. In those days, when these were technical difficulties with regard to the joinder of indictments, such an assertion could not be justified. The court was entitled to lay down the rule of practice in *Rex v. Jones*³⁹² since it was, I think, basing its decision on the general fundamental principle of giving a fair trial to the prisoner. Where conflicting considerations of principle arise the court must do the best it can to reconcile them.

In my opinion, therefore, no principle is automatically infringed by the practice laid down in *Rex v. Jones*³⁹³ (even though your Lordships may think it undesirable in future) and, while that practice is maintained, one has to see whether a particular injustice arises from following the procedure thus laid down. The benefit which (as it now turns out) he would have obtained from having one trial was fortuitous. I do not regard this point as a valid reason for allowing the appeal and I see no injustice or abuse of process in allowing the trial of the second indictment.

I agree with the opinion of my noble and learned friend, Lord Devlin, save in so far as I am not in accord with his more general criticism of issue estoppel. I agree with his remarks as to the practice to be followed in future.

I would therefore dismiss the appeal.

Representation

Solicitors: Cowan, Lipson & Rumney ; Director of Public Prosecutions .

Appeal dismissed. (F. C.)

Footnotes

- 1 (1963) *The Times*, April 6, 1963 .
- 2 (1840) 9 C. & P. 364 .
- 3 (1851) 2 Den. 94 .
- 4 (1861) 9 Cox C.C. 86 .
- 5 (1867) 10 Cox C.C. 480, C.C.R.
- 6 *Ibid.* 481n., 483.
- 7 (1875) L.R. 10 Q.B. 378 .
- 8 (1882) 15 Cox C.C. 29 , C.C.R.
- 9 (1882) 15 Cox C.C. 85 .
- 10 (1890) 24 Q.B.D. 423, 431; 6 T.L.R. 186 .
- 11 (1957) *The Times*, Sept. 26.
- 12 [1897] 1 Q.B. 214; 13 T.L.R. 27; 18 Cox C.C. 449, C.C.R.
- 13 (1890) 17 Cox C.C. 325 .
- 14 (1896) 13 T.L.R. 70; 60 J.P. 809 .
- 15 [1897] 1 Q.B. 214 .
- 16 [1900] 2 Q.B. 758, 769, 771; 16 T.L.R. 477; 19 Cox C.C. 554, C.C.A.
- 17 [1914] 2 K.B. 570; 30 T.L.R. 422, C.C.A.
- 18 (1908) 21 Cox C.C. 702, D.C.
- 19 (1931) 23 Cr.App.R. 1, C.C.A.
- 20 [1946] 1 K.B. 414, 421; 62 T.L.R. 456; [1946] 2 All E.R. 368, D.C.
- 21 [1950] 1 K.B. 26, 31; 65 T.L.R. 586; [1949] 3 All E.R. 662 , C.C.A.
- 22 [1950] A.C. 458, 479; 66 T.L.R. (Pt. 2) 254, P.C.
- 23 [1960] 2 Q.B. 513; [1960] 3 W.L.R. 426; [1960] 3 All E.R. 149, C.C.A.
- 24 (1894) 15 L.R.(N.S.W.) 1 .
- 25 (1948) 77 C.L.R. 511 .
- 26 (1951) 83 C.L.R. 341 .

27 (1952) 52 S.R.(N.S.W.) 213 , 217.
28 (1956) 96 C.L.R. 62 , 68.
29 [1914] 2 K.B. 570, 574, C.C.A.
30 [1897] 1 Q.B. 214, C.C.R.
31 (1956) Tas.S.R. 95 .
32 (1960) S.R.(N.S.W.) 297 , 301.
33 (1916) 242 U.S.Rep. 85, 87.
34 (1948) 332 U.S.Rep. 575.
35 (1941) 17 South Eastern Reporter 573.
36 [1926] A.C. 155; 42 T.L.R. 207 , P.C.
37 [1939] A.C. 1; 55 T.L.R. 260; [1938] 4 All E.R. 747, H.L.
38 (1950) 81 C.L.R. 446 .
39 (1947) 63 T.L.R. 561; [1947] 2 All E.R. 701; 32 Cr.App.R. 102, C.C.A.
40 (1843) 2 Mood. & R. 446 .
41 (1909) 3 Cr.App.R. 13, 15, C.C.A.
42 [1914] 2 K.B. 570 , 575.
43 [1897] 1 Q.B. 214 , 217.
44 [1952] 2 Q.B. 758, 767; [1952] 2 T.L.R. 135; [1952] 2 All E.R. 312; 36 Cr.App.R. 114, C.C.A.
45 (1885) 10 App.Cas. 210, H.L.
46 (1886) 11 P.D. 59; 2 T.L.R. 270, C.A.
47 (1876) 13 Cox C.C. 217 .
48 [1909] 1 K.B. 258 , 262.
49 [1950] A.C. 458 .
50 (1918) 34 T.L.R. 587; 13 Cr. App.R. 166, 168, C.C.A.
51 [1946] 1 K.B. 414; 62 T.L.R. 456, D.C.
52 (1909) 2 Cr.App.R. 197, 207-208, C.C.A.
53 (1910) 5 Cr.App.R. 65, 197, C.C.A.
54 [1939] A.C. 1 , 20.
55 (1941) 17 South Eastern Reporter 573.
56 (1956) 96 C.L.R. 62 , 68.
57 [1897] 1 Q.B. 214 .
58 [1952] 2 Q.B. 758, 767; [1952] 2 T.L.R. 135; [1952] 2 All E.R. 312; 36 Cr.App.R. 114, C.C.A.
59 [1954] 1 Q.B. 1; [1953] 3 W.L.R. 586; [1953] 2 All E.R. 750, D.C.
60 [1954] 1 Q.B. 1 , 6.
61 (1876) 13 Cox C.C. 217 .
62 [1914] 2 K.B. , 570, 574-576.
63 [1897] 1 Q.B. 214 .
64 1948 S.A.S.R. 108 .
65 (1918) 34 T.L.R. 302; 13 Cr. App.R. 101, C.C.A.
66 [1914] 2 K.B. 570, 574; 30 T.L.R. 422, C.C.A.
67 (1909) 2 Cr.App.R. 197, 207-208, C.C.A.
68 (1857) 10 Cox C.C. 481n ., 483n.
69 [1914] 2 K.B. 570 , 574.
70 (1918) 34 T.L.R. 587; 13 Cr. App.R. 166, C.C.A.
71 (1910) 5 Cr.App.R. 65, 197, C.C.A.
72 5 Cr.App.R. 197 , 198, C.C.A.
73 1941 17 South Eastern Reporter 573.
74 (1956) 96 C.L.R. 62 , 68.
75 (1960) S.R.(N.S.W.) 297 , 301.
76 [1926] A.C. 155; 42 T.L.R. 207, P.C.
77 [1939] A.C. 1; 55 T.L.R. 260; [1938] 4 All E.R. 747, H.L.
78 (1916) 242 U.S.Rep. 85, 87.
79 [1950] A.C. 458, 479; 66 (Pt. 2) T.L.R. 254, P.C.
80 [1900] 2 Q.B. 758; 16 T.L.R. 477; 19 Cox C.C. 554 .
81 [1900] 2 Q.B. 758 , 769.
82 [1897] 1 Q.B. 214; 13 T.L.R. 27; 18 Cox C.C. 449 .

- 83 (1952) 52 S.R.(N.S.W.) 213 , 217.
84 [1939] A.C. 1 , 20.
85 (1947) 63 T.L.R. 561; [1947] 2 All E.R. 701; 32 Cr.App.R. 102, C.C.A.
86 The Times, Sept . 26, 1957.
87 (1909) 3 Cr.App.R. 13, 15, C.C.A.
88 [1914] 2 K.B. 570 , 573.
89 (1876) 13 Cox C.C. 217 .
90 [1909] 1 K.B. 258 , 262.
91 [1952] 2 Q.B. 758, 767; [1952] 2 T.L.R. 135; [1952] 2 All E.R. 312; 36 Cr.App.R. 114, C.C.A.
92 [1954] 1 Q.B. 1, 6; [1953] 3 W.L.R. 586; 37 Cr.App.R. 188 , C.C.A.
93 [1950] A.C. 458, P.C.
94 (1941) 17 South Eastern Reporter 573.
95 (1840) 9 C. & P. 364 .
96 (1843) 2 M. & Rob. 446 , 457.
97 (1851) 2 Den. 97 , 130-131, 143-144, 151-152.
98 (1861) 1 B. & S. 688 .
99 (1857) 10 Cox C.C. 481n .
100 L.R. 1 C.C.R. 90 , 92-93.
101 (1875) L.R. 10 Q.B. 378, D.C.
102 (1876) 34 L.T. 455 .
103 (1882) 46 L.T. 177 .
104 (1882) 15 Cox C.C. 85 , 86-87.
105 (1887) 16 Cox.C.C. 311 .
106 (1890) 17 Cox.C.C. 325 .
107 (1890) 24 Q.B.D. 423, 427, 429-431, 435-436; 6 T.L.R. 186 .
108 (1895) 59 J.P. 778 .
109 (1896) 13 T.L.R. 70 .
110 [1897] 1 Q.B. 214, 218, 219; 13 T.L.R. 27 .
111 [1900] 2 Q.B. 758, 763, 768; 16 T.L.R. 477 .
112 (1908) 99 L.T. 668; 24 T.L.R. 873, D.C.
113 (1909) 3 Cr.App.R. 13 , 15, C.C.A.
114 [1910] 2 K.B. 496, 501; 25 T.L.R. 550; 5 Cr.App.R. 65, 197, C.C.A.
115 [1914] 2 K.B. 570, 573, 575; 30 T.L.R. 422, C.A.
116 [1916] 1 K.B. 443, 447; 32 T.L.R. 137, C.C.A.
117 (1918) 13 Cr.App.R. 166, 168; 34 T.L.R. 587, C.C.A.
118 (1931) 144 L.T. 748 , C.A.
119 [1946] K.B. 414; 62 T.L.R. 456; [1946] 2 All E.R. 368, D.C.
120 (1947) 63 T.L.R. 561, 563; [1947] 2 All E.R. 701, C.C.A.
121 [1950] 1 K.B. 26; 65 T.L.R. 586; [1949] 2 All E.R. 662, C.C.A.
122 [1957] Cr.L.R. 687, C.C.A.; (1957) The Times, Sept . 26 p. 2.
123 [1960] 2 Q.B. 513, 517-518; [1960] 3 W.L.R. 426; [1960] 3 All E.R. 149, C.C.A.
124 (1894) 15 E.R.(N.S.W.) 1, 9, 17.
125 (1948) 77 C.L.R. 511 , 518-519.
126 [1939] A.C. 1; 55 T.L.R. 260; [1938] 4 All E.R. 747, H.L.
127 [1950] A.C. 458, 471-472; 66 T.L.R. (Pt. 2) 254, P.C.
128 (1951) 83 C.L.R. 431 , 432.
129 (1952) S.R.(N.S.W.) 213 , 215, 220.
130 (1948) S.A.S.R. 108 , 110, 112.
131 (1956) Tas.S.R. 95 .
132 (1955) 93 C.L.R. 493; (1956) 96 C.L.R. 62 , 68, 71.
133 (1960) 60 S.R.(N.S.W.) 297 .
134 (1916) 242 U.S. 85 , 87.
135 (1948) 332 U.S. 575 , 578.
136 (1941) 17 South Eastern Reporter 563.
137 (1912) 107 L.T. 462; 28 T.L.R. 240, C.C.A.
138 (1909) 2 Cr.App.R. 197, C.C.A.

139	<i>(1930) 144 L.T. 526, C.C.A.</i>
140	<i>96 C.L.R. 62, 70.</i>
141	<i>15 S.R.(N.S.W.) 1.</i>
142	<i>[1918] 1 K.B. 416, C.C.A.</i>
143	<i>[1903] 1 K.B. 444; 19 T.L.R. 163, C.C.A.</i>
144	<i>(1888) 10 App.Cas. 210, 214-215, 220-221, H.L.</i>
145	<i>(1886) 11 P.D. 59, 63; 2 T.L.R. 270, C.A.</i>
146	<i>(1889) 14 App.Cas. 665, 668; 5 T.L.R. 552, H.L.</i>
147	<i>[1898] 1 Q.B. 677, 680.</i>
148	<i>[1947] 2 All E.R. 255, C.A.</i>
149	<i>[1948] 1 All E.R. 227, 229-230, C.A.</i>
150	<i>[1909] 1 K.B. 258, 261; 25 T.L.R. 79, D.C.</i>
151	<i>[1952] 2 Q.B. 758, 767; [1952] 2 T.L.R. 135; [1952] 2 All E.R. 312, D.C.</i>
152	<i>[1954] 1 Q.B. 1, 4; [1953] 3 W.L.R. 586; [1953] 2 All E.R. 750, D.C.</i>
153	<i>[1963] A.C. 349, 367, 369; [1961] 3 W.L.R. 619; [1961] 3 All E.R. 299, H.L. (N.S.).</i>
154	<i>2 Den. 94, 149-150, 155, 214-215, 221-222.</i>
155	<i>332 U.S. 575, 579.</i>
156	<i>[1914] 2 K.B. 570.</i>
157	<i>L.R. 1 C.C.R. 90.</i>
158	<i>2 Den. 94, 153-157.</i>
159	<i>10 Cox.C.C. 481n, 482n.</i>
160	<i>24 Q.B.D. 423.</i>
161	<i>3 Cr.App.R. 13.</i>
162	<i>[1910] 2 K.B. 496.</i>
163	<i>15 Cox.C.C. 85.</i>
164	<i>9 C. & P. 364.</i>
165	<i>L.R. 10 Q.B. 378.</i>
166	<i>1 B. & S. 668, 696.</i>
167	<i>34 L.T. 455.</i>
168	<i>15 Cox.C.C. 85.</i>
169	<i>24 Q.B.D. 423, 426, 428, 430-436.</i>
170	<i>13 T.L.R. 70; 60 J.P. 809.</i>
171	<i>[1897] 1 Q.B. 214.</i>
172	<i>[1900] 2 Q.B. 758.</i>
173	<i>(1881) 6 Q.B.D. 300, 304-305, 306.</i>
174	<i>99 L.T. 668, 669, 670.</i>
175	<i>3 Cr.App.R. 13.</i>
176	<i>[1914] 2 K.B. 570.</i>
177	<i>13 Cr.App.R. 166.</i>
178	<i>[1957] Crim.L.R. 687, C.C.A.; (1957) The Times, Sept. 26, p. 2.</i>
179	<i>144 L.T. 748, 751, 752.</i>
180	<i>[1946] 1 K.B. 415.</i>
181	<i>63 T.L.R. 561.</i>
182	<i>[1950] 1 K.B. 26.</i>
183	<i>92 C.L.R. 62, 68.</i>
184	<i>[1915] 1 K.B. 21; 30 T.L.R. 580, C.A.</i>
185	<i>[1952] 2 Q.B. 758.</i>
186	<i>[1954] 1 Q.B. 1, 4 et seq.</i>
187	<i>3 Cr.App.R. 13, 15.</i>
188	<i>[1914] 2 K.B. 570, 575.</i>
189	<i>Ante, p. 1271; [1963] 3 W.L.R. 839, 851-852; [1963] 3 All E.R. 510, C.C.A.</i>
190	<i>13 T.L.R. 70.</i>
191	<i>[1918] 1 K.B. 416, 417.</i>
192	<i>(1939) 55 T.L.R. 470, 472; [1939] 1 All E.R. 753, C.C.A.</i>
193	<i>[1898] 1 Q.B. 677.</i>
194	<i>[1948] 1 All E.R. 227.</i>

195	[1957] Cr.L.R. 687.
196	(1957) <i>The Times</i> , Sept. 26, p. 2.
197	332 U.S. 575, 577.
198	(1961) 45 Cr.App.R. 366, 370-371, 372.
199	(1692) 12 St.Tr. 950, 1034.
200	(1851) 5 Cox.C.C. 231.
201	144 L.T. 526.
202	L.R. 10 Q.B. 378, 380.
203	[1918] 1 K.B. 416, C.C.A.
204	[1918] 1 K.B. 416, C.C.A.
205	[1954] 1 Q.B. 1; [1953] 3 W.L.R. 586; [1953] 2 All E.R. 750, D.C.
206	[1918] 1 K.B. 416.
207	[1918] 1 K.B. 416.
208	(1939) 55 T.L.R. 470; [1939] 1 All E.R. 753, C.C.A.
209	(1936) 26 Cr.App.R. 15, C.C.A.
210	(1796) 2 Leach 708.
211	2 Leach 708, 717.
212	Ibid. 720.
213	(1591) 4 Co.Rep. 45b, 46b.
214	Unreported.
215	Unreported.
216	(1876) 34 L.T. 455.
217	34 L.T. 455, 457.
218	(1611) 9 Co.Rep. 61b, 65b.
219	(1825) 4 B. & C. 329, 330.
220	(1840) 9 C. & P. 364.
221	Ibid. 364-365.
222	(1851) 2 Den. 94.
223	(1851) 2 Den. 94.
224	(1861) 1 B. & S. 688.
225	Ibid. 696.
226	Ibid. 694.
227	(1843) 2 M. & Rob. 446.
228	(1851) 5 Cox C.C. 324, 325.
229	2 M. & Rob. 446.
230	2 M. & Rob. 446, 457-458.
231	5 Cox C.C. 324.
232	5 Cox C.C. 324, 325.
233	(1890) 24 Q.B.D. 423; 6 T.L.R. 186.
234	(1867) L.R. 1 C.C.R. 90.
235	(1890) 17 Cox C.C. 325.
236	Ibid. 327.
237	[1950] 1 K.B. 26; 65 T.L.R. 586; [1949] 2 All E.R. 662, C.C.A.
238	L.R. 1 C.C.R. 90.
239	(1857) 10 Cox C.C. 481n.
240	Ibid. 483n.
241	(1875) L.R. 10 Q.B. 378, D.C.
242	L.R. 10 Q.B. 378, 381.
243	Ibid. 382.
244	[1897] 1 Q.B. 214; 13 T.L.R. 27.
245	[1897] 1 Q.B. 214, 218.
246	Ibid. 219.
247	[1950] A.C. 458, 479; 66 T.L.R. (Pt. 2) 254, P.C.
248	(1956) 96 C.L.R. 62, 70.
249	(1960) 60 S.R.(N.S.W.) 297, 301.
250	(1948) 332 U.S. 575.

251	<i>[1897] 1 Q.B. 214 .</i>
252	<i>[1914] 2 K.B. 570; 30 T.L.R. 422 , C.C.A.</i>
253	<i>[1914] 2 K.B. 570 , 574.</i>
254	<i>[1910] 2 K.B. 496; 25 T.L.R. 550, C.C.A.</i>
255	<i>(1918) 13 Cr.App.R. 166, 168; 34 T.L.R. 587, C.C.A.</i>
256	<i>(1931) 144 L.T. 748, C.C.A.</i>
257	<i>Ibid. 751.</i>
258	<i>144 L.T. 748 , 752.</i>
259	<i>(1909) 34 T.L.R. 587; 3 Cr. App.R. 13, C.C.A.</i>
260	<i>[1900] 2 Q.B. 758; 16 T.L.R. 477 .</i>
261	<i>[1900] 2 Q.B. 758 , 766.</i>
262	<i>(1882) 46 L.T. 177 .</i>
263	<i>(1882) 15 Cox C.C. 85 .</i>
264	<i>Ibid. 87.</i>
265	<i>[1950] A.C. 458 .</i>
266	<i>[1963] 1 W.L.R. 1200; [1963] 3 All E.R. 597, C.C.A.</i>
267	<i>(1963) 48 Cr.App.R. 6 .</i>
268	<i>[1950] A.C. 458 .</i>
269	<i>2 Den. 94 , 199.</i>
270	<i>1 B. & S. 688 , 696.</i>
271	<i>L.R. 1 C.C.R. 90 .</i>
272	<i>10 Cox C.C. 481n .</i>
273	<i>[1950] 1 K.B. 26 .</i>
274	<i>[1914] 2 K.B. 570 .</i>
275	<i>13 Cr.App.R. 166 .</i>
276	<i>9 C. & P. 364 .</i>
277	<i>144 L.T. 748 .</i>
278	<i>[1914] 2 K.B. 570 .</i>
279	<i>[1950] A.C. 458 .</i>
280	<i>(1948) 77 C.L.R. 511 , 518-519.</i>
281	<i>1 B. & S. 688 .</i>
282	<i>L.R. 10 Q.B. 378 .</i>
283	<i>3 Cr.App.R. 13 , 15.</i>
284	<i>[1914] 2 K.B. 570 , 573.</i>
285	<i>[1897] 1 Q.B. 214 .</i>
286	<i>[1954] 1 Q.B. 1 .</i>
287	<i>[1918] 1 K.B. 416 .</i>
288	<i>55 T.L.R. 470 .</i>
289	<i>[1958] 1 W.L.R. 312; [1958] 1 All E.R. 475, C.C.A.</i>
290	<i>[1918] 1 K.B. 416 .</i>
291	<i>144 L.T. 748 .</i>
292	<i>[1914] 2 K.B. 570 .</i>
293	<i>144 L.T. 748 .</i>
294	<i>[1950] A.C. 458 .</i>
295	<i>[1950] A.C. 458 .</i>
296	<i>[1950] A.C. 458 , 479.</i>
297	<i>[1946] K.B. 414, 419; 62 T.L.R. 456; [1946] 2 All E.R. 368, D.C.</i>
298	<i>L.R. 1 C.C.R. 90 .</i>
299	<i>[1950] A.C. 458 .</i>
300	<i>[1900] 2 Q.B. 758 .</i>
301	<i>Ibid. 764.</i>
302	<i>Ibid. 780.</i>
303	<i>2 Den. 94 .</i>
304	<i>[1900] 2 Q.B. 758 .</i>
305	<i>96 C.L.R. 62 .</i>
306	<i>332 U.S. 575 .</i>

307	96 C.L.R. 62 .
308	96 C.L.R. 62 .
309	[1918] 1 K.B. 416 .
310	[1918] 1 K.B. 416 .
311	[1954] 1 Q.B. 1 , 6.
312	(1946) 31 Cr.App.R. 146, C.C.A.
313	(1947) 63 T.L.R. 487, C.C.A.
314	(1955) 39 Cr.App.R. 100 , C.C.A.
315	[1914] 2 K.B. 720; 30 T.L.R. 233, C.C.A.
316	(1881) L.R. 6 App.Cas. 229, 242, H.L.
317	(1789) 3 T.R. 98 , 106.
318	[1914] 2 K.B. 720 , 731.
319	(1806) 8 East 41 , 46.
320	(1924) 18 Cr.App.R. 25, C.C.A.
321	(1925) 18 Cr.App.R. 166, C.C.A.
322	(1925) 19 Cr.App.R. 4, C.C.A.
323	(1926) 19 Cr.App.R. 151 , C.C.A.
324	[1918] 1 K.B. 416 , 417.
325	55 T.L.R. 470 .
326	[1918] 1 K.B. 416 .
327	[1914] 2 K.B. 570 , 575.
328	[1914] 2 K.B. 720 .
329	3 Cr.App.R. 13 , 15.
330	The court now has such power; see Criminal Appeal Act, 1964, s. 1 .
331	[1954] 1 Q.B. 1 .
332	[1954] 1 Q.B. 1 , 6.
333	6 App.Cas. 229 , 243.
334	(1888) 10 App.Cas. 210 , 220, H.L.
335	(1843) 3 Hare 100 , 114-115.
336	(1890) 25 Q.B.D. 1, C.A.
337	25 Q.B.D. 1 , 9.
338	[1947] 2 All E.R. 255, C.A.
339	[1948] 1 All E.R. 227, C.A.
340	1 B. & S. 688 , 696.
341	24 Q.B.D. 423 .
342	(1896) 13 T.L.R. 70; 60 J.P. 809 .
343	24 Q.B.D. 423 , 431.
344	Ibid. 436.
345	144 L.T. 748 .
346	24 Q.B.D. 423 .
347	[1918] 1 K.B. 416 .
348	3 Hare 100 , 115.
349	[1918] 1 K.B. 416 .
350	[1918] 1 K.B. 416 .
351	55 T.L.R. 470 .
352	[1918] 1 K.B. 416 .
353	55 T.L.R. 470 .
354	[1958] 1 W.L.R. 312 .
355	[1918] 1 K.B. 416 .
356	[1918] 1 K.B. 416 .
357	10 App.Cas. 210 , 220.
358	Ibid. 220.
359	[1898] 1 Q.B. 677 .
360	L.R. 10 Q.B. 378 .
361	Ibid 381.
362	Ibid. 382.

363	<i>24 Q.B.D.</i> 423 , 430.
364	<i>L.R. 10 Q.B.</i> 378 , 381.
365	<i>24 Q.B.D.</i> 423 , 436.
366	<i>2 M. & Rob.</i> 446 .
367	<i>5 Cox C.C.</i> 324 .
368	<i>24 Q.B.D.</i> 423 , 436.
369	<i>1 B. & S.</i> 688 , 696.
370	[1897] <i>1 Q.B.</i> 214 , 218.
371	[1914] <i>2 K.B.</i> 570 .
372	<i>Ibid.</i> 575.
373	[1950] <i>A.C.</i> 458 , 579.
374	<i>3 Cr.App.R.</i> 13 .
375	[1914] <i>2 K.B.</i> 570 .
376	[1954] <i>1 Q.B.</i> 1 .
377	<i>L.R. 10 Q.B.</i> 378 .
378	<i>9 C. & P.</i> 364 .
379	<i>2 Den.</i> 94 .
380	[1910] <i>2 K.B.</i> 496 .
381	[1957] <i>Cr.L.R.</i> 687, <i>C.C.A.</i> ; (1957) <i>The Times</i> , <i>Sept.</i> . 26, p. 2.
382	[1898] <i>1 Q.B.</i> 677 , 680.
383	<i>332 U.S.</i> 575 , 579.
384	(1948) <i>77 C.L.R.</i> 511 .
385	(1951) <i>C.L.R.</i> 341 .
386	<i>96 C.L.R.</i> 62 .
387	<i>60 S.R.(N.S.W.)</i> 297 .
388	<i>1 B. & S.</i> 688 , 696.
389	<i>24 Q.B.D.</i> 243 .
390	[1918] <i>1 K.B.</i> 416 .
391	<i>55 T.L.R.</i> 470 .
392	[1918] <i>1 K.B.</i> 416 .
393	[1918] <i>1 K.B.</i> 416 .

**WITNESS STATEMENT
IN SUPPORT OF AN APPLICATION FOR A RESTRAINT ORDER
(SECTION 41 PROCEEDS OF CRIME ACT 2002)**

This statement (consisting of three pages, each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have willfully stated anything which I know to be false or do not believe to be true.

Dated: 21 May 2018

Signature: 

IN THE CROWN COURT AT HOVE

Martin John HILL

WITNESS STATEMENT

1. I am Christopher James Love, a financial investigator employed by HM Revenue and Customs. I make this witness statement to supplement the statement I made on 21 March 2018 in support of an application by the Crown Prosecution Service (CPS) for a Restraint Order pursuant to section 41 of the Proceeds of Crime Act 2002.
2. This statement is made to update the court on the progress of the investigation as required by the Restraint Order against Mr Martin John HILL granted by His Honour Judge Gold on 21 March 2018.

Criminal Investigation

3. I have been asked to provide an update to the court on the progression of the criminal investigation, Operation Insomnia, since 21 March 2018, as required in the restraint process. I have liaised with the criminal case team and state the following:
4. The Forensic Accountants who were tasked with analysis of VAT liabilities in respect of Burlington Hotel Operations Ltd. (BHOL), Burlington Hotel Sandown Ltd. (BHSL) and Shanklin Beach Hotel Ltd. (SBHL) have concluded their investigation

Signed. 

Date 21 May 2018.....

and submitted a draft report on 25 April 2018. The CPS requested that it be checked by an HMRC VAT specialist. This has been done and a witness statement provided by the HMRC VAT specialist. The report concludes that the final figure of VAT evaded during the period under investigation is £394,032.00.

5. This report was also forwarded to the Crown Prosecution Service for consideration prior to a charging decision being made in respect of the criminal matter on 25th April 2018.
6. The criminal case team have obtained evidence of further dissipation of funds. They obtained a Production order at Hove Crown Court on 24 April 2018 in respect of Tesco Bank savings account number 15627401 in the name of Martin HILL.
7. This account was discovered as a result of a previous Production order obtained at Hove Crown Court on 30 August 2017 in respect of Tesco Bank savings account number 13693715 in the name of Martin HILL, where a sum of £261,188.25 had been accumulated.
8. Mr HILL had purchased Flat 5, 16 Prospect Road, Shanklin, Isle of Wight PO37 6AE (Title Number IW63896) on 10 December 2014 for £140,000. This purchase was not subject to any mortgage. The property then was sold on the 27th July 2016 for £170,000. The funds from the sale of the property were deposited into Mr HILL's Barclays account number 23134148 from where it was transferred via seventeen separate payments of £10,000 over the course of three days into Mr HILL's Tesco savings account number 13693715. The balance of this Tesco account as at the 26th August 2016 was £261,188.25. HMRC believe these funds to be part of the benefit of the alleged fraud. Mr HILL has subsequently transferred these funds as follows:

Date	Amount	Receiving Account	Account Name
30/05/2017	£60,000.00	Tesco Bank 406420 10216556	Martin HILL
23/06/2017	£100,000.00	Tesco Bank 406405 15627401	Martin HILL
23/06/2017	£90,000.00	Tesco Bank 406420 10216556	Martin HILL
23/06/2017	£10,000.00	Santander 165171 20053268	Offshore private account – Jersey (account holder unknown)

Signed. 

Date 21 May 2018.....

10. Analysis of the Production order material received in respect of Tesco Bank account 15627401 (which had been opened after Mr HILL's arrest) showed that £84,500.00 of the £100,000.00 transferred into it on 23 June 2017 had once again been transferred to the Santander Bank account held in the States of Jersey. Further sums were transferred out of this account to another account held by Mr HILL with Santander Bank. As of 01 April 2018, this account held a nil balance.
12. The reviewing lawyer has indicated that an MG3 with a charging decision will be provided by the CPS in the week commencing 21 May 2018. The charges that the case team proposed are –

Cheating the Public Revenue contrary to Common Law,

Fraud by making or supplying articles for use in frauds, Fraud Act 2006 s.2 (7),

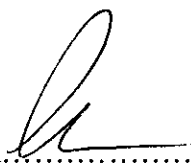
The fraudulent evasion of Value Added Tax (VAT) contrary to s.72 (2) of the Value Added Tax (VAT) Act 1994,

Money Laundering contrary to the Proceeds of Crime Act 2002 (as amended) s.327 Concealing, s.328 Arrangements and s.329 Acquisition use and possession.

I believe that the facts stated in this witness statement are true.

Name of Witness: Christopher James LOVE

Date: 21 May 2018

Signed 

Date 21 May 2018.....