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McMAHON v GOULD - (1982) 7 ACLR 202

SUPREME COURT OF NEW SOUTH WALES -- EQUITY DIVISION
Wootten J

15, 19 February 1982
-- Sydney

Companies -- Directors -- Liquidator -- Action to recover moneys from director -- Fraud and breach of duty by director alleged -- Criminal proceedings against director -- Application by defendant to have action stayed pending termination of criminal proceedings -- (NSW) Companies Act 1961 s 367B

The Crimes Act 1900 (NSW) by s 178(1) provides:

> Nothing in ss 165-176 both inclusive shall relieve any person from making a full discovery, by answer to interrogatories, or from answering any question in a civil proceeding.

The liquidator of D commenced proceedings against X who had been at material times a director of D. The liquidator relied upon s 367B of the Companies Act 1961 (NSW) alleging that X had been guilty of fraud and breach of duty owed to D.

Criminal proceedings had already been commenced against X, who applied to the Supreme Court for a general stay of the liquidator's proceedings pending the termination of the criminal proceedings.

Held: (i) It is clear that s 178 means that no person who has been charged with an offence under ss 165-176 may decline to answer any question in a civil proceeding based on the facts, the subject of the charge.

Re Saltergate Insurance Co Ltd (1980) 4 ACLR 733, at 734-5, cited

(ii) However, it goes too far to treat that as a legislative indication that the principle expounded in *Jefferson Ltd v Bhetcha* [1979] 1 WLR 898 is not to be applicable where such charges are laid.

(iii) The court retains its discretion to stay proceedings, but in exercising it should have regard to the policy underlying s 178.

(iv) In all the circumstances a stay of proceedings should be refused.

Principles relevant to the exercise "of the discretion to stay proceedings", discussed.

The "felonious tort rule" and the "right to silence", discussed.

Application for stay of proceedings

This was an application for a general stay of proceedings under s 367B of the Companies Act 1961 (NSW) which had been commenced by the liquidator of Dominion Insurance Co of Australia Ltd in the circumstances hereunder appearing.

J P Hamilton for the plaintiff.

B Walker for the first defendant.

H G Shore for the second defendant.

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Cur Adv Vult

Wootten J.

The plaintiff is the liquidator of, and the defendants were at material times directors of, The Dominion Insurance Company of Australia Ltd ("Dominion"). The plaintiff sues on behalf of Dominion for the repayment of two sums of $380,000 and $450,000, together with interest on the sums from the dates on which they were respectively withdrawn from Dominion's accounts. Although it is not referred to in the pleadings, I was informed that the plaintiff relies on s 367B of the Companies Act 1961.

In the case of the first defendant, Mr Gould, who is the applicant in the present motion for a general stay of proceedings, the plaintiff alleges in his Points of Claim that Mr Gould misapplied a cheque for $380,000 drawn by Dominion in favour of Newport Inn Holdings Pty Ltd, in that without the consent or approval of Dominion he caused the cheque to be negotiated and the proceeds paid to Eraville Pty Ltd ("Eraville"), a company of which he had the management and control and in which he was beneficially interested. In so doing, it is alleged, he acted in fraud of Dominion and in breach of his duties to it.

In relation to the other sum the Points of Claim allege that the two defendants, purporting to constitute a meeting of the directors of Dominion, resolved that it make a loan of $450,000 to Eraville, and caused a cheque for that amount to be drawn on Dominion's account. It is alleged that in relation to these matters the two defendants were negligent and committed a breach of their duties to Dominion in a number of particulars, one of which was that Mr Gould acted in his own interests rather than in the interests of the company as a whole.

In relation to both matters, Mr Gould's points of defence contain a denial of the allegations.

On 18 January 1982 Mr Gould was committed for trial on five charges, two of which are charges of conspiracy directly relating to the two sums claimed in the present proceeding. The other three charges involve related matters arising out of his activities in Dominion. Mr Gould now seeks that the present proceedings be stayed pending the termination of the criminal proceedings.

The argument before me started with reference to the rule in *Smith v Selwyn* [1914] 3 KB 98, somewhat inaptly known as the "felonious tort rule", as it is not confined to actions in tort. The rule long antedated that case but there received a classic exposition, *viz*, that:

> ... a plaintiff against whom a felony has been committed by the defendant cannot make the felony the foundation of a cause of action unless the defendant has been prosecuted or a reasonable excuse has been shewn for his not having been prosecuted." (at 106.)

Other authority shows that the rule required not merely the initiation but the completion of the prosecution, and that it is subject to various refinements not here material.

The rule was not directly relied on in this case. The rule applies only to felonies, and the conspiracy charges here directly in point are misdemeanours. However, it was argued that in place of, or alongside, "the old rule" in *Smith v Selwyn* was "the new rule", exemplified in *Jefferson Ltd v Bhetcha* [1979] 1 WLR 898, under which a court has a discretion to stay civil proceedings in the interests of justice if criminal proceedings were pending against the defendant involving the same issues.

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The distinction between felonies and misdemeanours was abolished in England by the Criminal Law Act 1967 s 1, and with it has died the rule in *Smith v Selwyn* (Supreme Court Practice 1979 Vol 2 para 3357). The rule apparently never took root in the United States (1 American Jurisprudence 2d at 578). It appears from the cases cited in the Canadian Abridgement 2nd ed, Vol 1 at 32 to 34 that the rule was originally applied in Canada, but was abolished by the Criminal Code 1892 c 29, s 534, and that a stay of civil proceedings by reason of pending criminal proceedings is now a matter of judicial discretion and is not granted except under special circumstances (*McKenzie v Palmer* (1922) 63 DLR 362; *Stone v Clark* [1942] OWN 331 *Johnston v Shiells* [1935] 2 DLR 806). In New Zealand the rule was abolished by the Criminal Code Act 1893 s 344.

As late as 1960 the rule in *Smith v Selwyn*, supra, was affirmed by the Full Court in New South Wales (*Thomas v High* [1960] SR (NSW) 401), albeit primarily for the purpose of emphasising limitations on its scope. It was treated as in force in Victoria by Sholl J in 1965 in *Hatherley and Horsfall Pty Ltd v Eastern Star Mercantile Pty Ltd* [1965] VR 182, although not without calling forth a learned article examining the rule and urging its abrogation by statute (C R Pannam *"Felonious Tort Rule"* (1965) 39 ALJ 164). The learned author argues that the rule had its origin in the protection of the Crown's right to the forfeiture of a convicted felon's property, and, when that rationale disappeared, was supported as a means of encouraging private individuals to prosecute felonies when no system of public prosecution existed. That rationale has also disappeared.

In 1972 Sugerman ACJ, speaking for a Court of Appeal including Holmes and Mason JJA, described the rule as "artificial (because confined to felonies), and now largely unnecessary because of contemporary methods of law enforcement (indeed already abrogated by statute in England)" (*Rochfort v John Fairfax & Sons Ltd* [1972] 1 NSWLR 16 at 20). However, the question of its application did not arise in that case.

In *Re Saltergate Insurance Co Ltd and the Companies Act* (1980) 4 ACLR 733, Needham J had this to say at 734-35:

> In submissions made by counsel for the applicant it was said that the basis of the exercise of the court's power had moved from that relied upon in *Smith v Selwyn*, namely, a public policy against the party wronged by acts constituting a felony preferring civil proceedings for damages to prosecution for the crime.
>
> It was submitted that the Court of Appeal in *Jefferson Ltd v Bhetcha* [1979] 1 WLR 898 had placed the power squarely on the principle of justice between the parties. The right of an accused to remain silent was submitted to be the principle applied by the court in such situations.
>
> I agree that there does appear to have been a change of emphasis in the decisions to which I was referred and I think it is my duty to follow the most recent exposition by the Court of Appeal.

His Honour was referring to *Jefferson Ltd v Bhetcha*, a decision of the English Court of Appeal. The statement of Needham J was quoted in *Caesar v Sommer* [1980] 2 NSWLR 929 by Roden J, who, however, went on rather more boldly to pronounce the rule in *Smith v Selwyn* dead, and suitably inter it. At 91 he said:

> It seems to me that even without having regard to the more recent cases such as *Jefferson Ltd v Bhetcha*, it would be wrong to regard the rule in

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> *Smith v Selwyn* as a rule of law applying in New South Wales today. To seek to apply that rule in the circumstances obtaining today in this State would be to attribute to the common law a sterility and rigidity which are foreign to its nature. It would be to treat the rule as though it were a principle.
>
> The common law, as I understand it, is based upon a series of principles which are regarded as being immutable. From time to time, as those principles are applied to prevailing circumstances, rules are developed which can become part of the fabric of binding precedents. But the applicability of those rules, and the relevance of the precedents which embody them, are both limited by the circumstances in which they were conceived. As circumstances change, the rules too must be expected to change if those immutable principles are to remain operative.
>
> The origin of the rule in *Smith v Selwyn* has been the subject of a deal of consideration by learned writers, and much of this was canvassed by Pape J in the *Wonder Heat* case. Whether the rule was based upon 'the public policy of a bygone age when no police existed', or whether the origin of the rule lay in the fact that the property of a convicted felon was forfeited to the Crown, its foundation has clearly disappeared, if indeed it ever existed, in New South Wales, despite our retention, for no discernible reason, of a totally artificial version of the archaic distinction between felonies and misdemeanours. What remains is the immutable principle that the common law will have regard to the requirements of public policy.

I greatly sympathise with this view, and trust that the rule will stay buried, so that its ghost does not again rise to rattle medieval chains (albeit refurbished in Victorian times) in modern litigation. However, with great respect, I cannot agree that the modern law as expounded in *Jefferson Ltd v Bhetcha*, supra, is a development of the rule in *Selwyn v Smith*, supra with a "change of emphasis". As Waddell J noted in *Beecee Group v Barton* (1980) 5 ACLR 33 at 39, the "felonious tort rule" was not mentioned in *Jefferson Ltd v Bhetcha* because the distinction between felony and misdemeanour had been abolished in England. The discretion to stay proceedings in the interests of justice which the Court of Appeal recognised in that case was not an emanation of *Smith v Selwyn* but always existed beside and independently of that rule. It was not confined to cases of overlapping civil and criminal proceedings. This is made clear in *Rochfort v John Fairfax and Sons Ltd*, supra, where Sugerman J referred to "the fundamental principle that a plaintiff is entitled to have his action tried in the ordinary course of the procedure and business of the court, subject only to an exercise of judicial discretion on proper grounds as part of the court's inherent powers" (at 19). His Honour went on to quote a number of authorities strongly emphasising this principle, and said:

> These are quoted as but instances of the many references to the subject to be found in the reports. But it is not intended to question the extensive inherent jurisdiction of the court to grant stays of proceedings in the interests of justice; it is merely intended to demonstrate the gravity of an exercise of this power and the necessity for the existence of proper grounds for its exercise.

Jefferson v Bhetcha is, as I see it, merely an application of this rule in the context of an application to stay civil proceedings because of pending criminal proceedings, in relation to which it gives valuable guidance.

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I approach the decision of this matter with the following guidelines:

(a) Prima facie a plaintiff is entitled to have his action tried in the ordinary course of the procedure and business of the court (*Rochfort v John Fairfax & Sons Ltd* at 19);

(b) It is a grave matter to interfere with this entitlement by a stay of proceedings, which requires justification on proper grounds (*ibid*);

(c) The burden is on the defendant in a civil action to show that it is just and convenient that the plaintiff's ordinary rights should be interfered with (*Jefferson v Bhetcha* at 905);

(d) Neither an accused (*ibid*) nor the Crown (*Rochfort v John Fairfax & Sons Ltd* at 21) are entitled as of right to have a civil proceeding stayed because of a pending or possible criminal proceeding;

(e) The court's task is one of "the balancing of justice between the parties" (*Jefferson Ltd v Bhetcha* at 904), taking account of all relevant factors (*ibid*at 905);

(f) Each case must be judged on its own merits, and it would be wrong and undesirable to attempt to define in the abstract what are the relevant factors (*ibid*at 905);

(g) One factor to take into account where there are pending or possible criminal proceedings is what is sometimes referred to as the accused's "right of silence", and the reasons why that right, under the law as it stands, is a right of a defendant in a criminal proceeding (*ibid*at 904). I return to this subject below;

(h) However, the so-called "right of silence" does not extend to give such a defendant as a matter of right the same protection in contemporaneous civil proceedings. The plaintiff in a civil action is not debarred from pursuing action in accordance with the normal rules *merely* because to do so would, or might, result in the defendant, if he wished to defend the action, having to disclose, in resisting an application for summary judgment, in the pleading of his defence, or by way of discovery or otherwise, what his defence is likely to be in the criminal proceeding (*ibid*at 904-5);

(i) The court should consider whether there is a real and not merely notional danger of injustice in the criminal proceedings (*ibid*at 905);

(j) In this regard factors which may be relevant include:

(i) the possibility of publicity that might reach and influence jurors in the civil proceedings (*ibid*at 905);
(ii) the proximity of the criminal hearing (*ibid*at 905);
(iii) the possibility of miscarriage of justice eg by disclosure of a defence enabling the fabrication of evidence by prosecution witnesses, or interference with defence witnesses (*ibid*at 905);
(iv) the burden on the defendant of preparing for both sets of proceedings concurrently (*Beecee Group v Barton*);
(v) whether the defendant has already disclosed his defence to the allegations (*Caesar v Somner* at 932; *Re Saltergate Insurance Co Ltd* at 736);
(vi) the conduct of the defendant, including his own prior invocation of civil process when it suited him (cf *Re Saltergate Insurance Co Ltd* at 735-6);

(k) The effect on the plaintiff must also be considered and weighed against the effect on the defendant. In this connection I suggest below that it may be relevant to consider the nature of the defendant's obligation to the plaintiff;

(1) In an appropriate case the proceedings may be allowed to proceed to a certain stage, eg, setting down for trial, and then stayed *Beecee Group v Barton*).

In considering the reasons why "the right of silence" exists (para (g) above), one enters a realm of controversy (see, for example, the discussion of the Eleventh Report of the English Criminal Law Revision Committee (1972) Cmnd 4991 in *The Right of Silence*, being papers presented at a seminar of the Sydney University Law School Institute of Criminology in June 1973). The phrase is a convenient rubric for several rules and practices which have various origins and serve various purposes. In the process of investigation of crime and the interrogation of suspects it comprehends the fact that it is not normally an offence to refuse to answer questions or to fail to provide an explanation or account of events. Not only is refusal or failure not an offence, but it cannot be used to draw an adverse inference against the person concerned at his trial. This aspect of the right of silence was greatly strengthened by the Judges' Rules which provided for the cautioning of suspects. Serving some of the same purposes but of different origin is the law relating to confessions in criminal cases, which cannot be used unless they are fully voluntary.

In terms of procedure at a criminal trial, the "right of silence" covers the situation that the accused is not obliged to give evidence -- indeed he may make an unsworn statement about which he cannot be questioned -- and for the most part no comment can be made to the jury on his failure to go in the box.

Finally, in legal proceedings generally, civil and criminal, a witness has a privilege to refuse to answer a question which

might tend to incriminate him. Naturally this does not apply to a defendant who chooses to give evidence in a criminal case.

The various rules that may be grouped under the "right of silence" have, as I have said, various origins, and some of the historic conditions that gave rise to them -- eg the inability of a man to give evidence at his trial, the use of torture, religious persecution, are no longer with us (Neasey "*The Rights of the Accused and the Interests of the Community* (1969) 43 ALJ 482 Hobson et al, *The Silence of the Accused* (1970), Stephen, *History of the Criminal Law* (1883) Vol 1 Chapters XI and XII). In considering why the "right of silence" exists, it is more fruitful to consider the reasons now argued in support of it, whether generally accepted or not. Many of them, and in particular those relating to the process of criminal investigation, are of no obvious relevance to the present problem. I refer to matters such as unfair pressure on a suspect in custody; the discouragement of improper police methods; the inducement of unreliable evidence; the absence of satisfactory methods of recording statements; the lack of time for reflection or of opportunity to take legal advice; the abhorrence of forcing a man to convict himself ("the cruel simple expedient" as Warren CJ called it in the *Miranda* case (1966) 384 US 436), and the maintenance of dignity and humanity in criminal trials. Perhaps the most relevant is the argument that because of the possibility that an innocent man forced into the box may give

an impression of guilt through being stupid, slow, overawed or simply nervous, he should have the choice of whether he gives evidence or not, without the risk of adverse comment.

On the other hand, the scope and role of "the right of silence" in the criminal process should not be exaggerated. As Lord Devlin has observed: "... while the English system undoubtedly does give the accused man the right to say nothing, it does nothing to urge him to take advantage of his right or even to make that course invariably the attractive one" (*The Criminal Prosecution in England* (1960) at 50). Nor has "the right" been understood to give a man freedom from being confronted at his trial with prior inconsistent statements of his own, provided they were made voluntarily. Even at the high point of its protection of the "right of silence" in the *Miranda* case, the Supreme Court of the United States held that statements made voluntarily but barred by the *Miranda* case could be used for purposes of cross-examination. In *Harris v New York* (1971) 401 US 222 the Court said: "The shield provided by *Miranda* cannot be perverted into a license to use perjury by way of a defense, free from the risk of a confrontation with prior inconsistent utterances."

In this context there are some consequences of the "right of silence" which no one, so far as I am aware, puts forward as legitimate reasons for its existence. These include the opportunity it may give the accused to remain silent till the end of the evidence against him at the trial, and then produce a fabricated story perfectly tailored to meet that evidence. They include the possibility of depriving the prosecution of any opportunity to check the accused's story and obtain evidence to refute it before the trial is over. In one particular matter -- the last minute production of alibis -- the injustice was so frequent and obvious that the legislature made an inroad into the "right of silence" by requiring notice of such an intended defence.

These are advantages which "the right of silence" gives to an accused, but they cannot reasonably be regarded as part of the reason why the right exists. In exercising its discretion to stay civil proceedings the court need not be concerned to preserve these advantages. It should be concerned to avoid the causing of unjust prejudice by the continuance of the civil proceedings, not to preserve the tactical status quo in the criminal proceedings whether it be just or unjust.

Turning to the present case, has there been demonstrated such a real risk of injustice to the defendant that the court would be justified in denying the plaintiff his fundamental right to a hearing in ordinary course? No case has been made that the civil case is likely to attract publicity that might prejudice criminal jurors; or that the criminal trial is immiment; or that disclosure of the accused's case might give rise to malpractice in the criminal trial. There is no suggestion that the defendant is a simple or handicapped man who might suffer unfairly in cross-examination. On the contrary, he is apparently a sophisticated man of affairs, experienced in the world of company and financial manipulation, who has initiated litigation and gone into the box and given evidence about these very matters when it suited him, even after the criminal charges were laid.

Indeed the irony of this case is that the only special circumstance that Mr Gould's counsel can point to is that Mr Gould has previously, notwithstanding the pendency of the criminal proceedings, invited other

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civil litigation of the matters at issue and been disbelieved in his account of them. After the criminal charges were laid, he launched, through a company found to be controlled by him, proceedings to have the present plaintiff removed as liquidator of Dominion. One of the grounds urged against Mr McMahon was that he had spent more time pursuing the two sums of money involved in this case than in ascertaining the company's creditors. The case was heard by Needham J together with an application for the winding up of Eraville on the ground of its indebtedness to Dominion for the two sums. Mr Gould gave evidence. Mr Justice Needham described him as "evasive, contradictory and ready, if he considered it suited his purposes, to put forward fiction as fact". His Honour referred to Mr Gould's evidence relating to the sum of $380,000 as "entirely incredible", "redolent of fantasy", and to his attempt to explain the series of events as one that "beggared description". He said he considered Mr Gould to be a man of no credit whatever and that he would not accept his evidence unless it were supported to the hilt by credible evidence or unless he made an admission clearly contrary to his interests.

Mr Gould's counsel submitted to me, as a reason for staying the present proceedings, that having regard to the reception by a judge of his previous attempt to explain the events in question, Mr Gould would be placed in a situation of extreme pressure if he had to litigate them again while the criminal proceedings were pending. I am unable to accept that there is anything unfairly prejudicial in this. No doubt if Mr Gould gives evidence in this proceeding and in the criminal proceeding which conflicts with the evidence he gave before Needham J he will come under extreme pressure to explain the discrepancy, but I see nothing unfair in this. It will happen whether the present case is heard before the criminal proceedings or not. If he gives the same evidence, he will no doubt face the same difficulties in having it believed, but that difficulty, in so far as it may affect the criminal trial, already exists and will not be created by the hearing of this case. The third possibility is that Mr Gould might wish to give a second version of the events in this civil case and a third in the criminal case. Mr Gould's counsel gave no clue as to which of the three courses his client wished to follow, and one is tempted to wonder whether the "extreme pressure" lies in the problem of choosing between them. But to adopt the words of the Supreme Court of the United States in *Harris v New York,* supra, the right to silence is not to be "perverted into a licence to use perjury by way of a defence, free from the risk of a confrontation with prior inconsistent utterances".

Finally, I must balance any possibility of prejudice to Mr Gould against the interests of the liquidator acting in the interests of Dominion's creditors and shareholders. In this connection it should be remembered that the liquidator is calling on Mr Gould to account for dealings undertaken by him in his fiduciary capacity of director of Dominion. He is not some stranger making an allegation against Mr Gould out of the blue. He is acting on behalf of the company to which Mr Gould voluntarily undertook fiduciary obligations, and is asking him to account.

There is a long history, going back at least to 1827 in England (7, 8 Geo IV c 29 ss 47-59) of legislative recognition that the introduction of the criminal law into this area calls for a special approach to the preservation of civil remedies. In this State the current provisions are in ss 177 and 178

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of the Crimes Act 1900, which relate to offences created by ss 165 to 176 of that Act. These offences include the misappropriation by agents of money or goods entrusted to them, fraudulent sales under powers of attorney, the pledging of a principal's goods by his agent, fraudulent dispositions of property by trustees, and a series of offences by directors and officers of companies -- fraudulently omitting entries in or falsifying books, publishing fraudulent statements, and cheating and defrauding the company. Section 178(1) provides: "Nothing in sections 165 to 176 both inclusive shall relieve any person from making a full discovery, by answer to interrogatories, or from answering any question in a civil proceeding." Section 177 protects a person from conviction under ss 165 to 176 if he first discloses his act or omission under compulsory process in a proceeding instituted by a party aggrieved or in bankruptcy or winding up proceedings.

Subsection (1) of s 178, which was in the Criminal Law Amendment Act of 1883 as s 139, has a history going back at

least to the English Larceny Act 1861, s 86. When the Criminal Law Revision Committee came in 1966 to review the law in its Eighth Report *Theft and Related Offences* Cmd 2977, it proposed in its draft Bill a clause 27(1) which with minor modifications became s 31 of the Theft Act 1968. Paragraph 200 of the Report is as follows:

> Clause 27(1) provides that a party or witness in certain civil proceedings shall not be allowed, in reliance on the usual privilege of non-incrimination, to refuse to answer a question or comply with an order on the ground that to do so might show that he has committed an offence under the Bill; but in compensation it makes the answer or disclosure inadmissible in evidence against him in the event of his being prosecuted for the offence. The civil proceedings referred to are proceedings for the recovery or administration of any property, for the execution of a trust or for an account of property or dealings in property. The policy of this provision and of the corresponding provisions in the present law concerning disclosure of offences under the 1861 and 1916 Acts is that on balance the public interest requires that persons in possession of property on behalf of others should be compelled to give information about their dealings with the property in order to protect the interests of those entitled to it, notwithstanding that this involves departing from the general rule that a witness need not incriminate himself. But it is thought that in return the making of the disclosure should give a measure of protection in respect of criminal proceedings. Disclosure is specially important in the case of small properties, which might disappear if a defalcator could obstruct proceedings for the recovery or administration of the property by standing on his privilege of refusing to disclose his dealings with the property on the ground that disclosure might incriminate him.

In the context of this legislative history and of s 177, I think it is clear that s 178(1) does, as Needham J hypothesised in *Re Saltergate Insurance Co,* supra, at 736 mean that no person who has been charged with an offence under ss 165-176 may decline to answer any question in a civil proceeding based on the facts, the subject of the charge. However, in my view it goes too far to treat this as a legislative indication that the principle expounded in *Jefferson Ltd v Bhetcha* is not to be applicable where such charges are laid. In my view the court retains its discretion to stay proceedings, but in exercising it should have regard to the policy underlying s 178.

Three of the five charges against Mr Gould are under sections to which s 178(1) applies, but it does not apply to the two charges of common law conspiracy which relate to the facts at issue in the present civil proceeding. However, the policy underlying the provisions, and expressed in the Criminal Law Revision Committee's Report, cannot logically be confined to those particular offences. This was recognised in the English Theft Act 1968, s 31 of which applies in respect of any offence under that Act, and in civil "proceedings" for the recovery or administration of any property, for the execution of any trust or for an account of any property or dealings with property. I think it proper to have regard to that policy in this case, and to weigh against the granting of the application the importance in the public interest that persons entrusted with property on behalf of others should be compelled to account without undue delay for their dealings with the property.

In all the circumstances I refuse the stay of proceedings.

Solicitors for the plaintiff: *Blessington Judd & Co*.

Solicitors for the first defendant: *Baker & Hazelwood*.

Solicitors for the second defendant: *Geoffrey D Schrader & Co*.

H H EDNIE
BARRISTER