1968 *Present :* **Weeramantry, J.**

K. M. D. JAYANETTI, Appellant, *and* H. A. MITRASENA (Assessor, Inland Revenue Department), Respondent

S. C. 603/1967—M. C. Colombo, 14565/A

Income tax—Prosecution for false return of income—Confessional statements made by assessee to the Commissioner at stage of appeal—Admissibility—Evidence Ordinance, s. 24—Confession caused by inducement, threat, or promise—Requisites thereof—Rule of official secrecy—Exceptions to the rule—Departmental settlement of an income tax offence—Whether it is a bar to subsequent institution of criminal proceedings—Two offences arising out of the non-disclosure of the same item of income—Effect—Offence of evading income tax—Quantum of punishment—Income Tax Ordinance, ss. 4, 69, 73 (2), 73 (6), 79, 80 (1), 80 (4), 90 (1), 90 (2), 90 (4), 92 (1), 92 (2), 94 (1)—Inland Revenue Act No. 4 of 1963, ss. 124, 127—Evidence Ordinance, s. 24—Penal Code, s. 67—Interpretation Ordinance, s. 9.

In a prosecution of the assessee-appellant under sections 92 (1) and 90 (2) of the Income Tax Ordinance for making a false return of income for the year of assessment commencing on 1st April 1961 by not disclosing a certain item of income in the return—

Held, (i) that statements of a confessional nature made by the assessee for the first time to the Deputy Commissioner of Inland Revenue in the course of the former's appeal to the latter against the assessor's assessment were not rendered inadmissible in evidence by section 24 of the Evidence Ordinance if the statements were made after the assessor's alleged inducements, threats, or promises had ceased to be operative at the date of the confessional statements. The inducement, threat, or promise contemplated in section 24 of the Evidence Ordinance should not have been dissipated by the time of the confessional statement.

(ii) that a statement made by an accused person to a person in authority is not a confession within the meaning of section 24 of the Evidence Ordinance, if the benefit conferred by the inducement, threat, or promise in question has no reference to the criminal proceedings against him.

(iii) that the rule of secrecy contained in section 4 of the Income Tax Ordinance did not debar the assessor from communicating to the prosecuting Counsel facts which came to his notice relating to the actual income of the assessee and the disclosures made by the assessee. It was competent for the assessor himself to have given evidence about these matters. Such disclosure to Court, for the purpose of a prosecution under the Income Tax Ordinance, of matters coming to the notice of an assessor in the performance of his duties is within the exception set out in the opening words of section 4 (1) of the Income Tax Ordinance.

(iv) that the circumstance that there was a settlement of the assessee's tax matters at the stage of his appeal to the Commissioner, could not amount to a compounding of the offence committed, so as to preclude the assessor from instituting criminal proceedings against the assessee subsequently on the

same matters which were departmentally settled. The only exceptions to this rule are, first, that which is provided by section 80 of the Income Tax Ordinance in a case where there has been no fraud or wilful neglect involved in the disclosure of income and, secondly, the occasions contemplated in sections 90 (4) and 92 (2).

(v) that the appellant's non-disclosure of income, although it constituted two separate offences falling under sections 92 (1) and 90 (2) of the Income Tax Ordinance, related to the same item of income and, therefore, in view of the provisions of section 67 of the Penal Code and section 9 of the Interpretation Ordinance, should be punished on the footing that only the more serious of the two offences had been committed.

(vi) that the penalty of treble the amount of tax which can be imposed under section 92 (1) of the Income Tax Ordinance for the offence of evading income tax means three times the totality of the assessee's tax liability for the year of assessment and not merely three times the tax which would have been chargeable upon the undeclared sum which is the subject matter of the charge. However, the effect of section 92 (1) is to confer a discretionary power on the Court to impose a penalty less than the treble penalty. In the present case there was a total absence of any circumstances of mitigation.

APPEAL from a judgment of the Magistrate's Court, Colombo.

Annesley Perera, with *Ananda Wijeyesekara*, *A. S. Wijetunge*, *Nalin Abeyesekara* and *Thilesena Pelpola*, for Accused-Appellant.

V. S. A. Pullenayegum, Senior Crown Counsel, with *Lalith Rodrigo*, Crown Counsel, for Attorney-General.

Cur. adv. vult.

August 26, 1968. WEERAMANTRY, J.—

The accused-appellant in this case was charged with having committed from a return dated 5th July 1961 made under the Income Tax Ordinance an income of Rs. 12,126 derived by him in respect of transactions relating to the purchase of sugar by the Food Commissioner's Department and thereby evading tax. On a second count the accused–appellant was charged with making an incorrect return for the year of assessment commencing on the 1st day of April 1961 by omitting income of which he was required by the Income Tax Ordinance to make a return to wit an income of Rs. 12,126 derived by him in respect of transactions relating to the purchase of sugar by the Food Commissioner's Department. The offence charged under the first count is punishable under section 92 (1) of the Income Tax Ordinance and that under the second count under section 90 (2).

The appellant was convicted on both counts and sentenced on count 1 to a fine of Rs. 250 and a penalty of Rs. 14,400 and on count 2 to a fine of Rs. 500 and a penalty of Rs. 135,000. The appellant was also

sentenced to one month's rigorous imprisonment in default of payment of the fine imposed on count 1 and three months' rigorous imprisonment in default of payment of the fine imposed on count 2. As an additional punishment on count 2 the accused was ordered to be detained in the precincts of the Court house till 4 p.m. on the date of sentence.

A number of questions of law are urged on behalf of the appellant.

It is urged that the conviction in this case rests upon certain documents which are of a confessional nature, which documents it is contended would be inadmissible in terms of section 24 of the Evidence Ordinance. These documents were statements made to an assessor and as such are protected by the rule of secrecy which, it is claimed, has the effect of precluding them from being used in Court for the purpose of a prosecution.

The appellant also challenges the regularity of the very criminal proceedings themselves, on the basis that there had been a settlement of the appellant's tax matters for the relevant period before the Deputy Commissioner and that this settlement amounted to a compounding of the offence committed. It is urged therefore that it would not be competent for the assessor to institute criminal proceedings on those same matters which were departmentally settled.

In regard to the elements necessary to maintain these charges successfully the further point is taken that there must be clear proof of an intention to evade tax and that the prosecution is under the burden of proving dishonest intention affirmatively without leaving the question of intention at the level of surmise and conjecture.

Arising from the fact that two charges have been instituted in respect of the identical sum of Rs. 12,126 derived in respect of the identical transaction, the defence makes the further submission that the prosecution cannot maintain both charges in as much as they arise from the same act and that in any event the same act cannot attract punishment twice over.

Finally, on the question of punishment, it is urged that the learned Magistrate has wrongly imposed on count 1 the penalty appropriate to count 2 and on count 2 the penalty appropriate to count 1 and further that in any event the penalty appropriate to count 1 is not three times the totality of the assessee's tax liability for the year but three times the liability on the undeclared sum of Rs. 12,126 which is the subject of this charge.

I shall consider these various points of law in the order in which I have stated them.

Coming now to the first contention, namely, that the prosecution rests on the admission of certain documents of a confessional nature, it is necessary to review briefly the history of the investigations leading to the proceedings against this appellant.

It would appear that for the year in question, that is the year of assessment 1961-62, the appellant had sent in a return P1. In P1 the appellant was required to make a full and complete declaration of all his incomes and profits for the period 1.4.1960 to 31.3.1961, and this declaration having been accepted, the appellant was sent a notice of assessment P2a dated 17th October 1961 showing an assessable income of Rs. 25,868 on which he was taxed Rs. 1,277. He was subsequently called upon to pay an additional tax of Rs. 717 in consequence of the amendment of the law relating to allowances.

However, the complainant-respondent who was the assessor dealing with the appellant's file, started making investigations in 1963 into the financial position of the appellant as he found the income that had been returned to be incompatible with the disbursements and investments of the appellant. It may be observed that the complainant-respondent was not at the outset the assessor dealing with the appellant's file but that the file had been sent to him for detailed investigations in August 1963.

Circumstances which appeared to be incompatible with the appellant's returns were in particular the purchase of an estate and the building of a house in Colombo which had been furnished lavishly. Suspicion was heightened by the fact that the appellant had given himself the luxury of a tour practically around the world with two members of his family.

The respondent made his own valuation of the estate and the house and found a discrepancy of six lakhs of rupees between the income so computed and the income returned and he therefore proceeded to make additional assessments for 6 years under section 69. These assessments were made on 26th August 1963 and that for the year of assessment 1961/62 has been produced at this trial, marked P3. This assessment was for a sum of Rs. 100,000 for that year.

An appeal was preferred against this assessment on 13th September 1963, and the respondent inquired into the appeal against the additional assessments between September 1963 and about February 1964. In the course of this inquiry the respondent decided to and in fact conducted a search of the appellant's house on 14th October 1963 and a diary maintained by the appellant was recovered as a result of this search. Two days later the bank vault of the appellant was also searched. These two searches were both conducted within a few days of the appellant's return home from his trip abroad.

Thereafter, the respondent summoned the appellant for questioning on 25th February 1964. Subsequently the appellant had two further interviews with the respondent on 5th March 1964 and 26th March 1964, and, in April 1964, a search was conducted by the respondent in the

premises of one Smale, an associate of the appellant in some of his transactions, and a number of files containing correspondence and some books were removed from the house of Smale.

In the course of his inquiries the respondent questioned other persons as well and examined the records of the Food Department relating to purchases of sugar, dhal and gunnies. This latter aspect of the respondent's investigations was undertaken in consequence of information gathered from Smale's files.

Upon the basis of the information now in his possession the respondent issued a second set of additional assessments for a period of 5 years. These five additional assessments were made on 2nd June 1964 and the date fixed for payment of additional tax was 23rd July 1964. These additional assessments were for an aggregate sum of Rs. 500,000 for this period.

An appeal was duly preferred against these five assessments and the five appeals were again referred back to the respondent for inquiry. In the course of this inquiry the respondent had three further interviews with the appellant on 11th June, 18th June and 10th July 1964.

No agreement having been reached at these interviews the appeals were put up for hearing by the Commissioner, a circumstance of which the appellant was informed by letter D3 of 31st July 1964. The date of hearing fixed for these appeals was 11th August 1964.

The letter D3 also drew the attention of the appellant to the fact that taxes due on assessments under appeal were collectible and that the Default Branch had been instructed to take action accordingly.

Appeal proceedings commenced before the Deputy Commissioner on 19th August 1964 and at the hearing the appellant was represented by Counsel, Mr. Advocate Ambalavanar.

On a subsequent date of hearing, that is on 30th September 1964, before the questioning of the appellant commenced, the appellant elected to make a statement. He was allowed by the Deputy Commissioner to do so and made a statement which was taken down by the stenographer in the immediate presence and hearing of the Deputy Commissioner. The statement was typed out and submitted to the appellant on the next date of inquiry, that is 22nd October 1964, and signed by him. This document has been produced marked P13 (*b*) and contains an admission that the appellant had a Bank account in Switzerland which had been opened in 1955. In certain circumstances detailed therein this statement revealed a number of exchange control offences and also the receipt of some money in regard to a Government purchase of Brazilian sugar. It concluded with an *ad misericordiam* appeal highlighting the rise of the appellant from an initial appointment in the clerical service to the post of Food Commissioner and leaving it to the sympathy of the Deputy

Commissioner to consider this background and whether the appellant's career as a Civil Servant should be ended when he had reached the top of his career and was near the " plums of office ". It stated further that these worries were killing him and that he preferred to settle this matter.

This document P13 (*b*) is the first of the documents alleged to be confessional, whose reception in these proceedings is the subject of complaint.

The hearing before the Deputy Commissioner was resumed on 6th and 10th November 1964 and on the latter date the assessee's counsel asked that the hearing be adjourned for another date after having produced a statement which he wanted the Deputy Commissioner to peruse.

The proceedings before the Deputy Commissioner on 6th November have been produced marked P12A and P13. In these proceedings the appellant is recorded as admitting the receipt, on account of sugar purchases, of sums of £534.10.5d on 31st December 1960, £713.0.3d on 29th January 1960, £709.7.8d on 10th April 1959, and also a sum of Rs. 7,500 sometime in 1960. There was also an admission that the appellant had a bank account in the Union Bank of Switzerland. The appellant stated further that he had been told by certain parties with whom he negotiated that he would be paid between £750 and £1,000 on each sugar transaction. All these admissions were by way of answers to questions addressed to him by the complainant-respondent.

These proceedings constitute the second document the reception of which is objected to.

The third document to which exception is taken is P11, a set of figures containing dates and sums of money. This was tendered by the appellant's Counsel at the commencement of the hearing on 10th November 1964. This statement was signed by the appellant at the request of the Deputy Commissioner on the day it was handed in. This document has an entry of Rs. 5,000 against the date 27.8.1960 and an entry of £534.10.5d against the dates 12.7.1960 and 23.8.60. It will be noticed that these dates are within the period relevant to this charge and that the aggregate of these sums is Rs. 12,126, the sum referred to in both the present charges.

It is stressed on behalf of the appellant that these statements were made in consequence of relentless pressure kept up against him by the officials of the department. The circumstances in which these statements were made are said to amount to inducements, threats or promise within the meaning of section 24 of the Evidence Ordinance, which would have the effect of shutting out these statements at the trial. It is also pointed out that P13 (*b*) was made without any

consultation with Mr. Advocate Ambalavanar, Counsel appearing for the appellant at this inquiry, which again is said to be evidentiary of the stress to which the appellant was being subjected at the time.

A number of items of conduct on the part of the complainant-respondent are relied on as amounting both individually and in combination to threats, inducements or promises offered or held out by the complainant-respondent. Among these are : prospects of settlement held out to the appellant ; threats of further assessments if he did not settle ; an oral statement alleged to have been made by the assessor that the appellant had better settle or else he could do much worse before the Commissioner ; a threat of seizure and sale of the appellant's immovable property as appearing in D5 and D6 ; a threat of proceedings in the Magistrate's Court, as appearing in D6 ; a threat of further assessments viewed against the background of additional assessments running to lakhs of rupees which were themselves, it is submitted, capricious and arbitrary ; statements by the assessor such as " you had better tell the truth " and " I may have more evidence than what you imagine " and a promise of settlement if the assessee admitted having a bank account in Switzerland. Taken in the context of frequent offers of settlement and postponements granted for this purpose, raids on the premises of the appellant as well as of his friends and confrontations of the appellant with photostat copies of incriminating letters which could not be proved in Courts of law, it is submitted that grave fears would have been created in the appellant's mind of financial and social ruin unless he came clean and laid bare to the department the information they were in quest of.

Assuming for the moment that some or all of these items amount to threats, inducements or promises, it becomes necessary to examine whether the other requisites of section 24 are satisfied so as to shut out from evidence the statements of the accused to which I have referred.

It will be seen firstly that in terms of the section it must appear to court that the confessional statement was *caused by* the inducement, threat, or promise alleged. A second requisite is that such inducement, threat, or promise should both *have reference to the charge against the accused person* and give him grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature, *having reference to the proceedings against the accused.*

It would appear that neither of these requisites is satisfied, so that having regard to the provisions of section 24 of the Evidence Ordinance, it does not become necessary to determine whether the conduct of the assessor amounts to inducements, threats or promises held out to the accused.

In dealing with this first requisite, it must be borne in mind that the last of the interviews between the assessor and the appellant was on 30th July 1964 and the first of these statements was on 30th September

1964. During the period of two months which intervened, the matter had passed out of the hands of the assessor and had been referred by him to the Commissioner who was thereafter the authority seized of the matter.

Against this background it becomes necessary to determine whether the assessor's alleged threats, inducements or promises still continued to be operative at the date of the confessional statements for, as Lord Chief Justice Parker observed in the Court of Criminal Appeal in *Regina v. Smith* [1], the effect of the inducement, threat or promise should not have been dissipated by the time of the confessional statement.

It will be observed that so long as the appellant's case was in the hands of the assessor, the former persisted in his denial of a Swiss bank account and in his claim that all the information required by the assessor had been duly furnished. For example, as late as 24th June 1964 he denied by his letter D1 that he had any bank account abroad other than one at the Westminster Bank, London ; and as late as 28th July he was persisting, in his letter D8, in his position that all available information had been made available by him.

The interviews, therefore, between the assessor and the appellant had been unproductive of results as far as the assessor was concerned and his alleged threats, inducements or promises had proved futile. Matters remained in this state when the case was put up to the Commissioner for hearing. The assessor's letter D3 of 31st July makes this position clear.

It was only after several dates of hearing before the Commissioner that the first confessional statement was made.

It would seem therefore that the cause of the statement of 30th September was far more likely to have been what transpired at the hearing before the Deputy Commissioner rather than what transpired at the appellant's interviews with the assessor. The reason for the statement is hence most likely to be found in the course taken by the proceedings before the Deputy Commissioner, proceedings at which the realisation kept growing upon the appellant that he could no longer persist in his denial of guilt. On this matter there is a finding of fact by the learned Magistrate which I see no reason to disturb. As the learned Magistrate has observed, what unnerved the appellant was the obvious thoroughness of the assessor's investigations which made the appellant see reason by 30th September 1964.

In this view of the matter one factor essential to the applicability of section 24, namely that the confession should have been *caused* by the threat, inducement or promise is therefore lacking.

[1] *(1959) 2 Q. B. 35 at 41.*

I must next examine whether, assuming one or more of these items to amount to an inducement, threat or promise, they were in the opinion of the Court sufficient to give the accused person grounds which would appear to him reasonable for supposing that by making an admission he would gain any advantage or avoid any evil of a temporal nature *in reference to the proceedings against him*.

With regard to this requirement that the proffered benefit should have reference to the charge against the accused, there has recently been an observation in England to the effect that such a rule is illogical and unreasonable[1] and had never formed part of the law of England.

However we are here called upon to apply the statutory provisions of our law and whatever view may be taken under the English common law it remains clear that under our law of evidence the proffered advantage must have reference to the proceedings against the accused person.

On this matter it is urged that the confessional statements were the result of a promise of settlement in the sense that no criminal proceedings were to be taken thereafter and if this indeed be the truth this is a benefit having reference to the charges against the accused. I have elsewhere in this judgment examined this contention of the appellant and for reasons therein indicated I have concluded that there was no offer of a settlement and no inducement to settle in the sense that the department was waiving or abandoning its right to prosecute the appellant in a Court of Law. In view of this finding the advantage gained or evil avoided was certainly not in reference to the criminal proceedings against the accused.

The plea therefore that section 24 stands in the way of the use of these statements must fail on this ground as well.

In view of this conclusion I do not propose to examine the difficult question whether these statements are in truth confessions, for should they be such, which indeed the Crown denies, they will still be admissible despite the provisions of section 24. It is not necessary therefore to consider the various problems raised by *Anandagoda v. The Queen*[2] on the question whether the statement should amount to a confession of the offence charged without reference to extrinsic facts and whether the statement should contain an admission of the entire offence. In the circumstances I do not feel called upon to decide whether the documents objected to contain an admission of the entirety of the offences involved in counts 1 and 2 or whether as the Crown contends, they spell out at their best only one of the ingredients constituting these offences.

[1] *Commissioner of Customs and Excise v. Harz (1967) 1 All E. R. 177 at 184 per Lord Reid.*

[2] *(1962) 64 N. L. R. 73, P. C.*

Before I leave this question of threats, inducements or promises I should make some observations in regard to certain grounds of complaint which are alleged to furnish a background of torment and harassment against which the statements and conduct of the assessor take on the quality of threats.

The assessor has, under cross-examination, said in reference to the assessments made by him amounting to Rs. 500,000 that these were arbitrary. However, despite this answer, in which the assessor did less than justice to himself, there would appear to be a basis, unproved but not unreasonable, for the assessments that were made. The circumstance that the appellant was able to issue a single cheque for £4000 (Rs. 52,000) on his bank account in Switzerland afforded some foundation for the belief that he had considerable assets abroad. This item of information was gathered by the assessor from certain entries in the diary of the accused. Moreover the assessor had before him material strongly suggesting the possibility of the appellant having received around £1000 in respect of each sugar purchase by the department. We also have the evidence of the assessor that he examined the appellant's returns over a number of years and compared the incomes shown in the returns with the information he had regarding his investments and disbursements. He had as already observed travelled practically round the world with two members of his family, purchased an estate and built a house in Colombo which had been lavishly furnished. The difference between the income returned and the income so computed showed a discrepancy of six lakhs of rupees. All this taken against the background of a persistent denial by the assessee of any bank account abroad other than one at the Westminster Bank, London, was justification enough for the assessor's belief that considerable assets were hidden away and that an income of several lakhs had been received but not disclosed during the years under review.

When making an assessment an assessor is not bound to base his computations only upon provable sources of income and is entitled to make an assessment according to his judgment. The burden then would shift to the assessee to displace this assessment on the basis of facts which are peculiarly within his own knowledge [1]. Indeed the language of section 69 states no less, for it entitles the assessor to make his assessment " at the amount or additional amount at which *according to his judgment* such person ought to have been assessed."

No doubt assessors, in view of the amplitude of the discretion vested in them under section 69 and the far reaching consequences of additional assessments which they make, will have prominently before them the principles of justice and fair play which must ever underlie the exercise of so wide a discretion, and I have no cause in the present case to reach any other conclusion than that the assessor was so guided when he made these additional assessments. As has been observed in regard to

[1] *See Guillain v. Commissioner of Income Tax (1949) 51 N. L. R. 241.*

additional assessments under the English Acts, legal evidence is not necessary as a preliminary to an additional assessment, but there must be information before the inspector " which would enable him, acting honestly, to come to the conclusion " that such a state of facts exists.[1]

The search of the house of the appellant and of those of his associates, the threat of seizure and sale of his immovable assets and the threat of enhanced assessments and recovery through the Magistrate's Court, do not either, in my view, afford evidence of any pressure being brought to bear upon the appellant more than was legitimate in all the circumstances of the case.

This was a case of tax evasion on a considerable scale and one involving a legitimate suspicion of concealment of assets abroad. Moreover, although the fact of evasion became quite apparent there was a resolute and persistent denial by the appellant of any evasion and a refusal by him to furnish essential information which, having regard to the nature of this case and the location of the assets, was difficult to obtain. Tax officials engaged in investigating such a case could not in the conscientious discharge of their duties do less than was done by the respondent and I fail to see in his conduct anything other than an ordinary discharge of duty by a conscientious official, though in the context of a somewhat extraordinary case.

I now pass to a consideration of the argument that the statements are shut out from Court by the operation of the rule of official secrecy contained in section 4 of the Income Tax Ordinance.

This section provides that except in the performance of his duties under the Ordinance every person who is employed in carrying out the provisions of the Ordinance shall preserve and aid in preserving secrecy with regard to matters relating to the affairs of any person that may come to his knowledge in the performance of his duties under the Ordinance. The section goes on to prohibit the communication of any such matter to any person other than the person to whom such matter relates or his authorised representative, and persons employed in carrying out the provisions of the Ordinance are required to take and subscribe an oath of secrecy before a Justice of the Peace.

Exceptions to the rule of secrecy as set out in section 4 (4) cover communications to the Commissioner of Stamps, the Commissioner of Estate Duty and within certain limits to the income tax authority of any part of Her Majesty's Realms and Territories. Further exceptions to this rule are created by section 4 (5) in respect of the Auditor-General and by section 85 of the Bribery Act, Cap. 26, in respect of the Bribery Commissioner.

[1] *See R. v. Bloomsbury Commissioners (1915) 3 K. B. 768; following R. v. Kensington Commissioners (1913) 3 K. B. 870 ; Konstam, Income Tax 12th ed., section 399.*

It is submitted for the appellant that the duties of an assessor under the Ordinance are confined to assessments, collections, additional assessments and appearances at appeals. Prosecution, it is contended, is no part of the duties of an assessor so as to make of disclosures in the course of prosecution an exception to the rule of secrecy. In this connection attention is drawn to section 94 (1) which provides that no prosecution may be commenced except at the instance of or with the sanction of the Commissioner. There is also the evidence of the Deputy Commissioner who says that prosecution is not within his province but is a matter for the Commissioner.

Assuming then that the decision to initiate prosecution lies with the Commissioner and the Commissioner alone, once such a decision has been taken does it fall within the province of an assessor's duties to prosecute or assist at such a prosecution ?

When one examines the scheme of the Income Tax Ordinance, one sees the importance of the provisions relating to penalties and offences. Practically every aspect of the duties cast upon assessees by the Ordinance carries with it a penal sanction under Chapter XV. These penal provisions are the teeth which the Legislature has given the tax department for the more effective carrying out of its ordinary functions and cannot be so compartmentalised as to enable them to be viewed as a distinct or independent portion of the Ordinance, unrelated to its ordinary provisions regarding declaration, quantification and recovery.

If, as in the present case, an offence under the Ordinance necessitates a prosecution in the Magistrate's Court which is to be conducted by a member of the Attorney-General's Department, necessary instructions and documents must be furnished to Crown Counsel who is to conduct the prosecution. Can it be said that the rule of secrecy debars an assessor from communicating to Crown Counsel matters which have come to his notice relating to the affairs of the accused ? It seems to me that disclosure in such circumstance is as much part of the duties of an assessor as the duty which lies on him of taking any other steps within the law to ensure that the revenue is not deprived of its dues by default on the part of the assessee. If the assessor in charge of the file in question is debarred by the rule of secrecy from communicating to Crown Counsel the facts of which he is in possession, an effective prosecution for many of the offences created by the Ordinance will not be possible.

For example, in a prosecution for making a false return of income a necessary item of evidence in proving the falsity of the income returned would be the assessee's actual income. Can it be said that an assessor who is possessed of facts relating to such actual income is debarred from communicating these facts to prosecuting Crown Counsel ?

It may indeed appear somewhat disconcerting that admissions made or information divulged by the accused person himself should be the very material upon which a criminal charge against him is proved, but, as in other areas of the criminal law, such a circumstance does not render the evidence inadmissible. The Evidence Ordinance lays down certain limits transgression beyond which will render statements of an accused person inadmissible at his prosecution, but short of this no principle of law is offended by the use against an accused person at his trial, of disclosures made by that person himself. There may indeed be certain circumstances in which such use of incriminating material savours of unfairness but such unfairness does not render evidence inadmissible or vitiate a conviction.

Likewise, it would be impossible for prosecuting Crown Counsel to conduct the prosecution unless he could reveal to Court information he has so gathered from the assessor and lead evidence in proof of such matters. Should he for this purpose call the assessor as a witness the latter would in giving evidence be discharging his duties under the Ordinance no less than when he instructs Counsel and no less than when he performs those many other duties not expressly specified in the Ordinance but none the less essential to give effect to its provisions.

The sections relating to prosecution would indeed be rendered unworkable in many cases upon any other view.

Moreover, on any view, the performance of that which is an essential ancillary to the performance of one's duty is itself the performance of one's duty. To hold otherwise would be to give to the word 'duty' a meaning so unduly restricted as to defeat rather than promote the general purposes and scheme of the Ordinance. As Maxwell observes, it is the paramount duty of the judicial interpreter to put upon the language of the Legislature honestly and faithfully its plain and rational meaning and to promote its object.[1] Applying this principle one is compelled to the view that disclosure to Court is within the terms of the exception set out at the commencement of the section.

It is in my view unsafe to be guided on this matter by the analogy of secrecy provisions in other jurisdictions, which were cited in the course of the argument, for the terms of the Statutes containing them vary considerably from that we are here considering. Such facts therefore as that section 137 of the Indian Income Tax Act No. 43 of 1961 expressly exempts from the rule of secrecy prosecutions for an offence under that Act or that the Second Schedule to the English Income Tax Act of 1952 excepts prosecutions for perjury from the rule of secrecy but not prosecutions for other tax offences[2] are not therefore circumstances from which any inference may be drawn in regard to the construction of our

[1] *Maxwell, Interpretation of Statutes, 11th ed., p. 253.*

[2] *Vide para. 949 of the final report of the Royal Commission on the Taxation of Profits and Income, June 1955.*

Enactment. It would also appear that neither of the provisions referred to contains a general exception in regard to disclosure in the performance of duties such as appears in section 4 (1) of our Enactment.

On this aspect of the case reference must finally be made to section 127 of the Inland Revenue Act No. 4 of 1963. This provision, which is operative in regard to years of assessment commencing on or after April 1st 1963, but not to the year of assessment relevant to the present case provides that, notwithstanding anything in any other law, statements made or documents produced in relation to any matter arising under the Act, shall be admissible in evidence in proceedings for offences under sections 90 and 92 of the Income Tax Ordinance.

The appellant seeks to infer from this provision a pre-existing state of the law under which such statements or documents would have been inadmissible.

However, when construing a law one must have regard to the terms of that law upon their plain meaning and it would not be legitimate to limit that meaning in view of the terms of a law which has been enacted subsequently. The reason which prompted the Legislature to enact a provision in 1963 expressly excepting such prosecutions from the rule of secrecy may have been a desire to make explicit what was implicit before. Moreover the co-existence in the 1963 Statute of section 124, containing the rule of secrecy as had earlier existed in section 4 of the former Ordinance, along with section 127, cannot in any way limit the meaning of section 124, for there is no such presumption against superfluity of expression in Statutes as amounts to a rule of interpretation controlling what might otherwise be a proper construction.[1]

The Crown submits that the expression " any other law " in section 127 is suggestive of the legislature having therein referred to laws other than the Inland Revenue Act, to which, had it been its intention to make reference, the Legislature would have referred by using phraseology such as " notwithstanding anything in this or any other law ". The fact that section 127 refers to the question of admissibility in contrast to section 4 of the Ordinance, which does not primarily deal with admissibility [2], is also a circumstance relied on as supporting this contention.

These circumstances, though not conclusive, also support the conclusion to which I have given expression earlier, and in view of what I have stated heretofore, I conclude that disclosure to Court for the purpose of prosecution under the Income Tax Ordinance, of matters coming to the notice of an assessor in the performance of his duties is within the exception set out in the opening words of section 4 (1).

[1] *Maxwell, Interpretation of Statutes, 11th ed., p. 311.*

[2] *Gamini Bus Co. Ltd. v. Commissioner of Income Tax (1952) 54 N. L. R. 97 at 100, per Viscount Simon.*

I must next consider the contention that the settlement effected in the Department as well as the offer of settlement held out by the Department referred to a settlement in the sense of a compounding of the case against the appellant. It is contended that it was in the expectation that a settlement would have this effect that the disclosures of the appellant were made. It is further submitted that it is not the practice of the Income Tax Department in Ceylon or for that matter in the countries of the Commonwealth to prosecute an offender for an income tax offence once a settlement has been reached with the department.

I should here refer briefly to the relevant sections of the Income Tax Ordinance.

Sections 73 (2) provides that if after such further inquiry by the assessor as the Commissioner may order on receipt of a valid notice of objection, an agreement is reached as to the amount at which the appellant is liable to be assessed, any necessary adjustment of the assessment shall be made. Where no agreement is reached and the Commissioner proceeds to hear the appeal, he has power under section 73 (6) in disposing of such appeal, to confirm, reduce, increase or annul the assessment.

Section 79 provides that where an appeal has been lodged and the amount of the assessable income has been determined on appeal the assessment as so determined shall be final and conclusive for all purposes of the Ordinance as regards the amount of such assessable income. In an assessment which is final and conclusive under section 79 the Commissioner may in terms of section 80 (1), unless the assessee proves to his satisfaction that there was no fraud or wilful neglect involved in the disclosure of income, order the assessee to pay as a penalty for making an incorrect return a sum not exceeding Rs. 2,000 and a sum equal to twice the tax on the amount of the excess. Where a penalty is imposed under this provision the assessee is exempted by section 80 (4) from prosecution for an offence relating to that return under paragraph (*a*) of sub-section (2) of section 90 or under paragraph (*a*) of sub-section (1) of section 92.

The provision last referred to implies that there is always the possibility of prosecution in respect of fraudulent or wilful neglect in the disclosure of income despite the matter having been determined on appeal. Such determinations on appeal are, as already pointed out, orders which may reduce or increase the assessment, so that what the appellant describes as a settlement is really a determination by the Commissioner at an appeal a determination which leaves the door open to a prosecution unless the Commissioner decides to impose a penalty under section 80 (1). In fact it is by payment of a penalty under section 80 (1) that subsequent prosecution may be averted in terms of section 80 (4).

The notion of compounding is also not ignored in the scheme of the Ordinance, for the Commissioner is expressly empowered under sections 90 (4) and 92 (2) to compound an offence; and since the notion of

compounding is thus recognised by the Ordinance, it would not be possible to read into the sections dealing with settlement the notion of compounding unless there is such a clear implication in the terms of the Ordinance.

Upon a reading of these provisions it thus becomes clear that a determination by the Commissioner upon an appeal does not have the effect of tying the hands of the Commissioner in regard to criminal prosecution.

Dealing next with the question whether an assurance has been held out by the department that upon such a determination the department would not prosecute, I must observe that the appellant has not in any way been able to show that such an assurance express or even implied has been held out by the assessor or anyone else acting on behalf of the department. Indeed the appellant admits that he did not specifically raise the question of a criminal charge by the department. This was according to him in reliance on his own unilateral understanding of the word 'settlement' as meaning a settlement of all matters with the department including a prosecution for false returns. The most he can point to is a statement by him that he expected justice and fair play and saving from further disgrace—a statement which apparently drew no response from the department. Even viewed subjectively from the appellant's point of view no reasonable grounds existed for his belief.

By way of contrast he states that he did raise with the respondent the possibility of a bribery charge and that the respondent told him that the Commissioner would have to bring to the notice of the Bribery Commissioner any document which might come into his hands tending to support a charge of bribery. The appellant then stated that there would be no proof forthcoming to maintain such a charge to which remark the respondent replied that in that event the appellant had nothing to fear from handing over the bank statements. Even this conversation, dealing though it did with one type of prosecution, was silent on the question of prosecution for any tax offence; and no conversation between the appellant on the one hand and the respondent or the Commissioner on the other appears to have touched on the question of such prosecution at all.

What the appellant refers to as a settlement in this case may be gathered from a letter D7 addressed by him to the assessor, which has been countersigned by the latter, agreeing to the assessments and appeals being settled on the basis of an income of Rs. 120,000 for the years 1958/64 to 1961/62, Rs. 70,000 for 1962/63 and Rs. 60/000 each for 1963/64 and 1964/65. As the Deputy Commissioner has stated in evidence, on 24th November 1964 the assessor reported to him that he had agreed to the figures of the assessable income for the years in question, and having satisfied himself that this settlement was reasonable, recorded his determination as required by the Ordinance. This was a determination by the Deputy Commissioner in terms of section 73 (6), and there is nothing to

indicate that in arriving at this determination he was committing the Department to foregoing its right to impose a penalty or to launch a prosecution. Had it been the position of the appellant that he desired to have immunity from prosecution the step one would expect him to take in the absence of a penalty imposed by the Commissioner under section 80 (1) was to obtain a compounding under section 90 (4) or 92 (2).

Reliance was placed upon the existence of an almost invariable practice in the Income Tax Department to refrain from prosecution where settlement has been reached before the commissioner, and evidence was led to this effect.

However, the Deputy Commissioner has in his evidence denied any departmental practice or policy to refrain from using for purposes other than settlement any disclosures made or documents produced by an assessee in the course of negotiations leading to such settlement and has stated that if a serious tax evasion is disclosed the Commissioner would not consider himself prevented from taking further action. Moreover Mr. Advocate Ambalavanar who was called for the defence has quite fairly stated that on occasion he himself has seen the Commissioner to obtain immunity from criminal proceedings, and one can gather from this evidence that the provisions regarding compounding are invoked in practice where an assurance of non-prosecution is desired. In a case of this importance the clear procedure to which resort should have been had, if criminal proceedings were sought to be avoided, was to obtain such immunity in terms of these provisions and all the more was such a procedure imperative in the absence of any assurance written or indeed oral that no prosecution would ensue.

In this state of the matter I do not think that the settlement referred to constitutes a legal bar to a prosecution or that it can be argued on the facts that the conduct of the department amounts to a representation that its right to launch a criminal prosecution was being waived or abandoned.

It is said for the appellant that the conduct of the Department in prosecuting the appellant savours of unfairness having regard to the fact that the matter was settled departmentally. It is relevant in this connection to observe the provisions of Section 504 of the English Income Tax Act of 1952. This section enacts that statements made or documents produced will not be inadmissible even though the assessee was induced to make the statements or produce the documents upon his attention being drawn to the right of the Commissioners to accept pecuniary settlements instead of instituting proceedings and to their practice to be influenced by the fact that a full confession has been made or full facilities given for investigation.

If after the assessee's attention has been expressly drawn to the possibility of such a settlement instead of an institution of proceedings, there is nevertheless no bar to prosecution or to the use of statements so made or documents so furnished, it would scarcely be possible to suggest that where there has only been talk of a settlement without any reference to criminal proceedings it would operate harshly on the tax-payer if such proceedings were subsequently launched.

I must next consider the contention that the prosecution must clearly prove an intention to evade tax and that dishonest intention must be affirmatively proved. This submission was based in the main on the decision of this Court in *Chellappah v. The Commissioner of Income Tax* [1].

Basnayake J. there held that the bare omission of the item in question from the computation of the appellant's profits without proof that the omission was wilful and with intent to evade duty, was insufficient to bring home the charge. Difficulty of proof of such a mental state was held to be no reason for relaxing in a proceeding under section 87 the obligation that lies on the prosecution in all criminal cases.

In the Income Tax Ordinance as it stood at the time of this judgment section 87 (1), which corresponds to section 92 (1) in the later Ordinance, required that the act in question should be done wilfully with intent to evade. The present section does not, however, have the words " wilfully with intent to evade " but requires that by the doing of the act, the person concerned should thereby evade tax.

The appellant's contention is however that the element of wilful evasion is nevertheless a requirement under the section we are now considering for the reason that the word " evade " which still remains carries with it the connotation of unlawful escape or avoidance by " fraud, misrepresentation or underhand contrivance ", as observed by Basnayake J. in *Chellappah's case.*

I do not think the appellant can go so far as to submit that despite the amendment in the Statute the requirements under the former section still remain unchanged, but even on the assumption that the same requirement of wilful and unlawful escape is still present despite the omission of the expression " wilfully with intent to evade ", it would appear that the circumstances of the present case can scarcely be brought within the ruling in *Chellappah's case.* That case is clearly distinguishable as the incorrect return therein considered was the result of a wrong view taken by the assessee of the law and not the result of dishonesty of any sort.

The present case on the other hand is one where the prosecution has placed sufficient evidence before Court to show that the non-disclosure of the item of income in question was clearly the result of dishonesty on the part of the assessee. I do not think the prosecution could be expected to place before Court any more material on this aspect of the case than in fact it has done.

[1] *(1951) 52 N. L. R. 416.*

It is said for the appellant that even if he had an intention to evade tax that was not his dominant intention but rather a desire to protect himself from such adverse consequences of his misconduct as the loss of prospects in Government service or a prosecution for bribery. It is submitted therefore that the omission of this item was not with the intention of evading tax and therefore not punishable under section 92 (1).

I do not think there is validity in the distinction sought to be drawn by the appellant. So long as it is clear that the purpose of the appellant was *inter alia* the evasion of tax it matters little that he also had other purposes in view or that he was actuated by other motives.

I see no substance therefore in the contention that the prosecution has failed to prove an offence under section 90 sub-section 2.

Coming now to the question of punishment, it is contended on behalf of the appellant that two offences arise out of one act namely the act of making an incorrect return. The first count deals with omission from this return of a sum of Rs. 12,126/- and the second count charges the appellant with the act of making an incorrect return by omitting this sum. These are in the appellant's contention the negative and the positive aspects of the same transaction and therefore the appellant submits that he cannot be punished twice in respect of this one act.

The learned Magistrate has imposed in respect of each of these offences the maximum fine which the law allows and if the appellant's contention be correct that he is being charged for the same act as constituting two offences, there is substance in his contention that the maximum fine should not be imposed twice over.

In this connection there are two provisions of statute law which must be noticed.

Section 67 of the Penal Code provides that where anything is an offence falling within two or more separate definitions of any law in force for the time being, the offender shall not be punished with a more severe punishment than that which the Court which tries him will award in any one of such offences.

We must have regard also to section 9 of the Interpretation Ordinance which states that where any act or omission constitutes an offence under two or more laws the offender shall unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those laws but shall not be liable to be punished twice for the same offence.

The question then is whether it is the identical act or omission which constitutes both offences for which the accused has been charged. Is the act of omitting from a return identical with the act of making an incorrect return? Some guidance is offered on this matter by the case of *The King v. Haramanis* [1], a case where the accused had been convicted for removing timber without a permit under the Forest Ordinance and was

[1] *(1916) 19 N. L. R. 142.*

sought to be tried and punished thereafter in respect of theft of the same timber. It will be seen that in this case the identical act of removal constituted two offences, one of which had as an element the absence of a permit and the other the mental state of dishonesty. The act considered in relation to its attendant circumstances thus constituted two separate offences under two different laws. The Court upheld the view that although the element of removal of timber was common to both offences, the act of theft was different in law from the act of removing the timber without a permit. The " act " for the purpose of the offence under the Penal Code was removal coupled with an intention to take with dishonesty, while the " act " for the purpose of the Forest Ordinance was removal coupled with the omission to obtain a permit. The same physical act may in other words constitute different " acts " in law depending on the other factors with which it is associated.

Applying this principle to the present case the " act " constituting the offence under section 92 is the omission from a return in association with a resulting evasion of tax while the " act " under section 90(2) is that of making an incorrect return by omitting income required to be declared, which occurs in association with the absence of a reasonable excuse.

It may well in this way be possible to see different " acts " in law as the basis of the two offences charged, but it seems to me that it would be difficult to visualise the commission of the first of these " acts " without a commission also of the second. In this respect the present case differs from the case of removal of timber without a permit, which may well occur without an associated theft. The two offences are thus so nearly coincident in their constituent elements and their requisites of proof that it would be harsh to an assessee to charge and punish him as though these positive and negative aspects of the same matter constitute different and distinct offences. I therefore take the view, whatever may be the technical justification for convicting and punishing the accused separately in respect of these offences, that it would operate harshly on the appellant if he is punished for both these offences separately. I think it would sufficiently meet the ends of justice if the accused is punished in respect of one only of these offences and for this purpose the offence carrying the heavier penalty must of course be selected.

I come now to the question of the quantum of punishment which has caused me the most anxious consideration in this case.

Before I proceed to examine in detail the penal provisions that are applicable I must observe that the learned Magistrate has inadvertently imposed upon the appellant in respect of count 1 the penalty appropriate to count 2 and in respect of count 2 the penalty appropriate to count 1. It will be seen that the first charge, i.e., the charge under section 92 (1) entails *inter alia* a penalty of thrice the tax for the year while the second charge, i.e., the charge under section 90 (2) entails a penalty of double

the tax undercharged. The sentences passed by the Magistrate involve, however, the imposition of the treble penalty on the second charge and the double penalty on the first.

I shall therefore proceed to deal with this matter on the basis that the Magistrate had in fact imposed the penalties which he had clearly meant to impose namely a sum *inter alia* of 135,000/- on count 1 and a sum of Rs. 14,400/- on count 2.

I do not think it necessary to consider in detail the penalty of Rs.14,400/- which has been imposed in respect of the first charge, which had been meant to be imposed in respect of the second, for this sum is not so large in proportion to the offence involved as to merit closer examination. In any event, in the view I have already expressed regarding punishment twice over, it will not be necessary to consider this penalty further. In regard, however, to the penalty of Rs. 135,000/- imposed in respect of the second charge and meant to have been imposed in respect of the first, the magnitude of this sum in proportion to the particular charge of omission of a sum of Rs. 12,126/-, calls for an examination of the principles involved in imposing such a punishment.

The first matter I must consider is whether treble the amount of tax for which the accused would have been liable for the year of assessment, as provided in section 92 (1), means treble the total tax liability for that year or whether it means treble the tax which would have been chargeable upon the omitted sum which is the subject matter of this charge.

It would appear that if this provision is to be understood as meaning treble the total tax liability for the year, apparently disproportionate results might ensure. For example upon a charge of omission of a sum of Rs. 100/- a penalty of Rs. 300,000/- could be imposed on a person with a tax liability of Rs. 100,000/- for the year. Indeed a similar provision in the English Income Tax Act of 1952 produced anomalies which struck Diplock J. who heard the case of *Inland Revenue Commissioners v. Hinchy* in the Queen's Bench Division as absurd and unjust [1] and Lord Evershed M.R. in the Court of Appeal as startling [2]. These anomalies seriously disturbed the House of Lords itself as they produced " penalties wholly unrelated to the extent of the default and so extravagant as to be shocking " [3], and in fact necessitated the intervention of the Legislature which provided a new code of penalties by the Finance Act of 1960 [4].

However, in regard to our enactment, the intention of the legislature to specify a multiple of the total tax liability as the penalty for offences under section 92 (1) becomes clear when one compares that section with section 90 (1) under which, by way of contrast, the penalty imposed is a multiple of the tax which has been under charged in consequence of the

[1] *(1958) 3 All E. R. 682 at 685.*
[2] *(1959) 2 All E. R. 512 at 519.*
[3] *1960 A. C. at 761, per Viscount Kilmuir*
[4] *8 & 9 Eliz. 2, 1960, Schedule 6.*

incorrect return. The apparently graver nature of the offences specified in section 92 (1) as compared with the offences under section 90 (1) also lends force to this conclusion.

Guidance may also be had on this matter from the decision of the House of Lords in *Inland Revenue Commissioner v. Hinchy*[1] already referred to, where the words " treble the tax which he ought to be charged under this Act " were construed despite the resulting anomalies, as not meaning anything but treble the whole tax which ought to be charged for the relevant year.

There would appear to be nothing strange or unsustainable in the notion of a multiple of the total tax liability when one has regard to the origin of the notion in the history of English taxation. In the 19th century, when it first appeared, treble the tax liability for the year was comparable with, if not less than, a stipulated fine of such sums as £ 50, for taxation in that century fluctuated between such low extremes as 2 d. in the £ in 1875 and 1s. 4d. in the £ in 1855. Absurdities and anomalies in such a notion seriously appeared only with the phenomenal increase of taxation in this century, which caused such penalties to assume such extravagant proportions as to cause anxiety in the mind of the Court imposing them. Having regard to this background there can be little doubt that when the notion of this multiple tax liability was devised in the last century the English Parliament was clearly contemplating a multiple of the total tax liability and not a multiple of the tax under charged. Indeed as Viscount Kilmuir L. C. observed in *Hinchy's case*[2] a multiple of the tax liability was made a constituent of the penalty for tax offences by an Act of 1805 and it would be extremely unlikely that in the year of Trafalgar and Austerlitz Parliament was considering such a refinement as that involved in the distinction between a multiple of the tax liability and a multiple of the tax under charged by reason of the defective return.

The origin of such provisions thus clearly shows that what they contemplated was a multiple of the total tax liability and as far as we are concerned there is in addition a clear distinction now drawn by our legislature between multiples of tax liability and multiples of the tax under charged. There seems therefore to be no other interpretation to be given to this provision but to read it as meaning a multiple of the total tax liability for the year. The gravity of the burdens that might result would be no reason to give any ether interpretation to these words in the face of the clearly expressed intention of the Legislature, reinforced as it is by these historical considerations, and the decision in *Hinchy's case*.

There is however a saving feature in the Ceylon legislation which at any rate was not present in some similar English provisions till 1960. Section 25 (3) (*a*) of the English Act of 1952 made the treble penalty mandatory and left no discretion to the Court, for its terms were that the person committing the offence in question shall forfeit the sum of £ 20

[1] *(1960) A. C. 748.*

[2] *(1960) A. C. at 762–3.*

and treble the tax which he ought to be charged under the Act. The scheme of the English Act left a discretion not with the Court but with the Commissioners who by section 500 were given a discretion to mitigate any fine or penalty or to stay or compound any proceedings.

In the case of section 92(1) of our Act however the treble penalty is imposed in the terms that the defaulter shall be liable on conviction to a fine " not exceeding the total of Rs. 5,000 and treble the amount of tax for which he . . . . is liable under this Ordinance for the year of assessment. " This language clearly indicates that the Court is not bound to impose the penalty there referred to, for that is only a maximum. The correctness of this interpretation is apparent also from certain observations of the House of Lords in *Hinchy's case*. Lord Reid considered the phraseology of section 25 (3) (*b*) of the 1952 Act which, in terms similar to those of section 92 (1), states that the defaulter shall, if proceeded against before the General Commissioners, forfeit a sum " not exceeding £ 20 and treble the tax which he ought to be charged under this Act. " He drew attention therein to the fact that in earlier enactments of a similar nature in England, a comma appeared after the fixed sum stipulated as penalty, thereby leaving room for the argument that the words " not exceeding " applied only to the fixed sum and did not apply to the treble penalty.[1] Lord Reid proceeded to observe that inasmuch as a comma now does not appear, if proceedings are now taken before the General Commissioners, they are entitled to reduce the penalty of treble tax.[2] In our section as well no comma appears after the words " five thousand rupees ".

Since, then, the Court has a discretion to impose a penalty less than the treble penalty it becomes specially important in any case where the particular default alleged is only in respect of a small proportion of the assessee's total income, to relate the punishment which it inflicts to the particular charge before it.

It would appear that the learned Magistrate has been influenced in deciding on this maximum penalty, by the circumstance that the appellant as a public officer had failed to maintain the high standards expected of one in his position and that grave prejudice is caused to the State when persons so highly placed in the public service lack integrity and betray their trust.

It seems to me however that these are not circumstances strictly pertinent to the question of a penalty which must be imposed in the case of a tax offence. What the Court is here concerned with is not to express its censure at the conduct which has resulted in receipt of the undisclosed monies but with the fact that money though received from however dishonourable a source, has not been declared. The receipt of money by such unscrupulous means as bribery, blackmail or robbery, will itself attract its own penalty in appropriate proceedings, but it would not seem right that in tax proceedings punishments should be increased

[1] *(1960) A. C. at 765.*
[2] *See Inland Revenue Commissioner v. Elcock (1953) 35 T. C. 27.*

on that account. To do so would be to expose the offender to punishment twice over for the same misconduct when eventually the penal law appropriate thereto begins to move against him.

However despite the fact that the Court enjoys a discretion to mitigate the treble penalty and despite the circumstance that culpability in receiving the money ought not to be punished in these proceedings, there would still appear to be a total absence in this case of any circumstances of mitigation such as would justify a Court in imposing a lesser penalty than the maximum which the law allows. The circumstance that there has been in this case a persistent denial of the receipt of the sum of money in question, that this sum though only a part is still a sizeable portion of the total income undeclared, the fact that the appellant himself the head of a department was knowingly making a return which he knew to be false, the fact that the income originally declared was only a very small proportion of that at which it was subsequently determined—all these render inappropriate any reduction of the penalty which the Court may impose.

These considerations would appear to render justifiable the heavy sentence imposed by the learned Magistrate though on grounds somewhat different to those which weighed most heavily with the Magistrate. No interference is therefore called for in regard to the quantum of the penalty of Rs. 135,000 imposed by the learned Magistrate.

The fine of Rs. 250 and the penalty of Rs. 14,400 as well as the sentence of one month's rigorous imprisonment in default of payment of the fine, all of which the learned Magistrate has imposed in respect of count (1) and which in fact he had meant to impose in respect of count (2) are deleted. The fine of Rs. 500 and the penalty of Rs. 135,000, both of which the Magistrate has imposed on count (2) but which in fact he had meant to impose on count (1) will stand as the punishments imposed in respect of count (1). The default term of three months' rigorous imprisonment imposed in regard to the fine of Rs. 500 exceeds one fourth of the maximum term of imprisonment of six months prescribed for the offence, and having regard to the provisions of section 312 (1) (*c*) of the Criminal Procedure Code I reduce this term to one of six weeks' rigorous imprisonment.

Subject to these variations the appeal is dismissed.

Appeal mainly dismissed.