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The Canadian Imperial Bank of Commerce (CIBC) was the banker of one Mr. A. Obront, who through his company, RIC, had perpetrated a massive fraudulent telemarketing scheme against persons in the United States. He induced his victims to purchase gemstones at inflated prices. When tried, Obront pleaded guilty and was sentenced to 4 years in prison. The Court also made a forfeiture order that included a U.S. dollar bank account at the CIBC in the amount of U.S. \$28,809.37. The bank account had been frozen. The Court found that the bank had taken a security under the Personal Property Security Act in good faith to secure the account, among other assets. The Court found also that the proceeds that the bank was claiming out of the account were proceeds of crime and as such could not be given or dealt with as security by Obront. Thus the court ordered all of the funds in the account forfeited. The order was made pursuant to section 462.37(1) of the Canadian Criminal Code that allowed forfeiture orders to be made where the Attorney General can show on a balance of probabilities, that property is the proceeds of enterprise crime. CIBC now appealed that portion of the forfeiture order.

Section 462.41 requires that before a forfeiture order is made, notice must be given to any person “who, in the opinion of the court, appears to have a valid interest in the property.”

The Bank argued on appeal that it had a valid interest in the bank account and that the trial judge erred by ordering the monies in the account forfeited to the Crown. It submitted that the court was wrong to have held that because the “proceeds” in the account were proceeds of crime, they could not have been given as security by the perpetrator of the fraud.

The Crown in response argued that under section 11 of the Personal Property Security Act, a security interest only attaches when the debtor acquires rights in the collateral. In that regard R.I.C. never acquired rights in the funds of the victims because

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For further information or copies, please
contact: The Editor, Criminal Law Unit,
Legal & Constitutional Affairs Division (LCAD),
Commonwealth Secretariat,
Marlborough House, Pall Mall,
London SW1Y 5HX, United Kingdom.
Tel: +44 (0)20 7747 6417/6420/6423
Fax: +44 (0)20 7839 3302
E-mail: k.prost@commonwealth.int
v.wright@commonwealth.int

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the funds were obtained by fraud and thus the application of the *nemo dat* rule, means essentially that you cannot give what you do not have, no right existed.

▷ **Held:** allowing the appeal in part;

1. The bank was a secured creditor of Orbont pursuant to a security agreement registered under the *Personal Property Security Act*, which agreement secured credit facilities provided to R.I.C. by the bank. The case of *Chrysler Credit Canada Ltd. v. MVL Leasing Ltd.* (1993), 5 P.P.S.A.C. (2d) 92 (Ont. Ct. Gen. Div.) was distinguishable from the present case in that it involved a stolen car, in which there was no intent by the owner of the car to transfer ownership to the rogue.

In the present case, the victims of the gem scam did not know they were victims and intended to forward their funds to R.I.C. in exchange for the gemstones that they received. The interest of R.I.C. in the funds was voidable but not void *ab initio*. The security interest of the bank was therefore able to attach to the funds deposited into the account.

2. Because of the trial judge's error, he did not go on to consider whether to exercise his discretion under s. 462.41 of the *Code* and allow the bank to retain for itself the balance in the bank account. On appeal, this court may exercise the discretion conferred by that section on the sentencing judge: (s. 686(8) and s.462.44 of the *Code*).

3. The Bank had further argued that the funds in the account were not proceeds of crime or at least part were not. The evidence disclosed that the way the account operated was that the cheques from the victims in U.S. funds were deposited into the account, and R.I.C. was permitted by the bank to immediately withdraw the funds, usually by transferring them first to its Canadian dollar operations account. If a cheque from a victim were subsequently dishonoured, R.I.C. would then owe that amount as a debt to the bank. That debt was secured by the general security agreement in respect of whatever funds were in the account. At the close of the day on the date that the order was made freezing the account, January 20, 1997, the account balance stood at U.S. \$1,491.27. The order was served on the bank on January 21, 1997. The time of service was not in evidence. On January 21, the account went into a debit balance as the

amount represented by one returned cheque, presumably from a victim, was deducted (U.S. \$13,664.50), together with U.S. \$7,000 as a debit in error, corrected the next day by a credit memo. However, there was also a deposit into the account on January 21, in the amount of U.S. \$41,014.08. This deposit included cheques from 7 victims. At the end of January 21, the balance in the account was U.S. \$21, 860.77, rising to U.S. \$28,860.77 the next day after the credit memo for U.S. \$7,000. The bank deducted some service charges by the end of the month, leaving the total showing in the frozen account as U.S. \$28,809.37 on January 31, 1997.

However, one of the victims' cheques in the amount of U.S. \$13,640, which was deposited on January 21, 1997 as part of the U.S. \$41,014 was subsequently dishonoured. The bank argued that that amount, U.S. \$13,640, although shown as in the account as of the date the account was frozen, was not victims' money, but the bank's money, in effect loaned to R.I.C. in accordance with the normal operation of the account, and was therefore not proceeds of crime. The forensic accounting expert called by the Attorney General to give evidence at the forfeiture hearing also accepted that analysis.

Because the U.S. \$13,640 was not proceeds of crime, the Appeal Court agreed that it could not be the subject of a forfeiture order. However, the balance of the funds deposited into the account on January 21, 1997, U.S. \$27,374.08, was clearly proceeds of crime and represented the cheques of six identifiable new victims.

The bank took the position that the most that could be forfeited was the closing account balance at January 21 of U.S. \$28,809.37 minus U.S. \$13,640 for the dishonoured cheque, leaving U.S. \$15,169.37. The Court found that that approach would in effect allow the bank to use part of the new victims' money, deposited on January 21, 1997, to make up the overdraft into which the account had fallen on that day, as a result of the dishonour of another cheque from an earlier date. (\$13,644.50). The court has discretion under s. 462.41 of the *Code* whether to return part of any proceeds of crime to an innocent person with an interest in those proceeds. Although it was satisfied that the bank had a security interest in all the monies in the account pursuant to its security agreement, it did not exercise its discretion in favour of the

bank in these circumstances in respect of any of the U.S.\$27,374.08 of new victims' money deposited on January 21, 1997. It held that those monies were identifiable proceeds of crime that should be returned to the victims. The Court substituted the Order of the trial judge with one forfeiting to the Crown the amount of U.S. \$27,374.08, and returning the balance of U.S. \$1,435.29 to the bank.

R v. Canadian Imperial Bank of Commerce, 12th October 2000, Court of Appeal of Ontario (unreported). (<http://www.ontariocourts.on.ca/decisions/200/november/cibc.htm>)

Drug trafficking – substitution of charges after closing submissions – whether joint trial could be ordered after substitution – Criminal law – Drug trafficking by possession – whether necessary to prove ownership of premises in which drugs were found – Evidence – corroboration – whether accused lies amount to corroboration of his guilt – Voluntariness of statements – (Singapore)

S and B were jointly charged and tried with being party to a criminal conspiracy to traffic 60.17g of heroin. At the end of the trial the judge found that there was no evidence of criminal conspiracy between the two as contemplated in the joint charge. He found however that other charges of drug trafficking had been made out against them severally. He therefore substituted the joint charge with two separate charges of drug trafficking, one against each of them.

The case against the accused persons was that the Central Narcotics Bureau (CNB) mounted surveillance on S, following which he was searched and a sachet of heroin was found on his body. A further search of a flat, to which he held the keys, revealed ten packages of heroin in a haversack owned by S. Other drug trafficking instruments, like a weighing machine, were also found in the haversack. In respect of B, his flat was also searched on the same day but nothing incriminating was found, and he could not be arrested because he had managed to hide from the CNB officers. He was subsequently arrested some months later and made a series of statements in one of which he explained how he bought 25 packages of heroin and resold 10 of them to S.

At the trial S denied ownership of the drugs, alleging that he had lent the haversack to B who must have used it for the drugs. B's defence was that the incriminating statement was made under inducement from one of the officers of the CNB. After a voir dire, the trial judge found this assertion to be unfounded and admitted the statement.

Both appealed.

In respect of S, the following grounds of appeal were canvassed:

1. That the trial judge erred in law in substituting fresh charges when he found that the joint charge could not be made out, and then proceeding with the substituted charges against both accused persons in the same trial when the trial should have been severed.
2. That he erred in failing to give any or sufficient weight to his evidence and that of his girlfriend.
3. That he erred in using the presumptions under s. 17 and 18(1) (c) of the Misuse of Drugs Act together to find a case against S.
4. That he erred in law in not directing himself to treat B's evidence with caution under s.116 illustration (b) of the Evidence Act.

In case of B, only one ground of appeal was canvassed, viz. that the trial judge erred in law and in fact in finding that the statement was voluntarily made and was admissible as evidence.

➤ **Held:** dismissing the appeals;

1. Section 163 of the Criminal Procedure Code of Singapore allows the alteration of charges either by substitution or in addition to existing charges at any time before judgement is delivered. Although the substitution in the present case was done rather late in the proceedings, the trial judge was clearly empowered to substitute the original charge with fresh charges if the evidence supported different charges from those originally preferred.

Besides, contrary to counsel's assertion, the trial judge was right in law in not severing the trial of S and B. Under s. 176 of the Criminal Procedure Code, two or more persons can be jointly tried if the offences for which they are accused were committed in the same transaction. 'Same transaction' has been held to mean that there was proximity of time, continuity of action, unity of place and unity of purpose or design: *Lee Teck Wah & Anor. v. PP* [1998] 2 S.L.R. 827. All elements were present

in the evidence before the court. The most important - unity of purpose - was discernible from the evidence that the heroin was bought by B, in the presence of S, whereupon B immediately sold ten packages to S. It was through this sale that S was put in possession of the heroin found in his haversack and placed in the flat in which the investigators later found it. S was in no way prejudiced by the joint trial especially as the trial judge took pains to ensure that both accused persons were given an opportunity to recall and re-examine any witnesses and defence counsel were given more time to prepare any further submissions and to make a plea on whether they had any legal difficulty with the substituted charges.

2. Defence counsel submitted in support of this ground that since S was not the owner of the flat, the heroin found there could not be considered to be in his possession. This argument was misconceived as proof of possession does not require proof that S owned the flat in which the drugs were found. There was evidence to show that even though S did not own the flat, he frequently used it. It was established as well that he had spent several nights in the flat in the week leading up to his arrest and he had personal belongings and drug trafficking gear at the flat. Besides, the drugs were found in his haversack, and the trial court did not believe his explanation that B had borrowed it. The weight of the evidence was against S and his demeanour at the time of arrest did not help at all. He was said to be rather restless and told a series of lies. Although his counsel had argued that his lies should not be treated as evidence of guilt, in *R. v. Lucas (Ruth)* [1981] QB 720, it was held that there were certain circumstances when lies could have corroborative value because they indicated a consciousness of guilt. Four criteria were stated to be required before corroboration could be established viz: "The lie ... must first of all be deliberate. Secondly, it must relate to a material issue. Thirdly, the motive for the lie must be a realisation of guilt and a fear of the truth. Fourthly, the statement must be clearly shown to be a lie by independent evidence." In the court's view, these criteria had been met and the lies told by S were a deliberate attempt on his part to distance himself from the flat and the drugs.

3. Under s. 17 of the Misuse of Drugs Act, there is a presumption of trafficking where a person is found to be in possession of 2g of

diamorphine (heroin) unless it is proven otherwise. S.18 provides for the rebuttable presumption of possession of drugs which arises from proof of possession of the keys to any place in which a controlled drug is found. Both presumptions cannot operate at the same time as the s. 17 presumption applies only where possession is proved and s.18 applies where possession is presumed: *Low Kok Wai v. PP* [1994] 1 SLR 676. Consequently, if the prosecution in the present case sought to invoke the presumption in s. 17 to prove the *mens rea* of possession for the purpose of trafficking, they would then be prevented from relying on the presumption of possession found in s. 18(1) (c). The trial judge was therefore wrong to have stated that S failed to rebut both presumptions, because he did not have to.

However, this did not materially affect his conviction, as the prosecution's case did not rely on the double presumption.

On the question of treating with caution the evidence of B, the court relied on s.116 illustration (b) of the Evidence Act which provides as follows:

"The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common cause of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

Illustrations:

(b) that an accomplice is unworthy of credit and his evidence needs to be treated with caution"

It also considered that the common law rule that the court must warn itself of the dangers of convicting on uncorroborated evidence had since been abrogated by s.135 of the Evidence Act. The effect of both sections is that the court may convict an accused person based on uncorroborated accomplice evidence at the same time bearing in mind that the evidence should be treated with caution as the accomplice may, and must not, be presumed to be unworthy of credit. In *Chua Poh Kiat Anthony v. PP* [1998] 2 SLR 713, it was held that all that was required of the court was for it to scrutinise such evidence very carefully, but that it should nonetheless be given same weight as any other evidence so long as it can be shown to be reliable under the circumstances. There was therefore no legal basis for the contention that the trial judge should have treated B's evidence

with caution, because there was no longer such a requirement in Singapore law.

4. In respect of the ground of appeal contended on behalf of B, the alleged inducements were three:

- (a) the officer was said to have told B that if he did not speak out, his wife would be arrested;
- (b) The officer also referred to the statements already made by S thereby inducing B to give a statement that was consistent with those made by S.
- (c) the officer said to him that if he co-operated, he could let him see his wife.

The admissibility of the challenged statement was governed by s.24 of the Evidence Act, which laid down two stages in the test to determine whether a statement was admissible. First, was the confession made as a result of any inducement, threat or promise? Second, in making the confession, did the accused act in circumstances which would have led him to reasonably suppose that he would gain some advantage for himself or avoid some evil of a temporal nature to himself?

The court considered that the remark concerning the arrest of B's wife could amount to a threat. In respect of the promise to see his wife, the court did not believe that that could have been sufficient to weaken his freewill in the presence of a charge that carried the death penalty. The promise to procure a reduced charge could amount to an obvious inducement, but this could not be said to be the case in respect of a mere reference to statements made by a co-accused, an accomplice or a witness. The court found it difficult to see how an accused person could perceive gaining any advantage or avoiding any evil by making a self-incriminating statement simply because he was told what his co-accused had said. On the contrary it was proper that he should be told what his co-accused had said so that he could properly defend against the allegations.

Generally B's allegations regarding the inducements were self-contradictory and inherently improbable on the facts. His evidence was inconsistent and not otherwise sustained by objective evidence. There was no reason to interfere with the trial judge's findings on the *voir dire*.

Sharom bin Ahmad & Another v. Public Prosecutor
[2000] 3 SLR 565

Proceeds of Crime – calculation of amount to be recovered from offender – Drug Trafficking Act 1994, (U.K.)

Following a conviction for drug trafficking against W, a confiscation order was made by the trial judge in a sum calculated on the basis of the amount of the net benefit of the trafficking, including the actual cost of the drugs subject to the charges, multiplied by four to take into account the amount spent on previous drug purchases which the judge assumed were used to generate funds for the trafficking operation. This calculation took the sum from £484,437 of benefit to £2,422,185 with the additional costs of previous purchases factored in. W's realisable assets however amounted to only £237,161 and thus the order was limited to that sum.

W appealed against the finding that the proceeds of his drug trafficking amounted to £2,422,185. He argued that the finding in effect constituted a sentence, as he would remain in further jeopardy of steps being taken by the authorities under s.16 of the Drug Trafficking Act 1994, to increase the confiscation order by any amount up to the proceeds figure. W conceded that the sum of £484,437, which included the sum for the drugs seized and took account of deductions for legitimately acquired income, was properly treated as the proceeds of drug trafficking. But the judge was wrong in law in adding the figure he assumed would be the likely cost to W of the purchase of sufficient drugs to generate, when sold, a profit equal to the unexplained expenditure of £484,437. He also erred in assuming that the cost of buying the drugs used to generate such a profit must have been met out of previous trafficking in drugs and therefore added a hypothetical figure to the actual proceeds. This approach, counsel argued, was wrong in principle and was not permitted under the Act.

➤ **Held:** allowing the appeal;

Once a court had determined that an offender had benefited from drug trafficking, it had to make an order for confiscation in accordance with section 5 of the Drug Trafficking Act 1994.

In making such order, it must have recourse to the assumptions under section 4 which involved a two-stage process: the evidential stage and the assumptions stage. If the court wished to include in the calculation of the proceeds figure other sums alleged to be proceeds of drug trafficking,

which was not deemed to be so by the application of one of the assumptions in section 4, it could only do so on the basis of evidence, to the civil standard (section 2(8)). The trial judge was wrong to have taken the figure produced by the application of the proper approach, which was \$484,437, and then subject it to further hypotheses for which there was no evidential basis.

He made the following hypotheses:

- (i) that it was the product of particular drug trafficking - wholesale supply,
- (ii) that it represented net profits of such activity, and
- (iii) that a hypothetical quantity and value of drugs must have been required to be purchased during the preceding six years to enable such a net profit to be realised.

It was wrong for the judge to have employed the expenditure assumption under section 4(3)(b) for that purpose and the device of hypothesising a figure for the working capital to the actual proceeds was incorrect. There was no evidence that W possessed such drugs or that they were funded from previous dealing in drugs.

The figure for the confiscation order was limited to \$484,437.

R. v. Williams; Court of Appeal judgement of 19 December 2000, the Times, 11 January 2001.

Criminal Law – theft of chose in action – Words and phrases: “appropriation”, “obtaining” – Whether prosecution could cross-examine on a financial analysis of bank accounts not put in evidence – whether both a compensation and confiscation order can be made – Theft Act – Criminal Justice Act (United Kingdom)

R was convicted on charges of fraudulent trading and theft, and sentenced to a total of 5 years and 6 months. The court also ordered that his victims be compensated to the tune of £141,950, and a confiscation order was made consequently.

He appealed against both conviction and sentence.

R ran a building business, and between 1992 and his arrest in November 1997, he used the business to target and cheat vulnerable elderly

householders. His deceit took the following pattern: he would charge a modest price for an initial piece of work, in order to gain the customer's trust. He would then carry out subsequent works in respect of which the costs rose rapidly to amounts that far exceeded any that could properly have been charged. The customers were therefore duped into parting with substantial sums of money. The counts of theft were sample counts arising from his dealings with the owners of twenty separate properties. Most of the counts alleged theft of a chose in action since they involved payment by way of cheque drawn on bank or building society accounts that were in credit at the time. In causing the cheques to be drawn and presenting them so that the credit balances were diminished, R dishonestly took the credit balances for his own use.

The trial judge directed the jury that “in law, a person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it ... A thing of action is property which does not exist in a physical state; for example a trade mark ... You cannot physically see or touch that property. But if you have a bank account ... you have the right to withdraw from that account the amount in the account, or indeed more if you have a level of agreed overdraft. In law, that right to withdraw funds from such an account is regarded as property; it is a thing in action ... the prosecution have to prove that what the defendant stole was property belonging to another. (The defendant admits) ... that in each instance the payment was by a cheque from each of the householders, (whose) ... relevant bank or building society account ... at the material time was in credit. The prosecution has to prove that the defendant appropriated the credit balance. If you get a householder to draw a cheque on a bank or building society and cause the cheque to be presented, you cause the householder's credit balance to be diminished, and accordingly take that credit balance for your own use. Members of the jury, that is the direction I give you as to theft.”

R appealed the conviction and sentence on the following grounds:

1. The learned judge erred in that, in rejecting a submission of no case to answer, he held that R acquired “property belonging to another” when he presented for payment or caused to be presented for payment cheques

drawn by another person upon the credit balance of the account of the drawer of the cheque.

2. The learned judge erred in ruling that the Prosecution was entitled to cross-examine R upon a financial analysis of his bank accounts which had not been put in evidence and the accuracy of which was disputed. The prejudicial effect of such cross-examination greatly outweighed its probative value and was likely significantly to impact upon the jury in determining the central question in the case, namely whether the defendant had acted dishonestly.
3. The judge was wrong to have made a compensation order in the full amount dishonestly obtained by R; he should have at least deducted the values of the works actually carried out.

➤ **Held:**

In respect of the first ground of appeal, the issue for determination was whether or not the principle established in *R. v. Preddy* [1986] AC 815 applied. The headnote of that case stated that "when a payment was made telegraphically or electronically from one bank account in credit to another the chose in action represented by the credit balance in the payer's account was *pro tanto* extinguished or reduced and a new chose in action was created in the payee's account; that the payee did not obtain the payer's chose in action and, accordingly, did not obtain "property belonging to another" within the meaning of section 15(1) of the Theft Act 1968; that that was a fortiori the case where either account was in debit; that where the payment was by cheque the chose in action represented by the cheque never belonged to the drawer but came into existence belonging to the payee and so no "belonging to another" could be obtained by the payee within section 15(1); and that it made no difference if the payment went to the payee's solicitor rather than the payee himself."

Under the Theft Act 1968,

1. "(1) A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; ...
2. ...
3. (1) Any assumption by a person of their rights of an owner amounts to an appropriation ...

4. (1) "Property" includes money and all other property, real or personal, including things in action and other intangible property. ...

5. (1) Property shall be regarded as belonging to any person having possession or control of it, or having in it any proprietary interest (not being an equitable interest arising only from an agreement to transfer or grant an interest)....

(2) For the purposes of this section a person is to be treated as obtaining property if he obtains ownership, possession or control of it, and "obtain" includes obtaining for another or enabling another to obtain or retain."

It had been advanced on behalf of R that the payee of a cheque does not obtain any of the rights of an owner over "property which belongs to another". This is because such property is the right of the drawer of the cheque to demand from his bank payment of the credit balance in his account (or part thereof). The payee, it was submitted, did not acquire such a right; all he acquired was a contractual right to receive a specified sum from the paying bank's funds which would be diminished by a like amount.

The prosecution on the other hand argued that the crucial question was whether the defendant obtained (or attempted to obtain) property belonging to another. In these circumstances, the appropriation took place by the presentation of the drawer's cheque by, or on behalf of, R. In making this submission, the prosecution relied on *R v. Kohn* 69 Cr App R 395 and *R v. Hallam* [1995] Cr App R 323.

The difference between "appropriation" (in s.1) and "obtaining" (in s.15) is best articulated by Professor Smith in [1997] CLR 344, where he stated that:

"The thing in action belonging to the victim ... has gone forever - it is extinguished. The difficulty lies in finding an appropriation. If the defendant or his agent caused that diminution in that balance, it is submitted that the defendant stole it. If the defendant was paid by a cheque which he presented and which was honoured, it seems clear that he did appropriate the ... balance. Unless the processing of the cheque was fully automated, the actions of one or more persons

would intervene, but these were in effect innocent agents. Where funds are transferred by electronic transfer or CHAPS order [as in *Preddy*], the position is less clear because the defendant does not personally initiate the process by which the victim's account is debited."

The summing-up on this point contained no error of law and the judge was right in putting the matter to the jury in such clear terms.

2. On the second ground of appeal, it was submitted that the learned judge was wrong to have permitted the prosecution's line of cross-examination because the prosecution had neither outlined, nor attempted to prove the figures relating to the amount of money which passed through the appellant's own bank account. The defence had not checked the accuracy of the annualised figures which were put to the appellant. The figures were misleading because they related to turnover, not profit. In allowing the matter before the jury the judge was said to have been unfair and the effect prejudicial to the accused.

The reality of the position was, as the prosecution submitted, that the defendant had put himself forward as running an honest business from which he drew only some £17,000 a year. There was abundant material to show that the defendant's living expenditures were substantially in excess of this. To the extent that the defendant was disadvantaged by the absence of proper books of account, as he was, was a consequence of his own fault.

The court was satisfied that the defendant was not subjected to any unfairness which could not have been negated in re-examination, if there had been any innocent explanation for the figures which were put to him in cross-examination. Besides there was enough evidence to show that R had acted dishonestly towards his victims and the prosecution's line of cross-examination could not have rendered the convictions unsafe by any means.

3. As regards the issue of compensation and confiscation, there was no error of principle in making a confiscation order in the full amount dishonestly obtained by R from the offences for which he was convicted. However, the judge

should at least have deducted from the compensation order the value of the work done. Under section 71 of the Criminal Justice Act 1988 the Crown Court is empowered to make a confiscation order when it is satisfied that a defendant has obtained a benefit from an offence. The amount of the order should not exceed the benefit in respect of which the order is made or the amount which appears to the court that might be realised at the time of the making of the order. Section 72 is concerned with the procedure which has to be followed before such an order is made. Importantly, the Act also makes provision for restraint orders in cases in which it appears to the court that there are reasonable grounds for thinking that such an order might be made (Sections 76 and 77). The Powers of Criminal Courts Act 1973 makes no provision for the making of a restraint order in respect of awards of compensation made under its provisions.

There was thus no basis for saying that there was any obstacle to the making of orders both of confiscation and compensation. It may well be appropriate for a judge to make both orders in a case in which it appears that the total funds may be insufficient to satisfy them both. He may further order that so much of the compensation as he believes will not otherwise be recovered, due to a lack of the defendant's means, should be met out of the proceeds of confiscation. In deciding whether or not to make both a confiscation order and a compensation order, the judge may take into account the desirability of the confiscation order being made to the full extent of the value of the fraud so that any surplus will be taken up by the compensation order. To the extent that there may be a shortfall in the realisable assets to meet the requirements of both orders the judge would be acting perfectly properly if he were to decide that the claims for compensation were to have first call over those assets. Any order issued in relation to the sentence should reflect these principles and the Court would hear the parties on the application of those principles to the facts of the case at a later stage.

R. v. Roy Williams Court of Appeal, (Unreported); [Internet cite <http://porch.ccta.gov.uk/courtser/judgements>]