CALCUTTA HIGH COURT

S. Ganesan

Vs.

A.K. Joscelyne

Matter No. 111 of 1955

(Chakravartti, C.J. and Sarkar, J.

19.04.1956

JUDGMENT

Chakravartti, C.J.

1. This is a reference under Section 21(1), Chartered Accountants Act with respect to a complaint against one Mr. A. K. Joscelyne, who is a partner of Messrs. Lovelock and Lewes, a firm of Chartered Accountants of Calcutta. The Council's finding against him is that in certifying a Profit and Loss Account of a company, called the Deccan Sugar and Abkhari Co., Ltd., for the year ending on 31-12-1946, as correct and prepared in accordance with law, he has been guilty of misconduct of the varieties mentioned under items (o) and (p) of the Schedule to the Act.

2. It appears that from 1946 to 1952, Messrs. Lovelock and Lewes were appointed auditors of the Deccan Sugar and Abhkari Co., Ltd., in each successive year. The work was handled in different years by different partners of the firm. The Managing Agents of the company were another company, called Parry and Co., Ltd. At the time the Indian Companies Act was amended to 1936, the Managing Agents were already holding their office under an agreement which would not expire till 15-1-1957. Nevertheless, in 1946, the managed company came to think that in view of the expansion of its activities in recent years, it would be advantageous to conclude a fresh agreement with the Managing Agents for a fixed period. With that end in view, the company issued a Circular Letter to its shareholders, dated 30-4-1946, in which it was stated that it was proposed to enter into a fresh agreement with the Managing Agent for a fixed period of twenty years from 7-6-1946, "on exactly the same terms as to remuneration as they are at present receiving." The Circular Letter then proceeded to state what the existing terms as to remuneration were and the same were set out as follows :-

> "(a) an allowance of Rs. 5,000 per mensem;
> (b) a commission of 10 per cent. on the net annual profits of the Company as defined in

Section 87C(3), Indian Companies Act;
(c) the following commissions in respect of sales of the Company's products elsewhere than in Madras City at or through their branches or agencies." Various rates applicable to various kinds of commodities were then mentioned. The Circular Letter was accompanied by a Notice of an Extraordinary General Meeting which was to be held on 7-6-1946 in order to pass a Special Resolution, authorizing the conclusion of the proposed agreement. The Special Resolution was in due course passed an Agreement executed on 7-6-1946, as proposed.

3. Paragraph 1 of the Agreement stated that the company was thereby appointing the then existing Managing Agents to be the Managing Agents as on and from 7-6-1946 "upon the terms and conditions hereinafter expressed." Paragraph 3 set out the terms and conditions. In so far as material, it was provided that the Managing Agents would receive

> "by way of remuneration for their services (a) an allowance of Rs. 5,000/- per mensem for all their Madras Office expenses including Madras Assistants' and Clerks' salaries, x x x and (b) a commission of 10 per cent on the net annual profits of the Company."

The next sub-paragraph of para 3 proceeded to define net profits. The third sub-paragraph provided as follows :-

> "The Managing Agents shall also receive Commission at the following rates on account of sales of the Company's products elsewhere than in Madras City at or through their branches or agencies." The sub-paragraph then proceeded to mention rates as applicable to various commodities which were the same as previously mentioned in the Circular Letter.

4. The Profit and Loss Account of the company for the year ending on 31-12-1946, was the first profit and Loss Account prepared and published after the conclusion of the fresh agreement with the Managing Agents. Among the entries on the left-hand side of that account, occurred the following :- To Managing Agents' Remuneration including Office Allowance and Commission....Rs. 74,666. The first entry on the right-hand side was as follows :-

By Profit and Trading (After charging Factories and Agencies salaries Rs. 4,94,377/-).....Rs. 7,83,010. The remuneration earned by the Managing Agents during the year ending on 31-12-1946 under clause (a) of the Agreement was Rs. 60,000/- and that earned under clause (b) as the percentage of the profits was Rs. 14,666/-, making a total of Rs. 74,666/- The selling commission earned by them under the third sub-paragraph of para 3 of the Agreement was Rs. 35,400/-.

5. It will be seen that the amount shown in the Profit and Loss Account as paid to the Managing Agents on account of their remuneration included only the sum paid to them on the monthly

salary basis and the sum due to them as percentage of the profits earned by the company. The sum of Rs. 35,400/-, paid to them as selling commission was not shown as a part of the remuneration paid to them as Managing Agents. Nor was that sum shown on the right-hand side of the Profit and Loss Account as an item of expenditure, either separately or as included in the selling expenses. On the other hand, what was done was that before arriving at the amount transferred to the Profit and Loss Account from the Trading Account, the selling commission paid to the Managing Agents was first deducted out of the gross receipts and it was only the figure arrived at after making the deduction which was shown as the profit on trading. From the Profit and Loss Account one would not know that this sum of Rs. 35,400/- had at all been a part of the receipts of the company from the sales or that it had been at all paid to the Managing Agents, for whatever services it might have been paid.

6. The Profit and Loss Account of the next succeeding years up to 1952 were all prepared on the same lines. In none of them was the selling commission paid to the Managing Agents shown as part of the Managing Agency remuneration, nor was it at all shown as an item of the expenditure, the impression created being that the amount brought into the Profit and Loss Account as profit on trading was the whole of the receipts from sales minus only factories and agency salaries.

7. On 18-1-1954, one S. Ganesan, who was a shareholder of the Deccan Sugar and Abkhari Co., Ltd., addressed a complaint to the Institute of Chartered Accountants. His charge against the Auditors was that they had misled the share-holders by not reporting to them the non-disclosure of the remuneration paid to the Managing Agents on account of the sales of the company's products elsewhere than in Madras City at or through their branches or agencies in the published accounts and, secondly, that they had also failed to report to the shareholders the misstatement contained in the Profit and Loss Account regarding the gross income such misstatement being an understatement of the income resulting from a direct deduction of the sales commission from the sales in the Trading Account, which had not been published to the share-holders, before the amount of the gross income to be brought into the Profit and Loss Account was determined. According to the complainant, the law required that the total of the amounts paid to the Managing Agents should be disclosed to the share-holders as a distinct item in the Profit and Loss Account, whatever might be the services for which such amounts were paid. According to him, it was also required that the expenditure incurred in paying a selling commission to the Managing Agents on account of the sales outside the Madras City should be shown in the Profit and Loss Account as an item of expenditure and similarly it was to be shown as a part of the gross income, the two together showing what the real profit was. It was not his complaint that the selling commission should have been paid to the Managing Agents, but his complaint was that the payment had not been shown in the Profit and Loss Account, either as a part of the remuneration paid to the Managing Agents for their services as Managing Agents or as commission paid to them for services of other kinds or as an item of expenditure in regard to sales outside the Madras City. The result was that the shareholders had been kept from the knowledge of how much their Managing Agents were actually costing them and also kept from

the knowledge of what expenses were being incurred in making and effecting the sales outside the Madras City. The complainant stated that in view of such suppression of a material fact in the Profit and Loss Account, the Auditors had been guilty of misconduct in not reporting the non-disclosure of the payment of the selling commission to the share-holders, but in reporting, on the other hand, that the accounts were correct and had been prepared in accordance with law. "The Auditors", he said,

> "had failed in their duty all these years to bring this fact to the knowledge of the share-holders by giving misleading reports every year and certifying wrongly that the accounts were in conformity with the law."

He added that

> "on the other hand, the Auditors, Messrs. Lovelock and Lewes, in clear negligence of their duties as Auditors and with a desire to accommodate the Managing Agents and Directors to conceal the payments of commissions as stated above from the knowledge of the share-holders, went to the extent of giving misleading reports that the accounts were in conformity with the law." As regards law, he mentioned only Section 132(3), Indian Companies Act and he prayed that the Institute of Chartered Accountants might take such action as they thought fit to take.

8. On receipt of that complaint, the Secretary of the Institute addressed the usual enquiry to Messrs. Lovelock and Lewes, requesting them to inform the Institute which of their members had been concerned with the certification of the accounts complained of. The firm replied that the accounts of the Deccan Sugar and Abkhari Co., Ltd., had been signed for the year ended on 31-12-1946 by Mr. A. K. Joscelyne; for the years ended on 31-12-1947 and 1948 and on 31-5-1952, by Mr. J. S. F. Gibb; for the year ended on 31-12-1949, by Mr. W. Stuart Smith and for the period of seventeen months ending on 31-5-1951 by Mr. P. Niyogi. On receipt of that information, four enquiries were started against the four members of the firm whose names had been disclosed. The present reference arises out of the enquiry against Mr. A. K. Joscelyne.

9. The respondent, Mr. A. K. Joscelyne, filed his written statement on 26-2-1954. In that he stated that in accepting the Profit and Loss Account, as drawn up, he and his firm had been guided by the advice which they had received from their legal advisers. The advice, it was said, had been that the particulars to be disclosed in the Profit and Loss Account under Section 132(3), Indian Companies Act, were particulars of the remuneration payable to the Managing Agents, as such, but not particulars of remuneration paid or payable to them in any other capacity. It was stated further that the legal advice received had also been that where Managing Agents of a company held an additional office, such as the office of Selling Agents, the remuneration payable to them in respect of such latter capacity was not remuneration for their services as Managing Agents. That interpretation of the law, which had been obtained from the firm's legal advisers in 1937, received, it was said, support from clause 338 of the Companies Bill, then pending before

Parliament. As regards the allegations that the selling commission paid to the Managing Agents had not been disclosed even as an item of expenditure and that it had not been shown as a part of the gross income, the respondent gave no specific answer in his written statement. He only stated that he did not admit the correctness of the unpublished trading accounts of the company annexed to the complainant's petition. The written statement ended with the observation that the complainant must have been aware, at all material times, that the Managing Agents had been receiving a selling commission in respect of sales effected through their own branches outside the Madras City and that In any event, the Auditors as a firm of Chartered Accountants had acted *bona fide*, being guided by the legal opinion obtained by them on the subject.

10. The enquiry came to be held on 30-11-1954, by a Disciplinary Committee consisting of five members. It appears that, on an earlier date, the enquiry against Mr. Niyogi and Mr. Gibb had already been held by a smaller Disciplinary Committee and the complainant had then attended. He was not present when the enquiry against the respondent was held. The Committee which held the enquiry against the respondent also held an enquiry against Mr. Stuart Smith and it was agreed by the parties that the decision in the respondent's case would govern the other case as well. It appears that the cases against Mr. Gibb and Mr. Niyogi had similarly been dealt with together on the same basis and same understanding.

11. As I have already stated, the complainant did not attend the present enquiry, nor had he stated in his complaint with what specific types of misconduct from among those enumerated in the Act, he was charging the Auditors. It appears, however, that at the enquiry against Mr. Gibb and Mr. Niyogi his attention was drawn to the Schedule to the Act and he had then indicated that he considered the misconduct alleged by him to come under items (o) and (p) of the Schedule. After those two items had been selected by the complainant, both the enquiries appear to have been proceeded on the footing that the subject-matter of investigation was whether the Auditors had been guilty of misconduct of the kinds mentioned in those two items.

12. It is necessary to refer here to one other matter. It will be recalled that in his petition of complaint, the complainant had not only pointed out what he regarded as lapses of the Auditors, but he also alleged that the Auditors had acted with a desire to accommodate the Directors and the Managing Agents in regard to concealing the payment of the selling commission from the share-holders. At the inquiry against Mr. Gibb and Mr. Niyogi, he withdrew that allegation, because he said that he had no basis for it and could not prove it. At the very commencement of the present enquiry the Committee was reminded of the complainant's withdrawal of that portion of his charge and the enquiry appears to have proceeded on the basis that the allegation of wilful negligence or dishonesty no longer subsisted.

13. The respondent was examined at some length, or I should rather say the Committee tried to examine him at some length, but he preferred to rely mostly on a written argument which he had already filed rather than give oral answers. The Committee admitted that argument and treated it

as containing his whole case. I shall have to say a great deal about that written argument hereafter. It will be sufficient, if I mention at this stage that the written argument went far beyond the written statement and in fact involved, in certain respects at least, a complete change of front. In substance, the respondent was no longer stating that he had been guided by the legal opinion which his firm had received in 1937, but his contention was that he had acted on his own opinion of that opinion. He had construed the opinion for himself, had also construed the Managing Agency Agreement on his own account and he had arrived at the conclusion that, under the Agreement, the office of selling agents was a separate office held by the Managing Agents, for which they were to be separately remunerated. If that construction of the Agreement was correct, the respondent pleaded that he had acted in accordance with the true view of the law, as elucidated by the legal opinion received by his firm in 1937 and also by certain observations of the Saklatvala Committee which had reported in the same year. If his construction of the Agreement was not correct, he claimed that, nevertheless, he should be treated as having acted *bona fide* and in that connection he relied upon another opinion received by his firm in the year 1953, which also, according to him, supported the view he had taken. Proceeding next to the charge as to the non-disclosure of the selling commission even as an item of expenditure which by this time, had crystallized into a charge of a violation of Regulation 107, the respondent claimed to have acted on another legal opinion obtained by his firm in 1937. According to that opinion, the view generally taken by Accountants that the expression 'gross income' in Regulation 107 of Table 'A' meant 'gross profit' might be accepted and acted on as correct, in the absence of any decision of the Courts to the contrary. The respondent stated further that at the time he had signed the Profit and Loss Account in question, it had already become an established practice with the Accountants to equate 'gross profit' with 'gross income' of Regulation 107 and no objection had ever been taken by his firm or any other firm of Accountants or by the Registrar of Joint Stock Companies. He added that, in any event, failure to disclose the selling commission could not be a failure to disclose a material fact which would be necessary to make the statement not misleading, because even if all gross sales and all expenditure had been shown in the accounts the selling commission would still not have been shown separately, but would have been incorporated with other expenses under the general head 'Selling Expenses', so that the share-holders would not know how much had been paid as selling commission and would not receive any additional information. His plea in substance, therefore, was that he had interpreted the law correctly, had applied it to the Agreement on a true construction of that Deed and that even if he had been mistaken, he had acted *bona fide* in accordance with his own honest understanding of the law and the Agreement and, therefore, he could not be held guilty of misconduct. The account he had certified showed a just balance of profit and loss.

14. I have omitted to mention one other ground which the respondent gave for his view that, under the Agreement, the selling commission was not paid to the Managing Agent as a part of the Managing Agency remuneration. He pointed out that while in the Circular Notice, the three heads under which the Managing Agents were to receive their remuneration were enumerated as (a), (b) and (c), the provisions as to the selling commission in the Agreement was not so

numbered and was shown as an independent provision, not linked with the earlier provisions through the letter 'c', as it was in the Circular Letter.

15. The Disciplinary Committee failed to be unanimous. The President, Mr. Mody, and two other members, Mr. Sastri and Mr. Raiji, held that the respondent had not been guilty of either of the two forms of misconduct charged against him. One member, Mr. Rajam Aiyar, held that he had been guilty of both the forms of misconduct. The fifth member, Mr. Nargolwala, would give the respondent the benefit of doubt with respect to the first charge, but he held that he had been guilty of the misconduct charged under the second count. While holding the respondent guilty of the second charge, Mr. Nargolwala added that he was prepared to accept the position that there had been no mala fides on the part of the respondent and that his omission to report on the non-disclosure of the selling commission as an item of expenditure involved no moral turpitude.

16. The reports of the Disciplinary Committee were considered by the Council of the Institute who found the respondent guilty of both the charges. Their findings are expressed as follows :-

> "The respondent failed to report on (1) the non-compliance of Section 132(3) and Regulation 107 of Table 'A', Indian Companies Act, and (2) the nondisclosure of the commission on sales of the company's products at or through their branches or agencies as part of the Managing Agents' remuneration in the Profit and Loss Account, thereby misleading the share-holders into the belief that a lower sum was paid to the Managing Agents, and offending against clauses (o) and (p) of the Schedule to the Chartered Accountants Act, 1949." It is that finding which has been reported to this Court.

17. At the hearing of the reference before us, Dr. Pal raised a preliminary objection which he had not taken before the Disciplinary Committee. He pointed out that the Chartered Accountants Act had come into force on 1-7-1949, whereas the impugned Profit and Loss Account had been signed on 2-5-1947. The misconduct alleged against the respondent was, therefore, a pre-Act misconduct, if it was a misconduct under the prior law at all and Dr. Pal's contention was that with respect to any pre-Act conduct, no proceedings under the Chartered Accountants Act of 1949 were maintainable. Although Dr. Pal had himself appeared before the Disciplinary Committee and had not taken this point, we allowed him to take it, since it went to the root of the Institute's jurisdiction or even the jurisdiction of this Court under the Act.

18. In my opinion, the contention of Dr. Pal is not well-founded. It is true that in the case of statutes of a penal character which create certain offences and make certain acts punishable as such offences for the first time, no proceedings under them are generally maintainable in respect of acts done before the commencement of the statute, unless the statutes include such acts by express provision or necessary intendment. The reason is plain. The act which was not an offence at the time it was done under the law then prevailing, cannot become so by reason of the operation of some statute which itself came into existence at a subsequent date, speaking as from

then and making acts of the kind concerned, if thereafter done, offences. Looking at the matter from another point of view, it will be seen that, in such a case, the element of mens rea which is always a constituent of offences, unless specifically excluded, will also be lacking, because one cannot have a criminal intention in doing an act which is not a crime at the time at all. It may be said that cases of professional misconduct do not differ essentially from cases of offences. Two tests, however, must be looked for. Is the offence or misconduct created for the first time by the Act concerned and, secondly, does the Act contain any indication that activities of the kind mentioned are intended to be covered by its provisions, whenever they may have been done? In the present case whether acts of the types charged against the respondent would amount to misconduct under the prior law cannot be said for certain, because the Auditor's Certificate Rules, which constituted the prior law, left it to the Central Government to determine in each case whether a particular conduct on the part of an Auditor was or was not professional misconduct. As to indications in the Act itself regarding its retrospective operation, I shall presently examine its provisions. I may state, however, that in spite of the ordinary and I might almost say cardinal rule of construction that statutes, particularly statutes creating liabilities, ought not to be so construed as to give them a retrospective operation unless there is a clear provision to that effect or a necessary intendment implied in the provisions, there is another principle on which Courts have sometimes acted. It has been held that where the object of an Act is not to inflict punishment on anyone but to protect the public from undesirable persons bearing the stigma of a conviction or misconduct on their character, the ordinary rule of construction need not be strictly applied. In the case of *Queen v. Vine*[1], the Court had to consider whether Section 14, Wine and Beer Amendment Act, which provided that

[1](1875) 10 QBD 195

> "every person convicted of felony shall for ever be disqualified from selling spirits by retail, and no license shall be granted to any person who shall have been so convicted,"

would cover the case of a man who had been convicted of felony but had nevertheless obtained a license for retail sale of spirits before the commencement of the Act. The Court, with the exception of a single dissenting member, ruled that a pre-Act conviction was covered by the section. Dealing with the principle applicable to such cases Cockburn, C. J., observed as follows :

> "If one could see some reason for thinking that the intention of this enactment was merely to aggravate the punishment for felony by imposing this disqualification in addition, I should feel the force of Mr. Poland's argument, founded on the rule which has obtained in putting a construction upon statutes - that when they are penal in their nature, they are not to be construed retrospectively, if the language is capable of having a prospective effect given to it and is not necessarily retrospective. But here the object of the enactment is not to punish offenders, but to protect the public against public-houses, in which spirits are retailed, being kept by persons of doubtful character. It may be that the felony may in

> some instances be such as not to affect the character in the ordinary sense of the term, as when by negligence so as to involve no criminality of purpose, a person may have caused the death of another and have been convicted of manslaughter and suffered only a trifling punishment. But the legislature has categorically drawn a hard and fast line, obviously with a view to protect the public, in order that places of public resort may be kept by persons of good character, and it matters not for this purpose whether a person was convicted before or after the Act passed, one is equally bad as the other and ought not to be intrusted with a license."

Mellor, J., who agreed with the learned Chief Justice observed as follows :

> "It appears to me to be the general object of this statute that there should be restraints as to the persons who should be qualified to hold licenses, not as a punishment, but for the public good, upon the ground of character. and accordingly by this clause, instead of leaving open the inquiry as to character, it is enacted, that if a man has been convicted of felony, it shall not be necessary for the justices further to inquire into his character; but they shall not grant him a license."

To the same effect, more or less, were the observations of Archibald, J., while Lush, J., dissented. It is true that the learned Judges also construed the words of the Act and extracted from them an intention to operate retrospectively, but the principle which was laid down regarding the construction of statutes which are designed to protect the public from the activities of undesirable persons would seem to me to be applicable to the construction of the Chartered Accountants Act. This Act also is designed to protect the public from unscrupulous, negligent or dishonest Accountants. It appears to me that unless the words of the Act clearly exclude such construction, it ought to be held to apply to all cases of proved misconduct, whenever such misconduct might have been committed, because, in the words of Cockburn, C. J., if a person has been guilty of conduct, which the Act regards as misconduct before the Act and another has been guilty of the same kind of conduct after the Act had commenced, "one is equally bad as the other". I do not, however, say that even when construing Acts of this class, Courts ought to construe them against the clear intention of the language used. As I understand it, the principle is that when the limits of the Act are not clear a Court, in construing its provisions, will not consider itself bound by the presumption that an Act is intended to operate prospectively rather than retrospectively to the same extent as in the case of ordinary Acts.

19. It is, however, not necessary in the present case to rely solely on the principle I have just stated. To my mind, there is ample indication in the Act itself that it contemplates pre-Act conduct also, as being within its purview.

20. To take Section 8 of the Act first, it enumerates certain disabilities which disqualify a person from having his name entered in or borne on the Register of Chartered Accountants maintained

by the institute. The section applies to the first entry of a person's name in the Register and also to the maintenance of his name after it has been entered. Of the disqualifications, item (v) of the section deals with convictions by a competent Court and the language is "if he has been convicted". Obviously, if at the time when a person is seeking an entry of his name in the Register, he has already been convicted of an offence of the kind mentioned in item (v), such conviction will be an absolute bar against the entry of his name. This will be the case even when a person is seeking an entry of his name immediately after the commencement of the Act and the opening of the Register and, therefore, it is clear that if there can be a person who would be eligible for an entry of his name in the Institute's Register as soon as the Act came into force and if he top is to be treated as disqualified for registration, in case there was a conviction against him, such conviction can only be a pre-Act conviction. The provisions of Section 8 are to have effect "notwithstanding anything contained in Section 4". Section 4 deals with classes of persons who are entitled to have their names entered in the Institute's Register. With regard to classes enumerated under items (ii) to (vi), it is arguable that no one belonging to any of these classes would be entitled to make an application for an entry of his name in the Register immediately at the commencement of the Act, because, before they could become so eligible, the Institute would have to make certain rules or prescribe certain matters which would necessarily take some time. In the case of such persons, therefore, there will be an interval between the commencement of the Act and the time when they might apply for the registration of their names and it is arguable that item (v) of Section 8 can be given a workable construction, if it is read as contemplating convictions suffered prior to the entry of a man's name in the Register but after the commencement of the Act. But the position with regard to persons enumerated under item (1) of Section 4 is entirely different. They, as would appear from sub-sections (2) and (4) of the section are intended to have their names immediately and automatically registered after the commencement of the Act without having to make any application and without having to pay any fees. If item (v) of Section 8 applies to this class of persons as well - and it clearly does - there can be no question that the conviction which may bar a person of this class from having his name entered in the Register, must necessarily be a pre-Act conviction. This meaning of item (v) of Section 8 becomes clearer when one considers it along with the provisions of Section 20(1)(c). That section provides that "the Council may remove from the Register the name of any member of the Institute -..... (c) who is found to have been subject at the time when his name was entered in the Register, or who at any time thereafter has become subject to any of the disabilities mentioned in Section 8, or who for any other reason has ceased to be entitled to have his name borne on the Register."

Applying these two provisions to the class of persons contemplated by item (1) of Section 4, it is clear that if, after the name of any such person has been registered, it transpires that at the time when his name was so registered, he was subject to the disability of a previous conviction, which is one of the disabilities mentioned in Section 8, the Council may remove his name. The point of time by which the liability of such person's name to be removed from the Register is to be determined, is the time when his name was entered in the Register. If the disability which is contemplated as a disqualification be an existing disability, as it obviously must be, the only

meaning, of which the provision is capable, is that the conviction contemplated is a conviction suffered before the commencement of the Act. It appears to me that there can be hardly any question that in the case of convictions at least, pre-Act convictions are contemplated by the Act.

21. Dr. Pal himself did not contend to the contrary. What he submitted was that item (v) of Section 8 was an exception limited to convictions for criminal offences of specified types. The particular mention of that variety of misconduct, in language which covers pre-Act misconduct of that variety, strengthened, according to Dr. Pal, rather than weakned his case. The mention of the particular, he contended, excluded the general. To my mind, that contention is completely answered by item (vi) of the same Section 8.

22. Item (vi) of Section 8 provides that notwithstanding anything contained in Section 4, a person shall not be entitled to have his name entered in or borne on the Register if he "has been found on inquiry to have been guilty of conduct which renders him unfit to be a member of the Institute." The item uses the expression, 'conduct which renders him unfit to be a member of the Institute' which has been used throughout the Act to describe compendiously and at the same time comprehensively types of conduct which the Act regards as misconduct. It, therefore, covers all kinds of misconduct which the Act treats as constituting disqualification for membership of the Institute. Reading item (vi) of Section 8 with Section 20(1)(c), the terms of which I have already read, it will appear that if after a person's name has been entered in the Register, it is found that at the time his name was so entered, he was subject to the disability mentioned in item (vi) of Section 8, the Council may remove his name. It is true that the condition which is described in item (vi) of Section 8 and, in fact, in all the items of the section, is described as a disability, both by Section 20(1)(c) and Section 8, itself. There may, therefore, be some question as to whether the disability contemplated by item (vi) is a disability, arising at the conclusion of an enquiry and resulting from an adverse finding therein, so that mere conduct or suspicion of conduct of a certain kind does not constitute the disability, but it is necessary that there should first be an enquiry and a finding. It appears to me that such meaning of the item will not work, because if the item is to be construed in that sense, it cannot possibly apply to any conceivable case coming within the first part of Section 20(1)(c). The first part of Section 20(1)(c) speaks of a person who is found to have been subject, at the time when his name was entered in the Register, to any of the disabilities mentioned in Section 8 and, therefore, also subject to the disability mentioned in item (vi) of the section. For judging whether the meaning I have just indicated will work, it is immaterial whether a person's name is entered immediately at the commencement of the Act or some time later. If the disability must be one to which the person concerned was subject at the time his name was entered in the Register, it is obvious that before his name was so registered, there could not have been an enquiry and a finding, because if there was an enquiry and an adverse finding, the person's name would not be entered in the Register at all. The plain meaning of item (vi), to my mind, is that what it contemplates is only that the person concerned should have been guilty of conduct which renders him unfit to be a member of the Institute, irrespective of when the conduct is discovered and when the person concerned had been guilty of it. The Act,

it ought to be remembered, is speaking of disqualifications which disentitle an Accountant from being borne on the Register of the Institute and from practicing as an Accountant. Item (vi) does not contain any limitation as to the time when the conduct should take place, nor does it lay down any time for the holding of the enquiry or the discovery of the disability. It appears to me that having regard particularly to the first part of Section 20(1)(c), read with item (vi) of Section 8 which covers all varieties of misconduct, the conclusion is inescapable that the Act is not limited to post-Act conduct alone, but embraces within its purview misconduct committed whether before or after the Act, provided the person concerned is found to have been guilty of it. It does not, therefore, appear to me to be material that the respondent signed the impugned Profit and Loss Account in May, 1947 and the date when he did so will not exclude the operation of the Act against him. In the end Dr. Pal conceded that he realized that these were difficulties in the way of accepting his contention.

23. Coming now to the merits of the case, Dr. Pal made it clear to us that he did not wish to contend for the purposes of this case that the Profit and Loss Account had been prepared in accordance with either Section 132(3), Indian Companies Act or Regulation 107 of Table 'A'. His sole contention would be, he submitted, that even assuming that the Profit and Loss Account had not been prepared in accordance with the directions contained in the Companies Act, as truly construed, still, his client could not be held to have been guilty of misconduct, because he had acted according to an honest understanding of the Act and an honest interpretation of the agreement, in aid of which he had drawn upon the legal opinion obtained by his firm and a practice well and firmly established in the profession. We were reminded that the respondent had been charged with professional misconduct and our attention was drawn to Section 145(2), Indian Companies Act which stated the duties of the Auditors to be to report, inter alia, to the members as to whether or not, in their opinion, the balance-sheet and the Profit and Loss Account had been drawn up in conformity with the law. Dr. Pal contended that if an Auditor *bona fide* formed an opinion, acting honestly and with reasonable care, he could not be held to have been guilty of professional misconduct, even though his opinion might be found to have been mistaken on a true construction of the Act or the accounts.

24. Before proceeding further, it might be useful to examine the charges laid against the respondent a litle closely and see what they mean. Item (o) of the Schedule is

> "fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary to make the financial statement not misleading." The language of item (p) is as follows :
> "fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity."

It will be noticed that in neither of these provisions is the misconduct expressed in terms of the Indian Companies Act. They are general and the provisions of the Companies Act are relevant only if they make some fact material for correct accounts or if they make some statement a

misstatement. As regards item (o), it appears to me, in the facts of the present case, that when it is said that the financial statement was rendered misleading, it was not alleged that the ultimate financial position of the company was misrepresented in the sense of the profit or loss or the funds in hand having been shown as greater or less than they actually were. The financial statement, that is to say, the Profit and Loss Account, was said to be misleading, because it did not give correct information as to how much had been paid to the Managing Agents as their commission and, therefore did not inform the shareholders how much their Managing Agents had been costing them. The 'material fact' appears to me to be the payment of the selling commission. It was material, because it was important for shareholders to know what was being paid to the Managing Agents by way of their remuneration so that they might see if the Managing Agency was costing too much and if the company was carrying too heavy a load. It was also material, because Section 132(3) regards the disclosure of the remuneration, provided it is remuneration contemplated by the sub-section, to be material. Translated into terms of the facts of the case, the charge under item (o) would mean that the respondent failed to disclose the payment of the selling commission which was a material fact and which had not been disclosed in the Profit and Loss Account, but disclosure of which was necessary so that the Profit and Loss Account might not mislead the shareholders by making it appear that the Managing Agents had received a small payment than had actually been made to them. Similarly translated into the concrete facts of the case, the charge under item (p) would mean that the respondent failed to report the misstatement in the Profit and Loss Account regarding the gross income, such misstatement being an understatement of the real gross income, caused by a prior deduction of the selling commission in the trading account which was not made known to the shareholders. It was also a misstatement regarding the quantum of the expenses incurred, since the amount was not shown as an item of expenditure at all and had the effect of stating wrongly to the shareholders that the sales had been merely what had been shown in the Profit and Loss Account and not the amount shown there plus the amount of the selling commission, paid out from the receipts. Even if the figure stood for good profit, it was misleading.

25. Since Dr. Pal did not make the extreme case that the Act and the Regulation had been correctly construed by the respondent, but he was willing to proceed on the assumption that his client had construed them wrongly, we are relieved of the task of deciding what Section 132(3) and Regulation 107 of Table 'A' really mean. The only issue raised is the issue of the *bona fide*s of the respondent and his having acted on his own honest understanding of the agreement and the law.

26. Even in that respect, I feel bound to observe that the account which the respondent gave himself was not the best. His written statement, as already pointed out, was supplemented by a written argument and the latter to a very large extent threw the former overboard. I leave aside the criticism made by some of the members of the Disciplinary Committee that even the reference to the legal opinion of 1937, contained in the written statement was disingenuous and misleading, because it appeared to be intended to create the impression that the Auditors had

obtained legal advice for the purposes of the present Profit and Loss Account. Even leaving that aside, it is clear that, ultimately, the respondent chose not to rely upon the legal opinion of 1937, as it was, but to contend that he had interpreted it on his own account and applied his own interpretation to the facts of the case. The legal opinion of 1937 which had been given by the Solicitors of Messrs. Lovelock and Lewes to Messrs. Andrew Yule and Co. Ltd., another client of theirs, stated that in a case where Managing Agents were separately appointed by means of a separate agreement or arrangement to hold another office under the company e.g., selling agents, the remuneration payable to them in respect of the latter capacity was not their remuneration for their services as Managing Agents and consequently it was not required to be disclosed under Section 132(3) of the Act. The respondent took it upon himself to say that, in that passage Messrs. Orr, Dignam and Co., had merely stated that where there was a separate agreement, the matter was beyond all doubt, but it did not mean that in order to take remuneration paid for services rendered in another capacity outside remuneration paid to Managing Agents, as such, a separate agreement was essential. This view the respondent claimed to have formed on his own account, although he protested repeatedly before the Committee that he was only a Chartered Accountant and not a lawyer. Be that as it may, the legal opinion on which the respondent relied would put any one on enquiry as to whether the separate agreement referred to in it could be an agreement contained in the same document as embodied in the Managing Agency Agreement or whether it would have to be an agreement by a separate deed. That question also the respondent answered for himself and he appears to have concluded that a separate deed was not essential. The last portion of the fourth paragraph of the opinion he ignored altogether. There, the Solicitors said that if the Managing Agents were paid a commission on sales or, as the case might be, as remuneration, not for acting in some other capacity but for their services as Managing Agents, particulars of that remuneration would have to be disclosed. That passage would indicate clearly to any one that whereas Managing Agents could hold office as selling agents under a separate agreement when there was such an agreement, it was equally possible that one of the terms of their appointment as Managing Agents might be that they would have to be given the selling agency and would be selling agents. Indeed, when legal opinion was again sought in 1953 - and the present agreement appears to have then been submitted to the Solicitors - they said that, in this particular case, it could be argued that since the selling agency commission was provided for in the Managing Agency Agreement, it was to some extent an adjunct to the office of Managing Agents and attributable to the holding of that office. The respondent, while claiming to have acted on the legal opinion seems to have acted on the legal opinion seems to have not only ignored the opinion but even rejected it, for he never considered the possibility that the holding of the Selling Agency might be in a particular case one of the terms of the Managing Agency Agreement.

27. We are not considering here whether the legal advisers of Messrs. Lovelock and Lewes were right in the construction they put upon Section 132(3), Companies Act. In fact, they were extremely guarded in their opinion and did not put forward any construction in a dogmatic manner at all. However, the question of the true construction of Section 132(3) has, in view of

the turn which the case has taken, become immaterial. The only question is whether, in construing it for himself and applying his construction to the agreement, the respondent acted *bona fide* and reasonably.

28. I have already referred to the respondent's attempt at construing the section. Proceeding now to his construction of the Agreement, it will be remembered that the advice given by the Solicitors in 1937 was of a general character. It was concerned only with the construction of Section 132 (3) and was not given in relation to any Managing Agency Agreement. But since, even as an opinion of the construction of the section, it stated that remuneration paid to Managing Agents for their services in a capacity of Managing Agents would not be Managing Agency remuneration under the section, if there was a separate agreement, and since it also envisaged the possibility that a commission on sales might be included in the Managing Agency remuneration, if the holding of a selling agency was a part of the Managing Agency Agreement, it was sufficient to pay any one on enquiry as to what the true character of the Agreement in the present case was. A person, conscious that he was only an Auditor and not a lawyer, as the respondent asserted of himself, might be expected, upon a perusal of the legal opinion, to think of submitting the Managing Agency Agreement to the legal advisers in order to obtain their opinion as to whether it contained any separate agreement regarding the selling agency or whether the agreement for holding the selling agency was a part of the Managing Agency Agreement. The respondent, however, did not feel the necessity of obtaining any opinion on the Agreement, but proceeded to construe it himself. I do not think that much turns on the circumstance that the Circular Letter issued in 1946 stated that the appointment of the Managing Agents under the proposed Agreement would be on exactly the same terms as to remuneration as they had been then receiving, because as Mr. Nargolwala correctly points out there is nothing to show that, at the time he signed the Profits and Loss Account, the respondent was aware of the Circular Letter, Another reason why no argument against the respondent can be drawn from the Circular Letter appears to me to be that the special resolution passed at the Extraordinary General Meeting, called for the purpose might not have authorized an agreement in precisely the same terms as proposed in the Circular. There is nothing to show how the special resolution was expressed. At the same time, it appears to me that the respondent's point that the provision regarding the selling commission was not linked in the Agreement with the preceding provisions by a letter of the alphabet, appears to me to be wholly without substance. In any event, before concluding that the provision contained in the third sub-paragraph of para 3 of the Agreement was an independent provision, a person doing his duty with ordinary care might be expected to advert to the terms of para 1 of the Agreement. There it is stated that the company appoints the Managing Agents "upon the terms and conditions hereinafter expressed"; and the language of the third sub-paragraph of para 3 is that "the Managing Agents shall also receive commission" etc. Prima facie at least, it would strike anyone that the term or condition embodied in the third sub-paragraph of para 3 was also one of the terms and conditions upon which, according to para 1, the Managing Agents were being appointed. How the respondent resolved the conflict between para 1 and the third sub-paragraph of para 3, if his construction of it was correct, he did not say.

He was asked whether he had not thought it necessary to refer to the Directors for an explanation of or information about the accounts. His reply was strange. It was given in the course of the oral evidence, but can be more conveniently shown from the written argument. "The Directors of the Company", he said,

> "especially the then Directors of the Company, apart from having to interpret the agreement, were responsible for arranging the terms thereof, and they above anyone else would know whether the commission on sales was intended as remuneration for services as Managing Agents or for services as Selling Agents. In the accounts prepared and signed by the Directors the commission on sales is not shown as Managing Agents' remuneration which clearly shows that the Directors considered this to have been paid for services rendered other than as Managing Agents."

29. The above amounts to saying that it would be superfluous to refer to the Directors, because their view of the Agreement was reflected in the manner in which they had presented the accounts and since they were the persons who had arranged the terms of the Agreement, they would know best what the Agreement meant. In putting forward that defense, the respondent appears to me to have said that because the Directors did not show the selling commission as a part of the Managing Agency remuneration, he concluded that the Agreement treated the selling agency agreement as a separate one and because the Directors were one of the immediately contracting parties, he thought he was entitled to accept their interpretation of the Agreement as evidenced by the manner in which they had presented the accounts. It appears to me that no Auditor can take up an attitude of that kind without repudiating his statutory responsibility as an Auditor. An Auditor is placed by the shareholders to look into the accounts of a company and to report to them what the true condition of its affairs is and whether that condition is correctly reflected in the accounts published. If he is merely to accept whatever the Directors say as final, his appointment as Auditor serves no purpose at all. The respondent appears to have forgotten that Section 145(2) of the Companies Act entitled and indeed required him to obtain information and explanations from the Directors of a company. If he found that the accounts presented by the Directors showed that, in their view, the selling agency commission was paid to the Managing Agents as a separate remuneration for a separate office, he might be expected to ask the Directors to explain to him how they reconciled that view of the selling commission with para 1 of the Agreement. The respondent, if he knew his duties and knew the Companies Act, might also have asked himself why, if the selling agency commission was a separate remuneration for a separate office, a special resolution should have been required for the purpose of sanctioning its payment and whether the passing of a special resolution did not suggest that the selling commission was also a part of the Managing Agency remuneration and, therefore, required a special resolution under Section 87C(2), Companies Act. It is not necessary to multiply the points on which any Auditor, acting with reasonable care, would have asked for information and explanations and would have sought legal opinion, since they were outside his special province of accountancy. It appears to me that the conclusion of Mr. Nargolwala that the respondent had betrayed negligence

in the performance of his duties with regard to satisfying himself that Section 132(3) of the Companies Act had been complied with is inescapable.

30. The other charge relates to an alleged violation of Reg. 107 of Table 'A' which is a compulsory Regulation for all public limited companies. With regard to that charge also, the respondent relied upon a legal opinion, another one given by the same Solicitors in the same year, that is 1937. Really speaking, the opinion relied on is no independent opinion at all, because the Solicitors merely referred to the view generally accepted amongst Accountants and said that in the absence of any judicial authority to the contrary, it was not unreasonable to suppose that the interpretation which the Accountants had placed on the Regulation should be accepted. Having said that so much, the Solicitors guarded themselves by saying that they could not give any assurance as regards what interpretation would be put upon the expression 'gross income', if the matter was contested in Courts. There is clearly nothing in that legal opinion on which one could rely and the reliance which the respondent placed was really upon the view accepted and acted on by his own interpretation. In fact, he refers also to the practice which, according to him, had already been in vogue for over eighteen years when he signed the impugned Profit and Loss Account. The view accepted and acted on by the Accountants is said to be that the expression 'gross income' in Regulation 107 is synonymous with 'gross profit'. It is not perhaps without significance that the respondent has nothing to say as regards the propriety of the procedure of deducting the selling commission from the receipts from the sales behind the screen, as it were, and presenting only the resultant figure in the published accounts, as if that presented the real receipts from the sales and as if no expenditure had been incurred or made. If, as the respondent appears to have contended, 'gross income' means 'gross profit' and therefore the resultant figure shown was only the profit and not the income, then a question arises as to what the term 'gross profit' itself means. If it means nothing more than the balance of the trading account, then it is not intelligible why, as Mr. Nargolwala pertinently asks, the Profit and Loss Account should have shown on the left-hand side the Managers' commission and the Madras expenses. According to the authoritative definition of 'gross profit' current among Accountants, the term means

> "the excess of the sales (less returns) over the cost of the goods sold including the expenses directly attributable to putting the goods in a saleable condition."

It is clear that the expenses which can be deducted, in addition to the cost of the goods, from the receipts from sales do not, according to this definition, include selling commission, because the expense on account of such commission is not attributable to putting the goods in a saleable condition. The whole complaint as regards the violation of Regulation 107 is that the amount paid to the Managing Agents under that head was concealed altogether from the view of the shareholders. If it had been shown as an item of expenses on the expenditure side, then the figure shown as profit on trading, exclusive of the selling commission, would not amount to a misstatement. But as the Profit and Loss Account stands, the amount paid as selling commission

appears nowhere, neither as a part of the Managing Agency remuneration, nor as an item of expenditure, and, therefore, the shareholders are kept altogether from the knowledge of the fact that the amount paid as selling commission was also a part of the amount received from the sales and that what is shown as profit on trading, is an amount arrived at after deducting the amount of the commission. The impression created by the Profit and Loss Account is that the amount shown there as profit on trading is the whole amount of the receipt from sales. Dr. Pal contended that the reason why the selling commission did not appear in the accounts at all, was that the receipt was a receipt from the agents of the company and, therefore, what the agents had deducted as commission due to themselves would not find place in the account of the principal. This argument was not advanced by the respondent himself and I do not see where it leads to. One can understand it being said that the business of selling in the branch offices run by the Managing Agents themselves, was solely their concern and the company was concerned with only the total amount that came into its hands from the Managing Agents as payments on account of the goods sold through the agencies. In such a case, there would be no expenditure at all incurred by the company and one could understand the selling commission or any expenditure at all not being shown in the Company's accounts. In the present case, however, quite inconsistently, some expenditure has been shown on the left-hand side and it is nobody's case, not even the respondent's, that the company was concerned only with the lump amount handed over by the Managing Agents to the company, as principal, as the company's share of the profits earned in the branches kept by the Managing Agents.

31. The most extraordinary statement made by the respondent in connection with the charge under Regulation 107 is that apart altogether from whether the accounts did in fact conform to the requirements of the Regulation, since he had established that the selling commission need not be disclosed as Managing Agents' remuneration, "the failure to disclose the selling commission is not failure to disclose a material fact which is necessary to make the statement not misleading." The respondent suggests that payment of the selling commission would be a material fact if only it was payable as a Managing Agency remuneration, but not otherwise and if the commission was not a part of the Managing Agency remuneration, which he thought he had established, its disclosure was not called for. The respondent was perhaps able to make that statement, because he did not know or had forgotten the opening words of Regulation 107 which are to the effect that the items of information enumerated in the Regulation are to be shown in the Profit and Loss Account "in addition to the matters referred to in sub-section (3) of Section 132, Indian Companies Act." The fact that a commission is not a part of the Managing Agents' remuneration and is not consequently liable to be shown under Section 132 (3). of the Act, does not establish that it need not be shown under the directions contained in Regulation 107. Indeed, the Regulation is supplementary to the section and requires some additional information to be given. I am not concerned here, as I might recall, with the true construction of Regulation 107 any more than the true construction of Section 132(3), but it is necessary to point out the facts I have adverted to in order to judge whether the claim of a *bona fide* exercise of reasonable care put forward by the respondent is established. The last contention of the respondent that even if the

amounts paid as selling commission were shown, it would have been shown as a part of the selling expenses and, therefore, the shareholders would get no information as to how much it was by itself, seems to me to be equally without substance. The whole complaint against the Profit and Loss Account in this regard is that by suppressing the payment of the selling commission, it understates the gross income and omits to state an item of expenditure. Even if the payment of the commission was to be included in the selling expenses, the shareholders would know what the total expenditure had been and would, therefore, get a true picture of the real position of the company in regard to the expenses incurred. As Mr. Nargolwala points out, under Regulation 107, the selling commission was liable to be disclosed either separately or at least as a part of the selling expenses, if the clear words of the Regulation were not to be disregarded. I am not, however, proceeding on the contraction of the words of the Regulation, but on the manner in which the respondent, on his own showing handled and dealt with the matter.

32. The broad and simple position with regard to this Profit and Loss Account appears to me to have been that the payment of the selling commission was completely blacked out. One could not see it, either as a part of the Managing Agency remuneration, or as an item of expenditure on the sales or as a part of the receipts from the sales. The respondent's case as regards the omission on his part to make any report regarding the payment of this commission has already been stated. Mr. Meyer contended that in the facts proved in the case, both the charges had been amply established. His submission was that for the purpose of seeing whether a charge of misconduct had been established or not, all that it was necessary to see was whether conduct of the types specified had in fact taken place. If it had taken place, misconduct was established. The question of *bona fide*s would, according to Mr. Meyer, be relevant only in considering whether any action should or should not be taken. In that view, Mr. Meyer contended that if the payment of the selling commission was a material fact in this case and if that fact was known to the respondent and if the omission of that fact from the Profit and Loss Account was to make the account misleading, and if the respondent had failed to disclose that fact in his report to the shareholders, misconduct on his part would be established. Similarly, if the statement that the profit on trading in the relevant year was after charging factories and agencies salaries, Rs. 7,83,010/-, was a misstatement in view of the fact a sum of Rs. 35,400/- had been previously deducted and if the respondent, knowing of the deduction, had yet not reported the misstatement, misconduct on his part would be, even without more, equally established.

33. I do not, however, think that the extreme contention of Mr. Meyer can be accepted. Professional misconduct on the part of the person exercising one of the technical professions cannot fairly or reasonably be found, merely on a finding of a bare non-performance of a duty or some default in performing it. The charge is not one of inefficiency, but of misconduct and in an allegation of misconduct, an imputation of a certain mental condition is always involved. I think, it would be impossible for any professional man to exercise his profession if he was to be held guilty of misconduct simply because he had not, in a given case, been able to do all that was required in the circumstances or that had misconceived his duty or failed to perform a part of it. I

think the test must always be whether in addition to the failure to do the duty, partial or entire, which had happened, there had also been a failure to act honestly and reasonably.

34. Judging by that test, I am unable to hold that the respondent acted in this case with reasonable care. The difficulty, however, is that he has been charged only under items (o) and (p) of the Schedule, but has not been charged under item (q) which is concerned with 'gross negligence' in the conduct of professional duties. Even apart from negligence, there might have been a ground for proceeding against the respondent if it could be established against him that he had been a willing party to or at least had connived at the concealment of the payment of the selling commission by the Directors. On that point again, there is the difficulty that the complainant withdrew the allegation that the respondent had acted with a desire to accommodate the Managing Agency and the Directors in regard to their concealing the payment of the commission. Speaking for myself, I am inclined to think that in a case of professional misconduct charged against an Accountant or a lawyer, the fact that the complainant withdraws a particular allegation cannot always be decisive or a reason for not pursuing an enquiry, for the object of such proceedings is to test the fitness of the person concerned, in the public interest, to exercise his profession. The fact, however, remains in the present case that not only was the allegation withdrawn but there has also been no further enquiry and, therefore, we have no right to assume that what was alleged against the respondent actually happened. It is in view of the nature of the charges framed that we find it difficult to take any action in the matter. Mr. Meyer himself frankly conceded that since the allegation of deliberate accommodation of the Directors and the Managing Agents in the matter of concealing the payment of the selling commission had been withdrawn, it was difficult to establish that, nevertheless, the respondent had failed to disclose a material fact known to him or to report on a misstatement similarly known. For what purpose and for what reason he would fail to disclose the fact in one case and report it in the other is not intelligible, if he appreciated the fact to be material and appreciated the statement to be a misstatement, inasmuch as there is no longer any allegation or willful participation in the concealment or connivance at it. All that can be said on the facts proved is that he failed to take normal and reasonable care in informing himself of the true position under Section 132(3) and Regulation 107 in relation to the Agreement and the Profit and Loss Account as drawn up. The position, therefore, seems to be that in view of the absence of any charge of negligence and the withdrawal of the particular allegation, it is not possible to hold that the charges actually framed had been established, although, as I have found, the respondent does not appear to me to have acted with reasonable care.

35. Our difficulty in dealing with this reference is increased by the fact that the opinion of the majority of the Disciplinary Committee was in favor of the respondent, whereas the opinion of the Council is against him. The Council has given no reasons in support of its opinion. Where the Council accepts the opinion of the Disciplinary Committee, the reasons for their opinion can be ascertained from the report which the Committee makes to the Council, but where the conclusion of the Council is the complete opposite of the conclusion of the Disciplinary Committee, this

Court is placed at a disadvantage, unless it is informed of the reasons which weighed with the Council in coming to a contrary conclusion. I should desire to point out that should it happen in the future that the Council is unable to accept the view of the Disciplinary Committee and comes to a different conclusion, it ought, when forwarding its opinion to this Court, to give its own reasons for taking a different view.

36. For the reasons given above, we must hold that in spite of the evidence of negligence and imprudence in acting on his own responsibility to matters beyond his province and certifying the Profits and Loss Account without obtaining any explanation from the Directors which was obviously called for in view of the terms of the Agreement and of the difficulty of reconciling the entries in the account with even his own view of the meaning of 'gross income', the particular charges laid against the respondent not been established against him. No orders on the Reference are, therefore, necessary and there will be no order for costs.

Sarkar, J.

37. I agree.

Order accordingly.