Argument day 3
1/8/72

" A "

THE BANKRUPTCY ACTS, 1914 and 1926.

IN THE WAKEFIELD COUNTY COURT.
IN BANKRUPTCY. No. 1 of 1972.

RE: JOHN GARLICK LLEWELLYN POULSON.
RESUMED PUBLIC EXAMINATION OF THE DEBTOR.

Before MR. REGISTRAR GARSIDE

at the Court

this 1st day of August, 1972.

PRESENT:

FOR THE OFFICIAL RECEIVER:	MR. H. BENNETT, Q.C. MR. A. LODGE.
FOR THE ATTORNEY GENERAL:	MR. G. COLES.
FOR THE TRUSTEE:	MR. MUIR HUNTER, Q.C. MR. D. GRAHAM. MR. CRYSTAL.
FOR THE DEBTOR:	MR. L. SAFFMAN.

The above-named debtor, being sworn and examined at the time and place above mentioned, upon the several questions following being put and propounded to him, gave the several answers thereto respectively following each question, that is to say :

MR. MUIR HUNTER: This is the adjourned hearing of the Public Examination of Mr. Poulson, whom I was examining when he was taken ill on the 3rd July. I propose, subject to any order the Court may make, to pick up the examination at the point at which Mr. Poulson fainted when he was being asked about his transactions with Mr. Dan Smith.

Since that incident, the Court has, of course, heard four private examinations relating to this matter, some of which are adjourned.

THE REGISTRAR: Yes.

MR. MUIR HUNTER: On Friday of last week, my chambers and my instructing solicitors were appraised of two applications which were to be made today, one by my friend Mr. Saffman, Mr. Poulson's solicitor, for an indefinite adjournment of the examination, as I understand, on the ground of a police investigation, of which, of course, I knew nothing about. Secondly, by Her Majesty's Government in what is now the several capacities of the Secretary of State for the Department of Trade and Industry, represented by my friend Mr. Bennett, leading Mr. Lodge, and by the Attorney General,

These are the Notes of the Public Examination, referred to in the Memorandum of Public Examination, of ..... taken before me this ..... day of ..... 1972.

Registrar.

represented by my friend Mr. Coles, who also desire an indefinite adjournment on grounds which I have so far failed sufficiently to understand. But in either case, it is intended that this examination, which has been on foot for one and a half days already, should be indefinitely adjourned to some indefinable date, notwithstanding the provisions of the Act, and therefore it is for your Honour to say which of those applications should best be taken first. Neither of them, I understand, are in writing.

THE REGISTRAR: I think I had better hear Mr. Saffman first.

MR. SAFFMAN: I am obliged, sir. May it please the Court; before I make my application, you will recollect that at the last hearing, Mr. Poulson having been taken ill, I gave an undertaking that I would obtain and file a medical certificate relating to what happened on that date. I have, in fact, a medical certificate from a Doctor M.W.D. Hessel of Pontefract, which is dated 25th July, 1972, which reads : "This patient was examined by me on the 23rd July, 1972, and in my opinion is now fit to resume the court hearing. He has diverticular disease of the colon which has been recently active and may continue to be so, especially in times of stress. This may present as an urgent call to stool with looseness and frequency of bowel movement. The recent collapse in court was probably due to the sudden increased mental stress when a number of further written questions were presented to him at short notice". That is signed "Dr. M.W.D. Hessel". I put that in only with the comment that the last paragraph is obviously inaccurate in so far as it refers to further written questions, but you will be aware, sir, as was said at the last hearing, that the debtor was asked detailed questions about a schedule which had been presented to him immediately prior to the examination continuing. I will put in that certificate.

So far as the application this morning is concerned, it is, of course, an application to adjourn the Public Examination of the debtor which is taking place at the moment under s.15 of the Bankruptcy Act, 1914, and if I may deal first with your power to adjourn, s.15(3) of that Act says, "The Court may adjourn the examination from time to time. The meaning of that section was examined in detail in a case of In re Von Dembinska reported in 1954 2 All England Reports at page 46.

THE REGISTRAR: Could I have that case again?

MR. SAFFMAN: Von Dembinska; 1954, vol. 2 of the All England Law Reports at page 46.

THE REGISTRAR: Will you be referring to it in detail.

MR. SAFFMAN: No, sir, very shortly. It is sufficient, I think, to read the headnote. It was a decision of the Court of Appeal, consisting of the Master of the Rolls, Sir Raymond Evershed, and Lord Justices Birkett and Roma, and in that case, where a registrar had made an order adjourning the public examination generally with liberty to apply to restore, and subsequently, there being no application to restore, there was an adjudication. It was held: "The power to adjourn a public examination from time to time under s.15(3) of the Act of 1914 was not confined to adjourning from one specific date to another specific date, but was a power to adjourn for such

periods of time, or generally, as the court might think most convenient. The adjournment made by the order in that case was an adjournment from time to time within the sub-section, and was not an adjournment sine die within the meaning of the Bankruptcy Rules, 1952, rule 192, which was of a penal character, and therefore the order was validly made". So that it is clear, in my respectful submission, that the Court has power to grant this application, if it sees fit to do so, by ordering a general adjournment, an indefinite adjournment, with liberty to apply.

You will doubtless be aware, sir, that on the 18th July, 1972, there was an announcement by the Prime Minister in the House of Commons that as a result of disclosures made in the Public Examination of the debtor in this case which had at that time taken place, which had been considered by the Government together with a report from the Official Receiver, that the City of London Metropolitan Fraud Squad had been instructed to carry out an investigation. It was not made clear what was to be investigated, and, indeed, if I may respectfully say so, the announcement by the Prime Minister was couched in the vaguest of terms, but it is clear that it must be a criminal investigation, and it is clear that it must be an investigation which involves not only the debtor, but other people, even though at the present time, whether or not it is the intention to prefer charges, and against whom such charges may be preferred - if any charges are preferred at all - is not known.

The fact that the making of charges has been considered is, in my submission, confirmed negatively by the decision of the Government not to use their alternative powers of ordering a tribunal of inquiry, in which case all witnesses would have had immunity from prosecution. So it is clearly not a matter where what is to be established is the facts, but there is to be an investigation with a view to criminal charges being brought.

I would assume that it is a matter of common ground that the liability of the debtor to answer questions, even though the answers which he gives are incriminating and that he is not entitled to refuse to answer such questions, is clear under s.15(8) of the Bankruptcy Act, 1914: "The debtor shall be examined upon oath and it shall be his duty to answer all such questions as the court may put, or allow to be put, to him."

The matter is dealt with in the case of In re Padgett, which is reported in 1927 2 Ch. at page 85 - again, a decision of the Court of Appeal.

MR. MUIR HUNTER: We have a set of reports that we shall be referring to, but I believe your Honour also has a law library in this court.

THE REGISTRAR: Yes, that is true.

MR. MUIR HUNTER: If there are any which need to be sent for, perhaps we can do that.

THE REGISTRAR: I do not think so - not at this stage, at any rate.

MR. SAFFMAN: And it is sufficient in referring to that case again to read the headnote :

> " The object of the public examination of a debtor under s. 15 of the Bankruptcy Act, 1914, is not merely to obtain a full and complete disclosure of his assets and the facts relating to the bankruptcy in the interests of his creditors, but is also for the protection of the public. A debtor, therefore, is not entitled to refuse to answer questions put to him at his public examination on the ground that by so doing he may incriminate himself."

In that case, the Master of the Rolls (Lord Hamworth) at page 88 referred to s. 73 of the Bankruptcy Act, 1914, where it was provided that "as regards the debtor, it shall be the duty of the Official Receiver to investigate the conduct of the debtor and to report to the court, stating whether there is reason to believe that the debtor has committed any act which constitutes a misdemeanour under this act o any enactment repealed by this act, or which would justify the court in refusing, suspending or qualifying an order for his discharge". "(b) to make such other reports concerning the conduct of the debtor as the Board of Trade may direct. (c) to take such part as may be directed by the Board of Trade in the public examination of the debtor; (d) to take such part and to give such assistance in relation to the prosecution of any fraudulent debtor as the Board of Trade may direct." "It is plain from an examination of that section that the duty of the Official Receiver is a wide one and is to be exercised in the interests of the public".

He then goes on to say at the bottom of the page: "It has been laid down by Mr. Justice Phillimore in re Atherton" which I shall refer to separately, sir, "and I agree with his decision that in the course of the public examination of a debtor, the debtor is not entitled to refuse to answer questions put to him on the ground that the answers thereto may incriminate him, the purpose of the act being to secure a full ahd complete examination and disclosure of the facts relating to bankruptcy in the interests of the public and not merely in the interests of those who are the creditors of the debtor."

As I have just said, sir, Lord Hamworth in that case agreed the decision of Mr. Justice Phillimore in In re Atherton which is reported in 1912 2 K.B. p.251. Atherton was a case where, according to the headnote, "A debtor who is in custody or under remand on a legal charge is bound at his public examination in bankruptcy to answer all such questions touching his conduct, dealings and property that the court may put or allow to be put to him even though the answers may incriminate him, and the scope of the inquiry is not limited .." - in this case, it refers to s.17 and 69 of the Bankruptcy Act, 1883, but the provisions are substantially repeated in the Bankruptcy Act, 1914 - "to offences under s.11 of the Debtors' Act, 1869, or in connection with his bankruptcy, but extends to all matters which the court may take into consideration under s.8 of the Bankruptcy Act, 1890, on the application for his discharge. The usual practice of not pressing such questions in relation to the alleged offence while a criminal charge is hanging over the debtor, but of adjourning the public examination until after the trial is only a rule of convenience".

Now, of course, my learned friend, Mr. Hunter, in opposing this application, will doubtless say "what charge", or "what charges", but as I have already indicated, while neither I nor anybody else is in a position to say what charge or charges may be brought, it is clear that the view must be taken that there is, to say the least, a strong likelihood of charges being brought, and such charges must of necessity involve the debtor, since they will be charges arising out of an investigation of his affairs, whether, in fact, he is charged or not.

If I may refer you, sir, to p.255 of that report at the middle of the page:

> " The point" - that is as to whether or not the debtor can refuse to answer any questions incriminating him - "was very properly raised by the Registrar and referred to me, because the practice in London has been, where a debtor is in custody or under remand on a criminal charge, not to press such questions while the charge is hanging over the bankrupt, but to adjourn the public examination until after the trial, but such a rule may, as has been pointed out, lead to mischief where it might be necessary to examine at once in order to trace assets which might be lost if prompt measures were not taken. It is, anyhow, only a rule of convenience and tenderness, and though I hope it will be followed generally both in London and in the country, there may be occasions where it will be desirable not to follow it. Such an occasion would occur where the bankrupt is likely to be extradited or to be handed over to colonial authorities under the Fugitive Offenders' Act. In such a case, the bankrupt might leave the country and perhaps not come within the jurisdiction again. There it would be the duty of the Official Receiver to examine him before he leaves the country."

There are two comments which I would like to make on that, and that is, first of all, that whilst the learned judge in that case refers to a debtor in custody or under remand on a criminal charge, it is my respectful submission that it could also apply, and that the learned judge would have indicated that it would apply, in a case as unusual as this where it is announced that criminal investigations are to be made into unnamed matters. And, secondly, he goes on to say that it is a rule which he hoped would be followed generally both in London and in the country, and the examples he gives where it would be desirable not to follow it is where the bankrupt is likely to leave the jurisdiction and consequently be subsequently incapable of examination. I do not think that there is any suggestion in this case that this is likely to happen.

THE REGISTRAR: Mr. Justice Phillimore, as he then was, contemplates a case where it might be expedient to continue with the public examination where it is necessary to trace assets.

MR. SAFFMAN: That is true, sir, to trace assets which might be lost if prompt measures were not taken, but I shall be coming later to whether or not a public examination is the only way in which assets can be traced.

If I may now go back to the case of Padgett which I quoted, 1927 2 Ch., and refer you, sir, to the bottom of page 88 as I have done before, as to the duties of the Official Receiver, it is my submission that in this case, since the

criminal investigation is into the conduct of the debtor and an enquiry as to whether or not he should be prosecuted for any fraudulent act, that the duties of the Official Receiver in this matter are being taken over from him by the police. In those circumstances --

THE REGISTRAR: I do not think you can quite say that, Mr. Saffman. The Official Receiver has a statutory duty.

MR. SAFFMAN: May I put it this way, sir, that the duties of the Official Receiver are being carried out for him by the police.

THE REGISTRAR: No; surely the police enquiry is far more wide-ranging than the Official Receiver's enquiry.

MR. SAFFMAN: The greater must include the lesser, sir.

MR. MUIR HUNTER: I think as a matter of law, your Honour, I might be allowed to remind my learned friend that since the decision in the Commissioner of Customs and Excise against Harts in the House of Lords, the police have not, except where conferred by statute, any power of compulsory examination of a witness, which we have.

MR. BENNETT: Any suggestion that the duties of the Official Receiver have been taken over in any way by the police is firmly rejected on behalf of the Official Receiver.

MR. SAFFMAN: I am, of course, sir, fully aware of the decision in The Commissioners of Customs and Excise -v- Harts, which related, in fact, to statements made under the Purchase Tax Acts. I accept what is said by my learned friend Mr. Bennett and I apologise for phrasing it wrongly. What I intended to say, and phrased wrongly, is that if this adjournment is granted because there is a police investigation, the duties of the Official Receiver are not prejudiced because, of course, the public examination is for two purposes; it is both for the protection of the public by an enquiry into the debtor's conduct, and also an investigation as to his dealings, affairs and assets.

So far as the point that my learned friend Mr. Hunter made is concerned, that on the basis of the Harts case the police have no compulsory powers to take statements which the Trustee in Bankruptcy and the Official Receiver have, may I point out, with the greatest respect, that there he is not, in my respectful submission, strictly accurate, because in addition to the public examination under s.15 of the Bankruptcy Act, there is also the right under s.25 of the Bankruptcy Act. Section 25(1) reads:

> " The court may, on the application of the Official Receiver or Trustee, at any time after a Receiving Order has been made against a debtor, summon before it the debtor, or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the court may deem capable of giving information respecting the debtor, his dealings or property; and the court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property."

So that irrespective of the decision in the Harts case, so far as the Trustee is concerned, if this public

examination is adjourned, the Trustee can still obtain the evidence on oath in a compulsory examination which would be available against the debtor.

If I may refer to correspondence which I have had with the solicitor for the Trustee in this matter. On the 19th July, 1972, I wrote to the Trustee's solicitors, Messrs. R.C. Moorhouse & Co.:

" Dear Sirs, J.G.L. Poulson (in Bankruptcy).

In view of the Prime Minister's announcement in the House of Commons on the 18th instant that the Metropolitan Police Fraud Squad had been instructed to carry out an investigation, we should be obliged if you would let us know as speedily as possible whether or not the Trustee in Bankruptcy would be prepared to consent to an indefinite adjournment of the public examination of our client. A similar letter has been sent to the Official Receiver.

A reply was received to that letter dated the 21st July:

" With regard to your request for an adjournment, we are instructed by the Trustee that he is not prepared to agree to an adjourhment, for there are many matters which he wishes to take up with the debtor and which are quite vital in the interests of the creditors."

That is the reason which was given to me for opposing the application.

There is evidence in the correspondence with the solicitors for the Trustee to show that throughout, since filing his petition, the debtor has co-operated to the fullest possible extent with the Trustee in Bankruptcy in this matter, and I can give as examples, first of all, the fact that he agreed without hesitation to the Trustee being supplied with a copy of the narrative attached to his form O.R.7, which, as you are aware, sir, is not available to the Trustee without the debtor's consent. That immediately upon being requested --

MR. MUIR HUNTER: I do not know what the authority for that statement is, with the greatest respect.

MR. SAFFMAN: I have not any authority for that statement with me, sir. I can only say that I was present at the office of the Official Receiver when the debtor was asked if he would authorise the Trustee to be supplied with a copy of the narrative.

At the request of the Trustee's solicitors, a letter was written to Messrs. Cooper Brothers & Co. authorising them, on his behalf, to supply to Messrs. R.C. Moorhouse & Co. all documents and information required by them in connection with his affairs; a similar letter to Messrs. Pannel Fitzpatrick & Co., chartered accountants; a similar letter to the Inland Revenue, and a similar letter to Lloyds Bank. On every occasion on which Mr. Poulson has been asked to give any authority at all to anybody for the supply of information, or has been asked to attend to give information, he has done so. In any event, the obligation to give information can be made a condition of the adjournment under s.15(3) of the Bankruptcy Act, because you, sir, can order the adjournment on such terms as you think fit, and you can make an order that the debtor shall supply to the Trustee, or those acting on his behalf, all information required by them, with liberty to the Trustee to apply if the condition is not observed. Or if in

the alternative, the evidence of the debtor is required on oath, then it can be a condition of the adjournment that the debtor can be examined under s.25 of the Act. If it is thought to be in the public interest that information so obtained should subsequently be made public, there is no reason at all why it cannot be disclosed at the public examination when it is ultimately re-heard if my application this morning is successful, if it is considered to be in the public interest, and if it is considered to be proper.

The only other comment I would like to make on what my learned friend Mr. Hunter has said about the public examination being on oath, is that the statements made by the debtor at his public examination are not in any event evidence against third parties. The debtor would have to be called to give evidence in the event of, as a result of information being obtained from the debtor, proceedings being instituted elsewhere, and, therefore, whether or not the information given by him is on oath or not, it is for that purpose irrelevant. And if I may refer you, sir, to the case of In re Brunner 19 Q.B. p.572.

THE REGISTRAR: What was the name?

MR. SAFFMAN: Brunner - which was a special case stated for the opinion of the High Court by the Judge of the County Court at Birmingham, a decision of Mr. Justice Kane in which it is sufficient merely to read the headnote :

> " The answers of a bankrupt on his public examination are not admissible in evidence in proceedings in the same bankruptcy by the Trustee against parties other than the bankrupt."

Now, I do not think I need to make any further reference to that case.

The position, therefore, in my submission, is that neither the Official Receiver nor the Trustee would be prejudiced by an adjournment of this public examination, because what I have said as to the rights of the Trustee to obtain information from the debtor either by interview or by examination under s.25., is, of course, equally applicable to the Official Receiver, and I mention that to cover the point made by my learned friend Mr. Bennett that any suggestion that the police have taken over in this case the investigations which the Official Receiver has to make, is repudiated. I, of course, accept that unreservedly, and therefore make that point that the same circumstances and the same remedies arise.

I have in this case, sir, one very great advantage over my learned friends Mr. Hunter and Mr. Graham in that I can take words out of their mouths where they cannot take words out of mine, by reference to them as the learned authors of "Williams on Bankruptcy", and I would refer, sir, to the 18th edition at p.275 where there is a paragraph headed "Rule in ex-parte James", and it reads as follows:-

> " Generally, the Trustee will be ordered, as an officer of the court, to do the fullest equity and in certain cases an even higher standard of conduct is imposed on him."

And of course, I would respectfully submit, and I am open to correction by those who wrote the words, that the reference to Trustee must also include Official Receiver.

" It is not easy to define the exact bounds of the principle based upon the control exercised by the court over its officer, which, since it operates in a field not covered by the established rules of law and equity, is incapable of reduction to an exact formula and must in its application be governed in part by ethical considerations. Legal rights can be determined with precision by authority, but questions of ethical propriety have always been, and will always be, the subject of honest difference among honest men, with which may be contrasted the dictum, while one may agree that opinions as to rules of honesty differ, the difficulty of recognising honesty when she appears affords no adequate reason for discarding her altogether."

And then if I may miss out some five or six lines:

" Lord Justice James stated 'The court of bankruptcy ought to be as honest as other people'".

And, of course, my learned friends in writing that referred to all the authorities on which they based it.

There is only one reported case where the House of Lords has referred to that rule, and that is a case reported in 1955 A.C. at p.491: Government of India, Ministry of Finance (Revenue Division) -v- Taylor, which was, in fact, a case decided under the Companies' Act regarding a liquidator's duty to pay debts which related to foreign taxation, the taxation being that of a Member of the Commons. The case itself, sir, is not relevant, not germaine, to this submission, except that in the course of his judgment Lord Keith of Avonholm said at the bottom of page 512:

" I was impressed for a time by the reference made by counsel for the appellant to the ruling In re Condon ex-parte James. Counsel stressed that he could not appeal to the rule as directly applicable for it applied only to an officer of the court, which the liquidator in a voluntary winding up was not, but as I understood him, the suggestion was that the court in a compulsory winding up would direct a liquidator to pay the tax" - that is foreign tax -"on the ground of honesty and fair dealing, and it would be impossible to follow one line in a winding up by the court and another in a voluntary winding up, a view, I may observe, taken in another connection by Mr. Justice Wynn Parry in In re Art Reproduction Co. Ltd.

The rule, however, which at best is exercised as a discretionary power by the Court appears to have been exercised only in cases where there has been some form of enrichment of the assets of a bankrupt or insolvent company at the expense of the person seeking a recoupment. No case has been brought to our notice of the application of the rule where there has been no enrichment of one party with corresponding loss to the other."

May I say, with the greatest respect, that in 1955 Lord Keith could not have conceived of a case where the Government would order a police investigation into unstated matters, and that had he known of that, he may have phrased it rather differently. What he is saying in that case, in my submission, is that he is not excluding a case where there has been no enrichment of one party and corresponding loss to the other, but merely that no such case had been quoted to him, and no

such case had so been decided at that time.

And if I may now go back to Williams to page 279, in the middle of the page - and here I am paraphrasing slightly, and I am sure my learned friends will stop me if I paraphrase wrongly - my learned friends, as the editors of Williams, set out what is presumably their definition of the ruling in ex-parte James, "that it is a prerogative of mercy reposing in the Court to alleviate cases of unusual hardship in which a regard to strict legal or equitable rights only would work manifest injustice." That, in my submission, is their definition, a definition which I adopt, and in my submission, this is a case in which that ought to be applied.

THE REGISTRAR: Is that page 279?

MR. SAFFMAN: That is on page 279, sir, a sentence approximately a quarter of the way down, and if you wish I will read the full sentence:

> " Having regard to the marked differences in the facts between re (Theluson) and re (Widsall) the application to the latter case of the principle hitherto regarded as a prerogative of mercy reposing in the court to alleviate cases of unusual hardship in which a regard to strict legal or equitable rights only would work manifest injustice. might have established a general rule indistinguishable from a legal right, and have extended a protection withheld by the legislature to all transactions with a bankrupt between the Receiving Order and its advertisements."

But I have extracted from that sentence, sir, and paraphrased to the best of my ability what I assume the definition to be as conceived by the learned authors.

May I now come, sir, to the last and the main reason for this application, and that is this, that in my submission it would be prejudicially affecting any possibility of a fair trial if charges were brought; not only charges against the debtor, but others whose names have already been mentioned in the public examination to date and those whose names - and I know them not - are presumably still to be mentioned if this public examination continues.

May I refer you, sir, to the case of In re (Cronmyre?) reported in 1894 2 Q.B. at page 246. The case itself is of little or no relevance to this present application, but at the bottom of page 250, Lord Esher, the Master of the Rolls, set out the definition of the proper questions to be put at a public examination - it was decided on the 6th April, 1894 - by reference to s.17 of the Bankruptcy Act, 1883, which, as I have said before, sir, is to all intents and purposes the same as s.15 of the 1914 Act.

> " The public examination is held before an officer of the court for the purpose, and the sole purpose of the debtor being examined. Nothing is to be determined or concluded against him or for him upon this examination. The court is only collecting from him evidence upon which it may afterwards act with regard to him in such manner as it thinks fit. The examination is a mere mode of obtaining evidence from the bankrupt himself.
>
> The Registrar is to conduct the examination, but he has no power to call witnesses. He has only to sit there and conduct the examination and to collect the answers of the

debtor to the questions put to him. The Registrar must no doubt determine whether the questions which it is proposed to put to the debtor are proper questions, and whether they are or are not put in a proper form. The Registrar has to regulate the examination to determine what questions are properly put and what questions cannot be put, and to enforce upon the debtor as far as he can at that time in that place, and for that purpose, his obligation to answer, but it is a mere mode of collecting evidence.

Now, for the purpose of collecting evidence, the bankrupt is to be asked, and he is to answer, all necessary questions respecting his conduct, his dealings and his property. It would be the duty of the Registrar to say 'You may ask him any proper questions with regard to his own dealings, but you must not ask him, and you cannot oblige him to answer, any questions with regard to any other person's dealings.' The Registrar must determine whether the questions are rightly put and whether the debtor ought to answer them. For that purpose, the Registrar must determine whether the questions put relate to the dealings of the debtor, or to the dealings of someone else."

And, of course, in this Public Examination perfectly proper questions will be asked relating to the affairs of the debtor, but those same questions since they relate to the affairs of other people, will prejudicially perhaps, in my submission, affect those other people.

MR. MUIR HUNTER: Does my learned friend appear for them, and, if so, perhaps he would specify which.

MR. SAFFMAN: I appear only for the debtor, sir.

THE REGISTRAR: Well, the decision in In re (Ryan?) was that the evidence in a bankruptcy was only evidence against the bankrupt.

MR. SAFFMAN: That is true, sir, but the point I am making at the moment is a point which affects people of whom I do not know. As I have already said, the main reason for this application for an adjournment is that there has already been ordered a criminal investigation which it must be assumed will lead to prosecutions. If it does not, then there is no harm done; but if it does, then there will be a great deal of harm done, in that in those circumstances it may be impossible for there to be a fair trial of those people, whoever they may be.

My learned friend Mr. Coles appears on behalf of the Attorney General; he does not act in this case for anybody who is in any way connected with the case, but, in the same way as he is entitled to speak and be heard on the matter, so I am entitled to speak and be heard on the question of prejudice to a fair trial of other people, even though I do not act for those people.

On the assumption that I will not be regarded as overly poetic and that under no circumstances will I be confused with Chairman Mao or any of his thoughts, may I say this, sir, that the position of the Official Receiver and the Trustee is analogous to that of expert horticulturalists examining those flowers and possibly weeds which are growing in the garden of Mr. Poulson's affairs which are of interest to them, and ignoring all other flowers which grow in that garden. This is, of course perfectly proper and is strictly in accordance with their duty,

and I would stress that not for one moment should it be thought that I on behalf of Mr. Poulson make any complaint whatsoever about the fact that they select the matters which they are investigating, nor the way in which they are carrying out that investigation; subject to one thing, sir, which I have already indicated to my learned friends and those instructing them, and that was the complaint about the lack of time given to Mr. Poulson to peruse a schedule - a very large schedule - of extracts from his accounts before he was questioned about them, and which I am medically advised caused the severe shock which prevented the continuation of his examination on the last hearing, because the point which I made to those instructing my learned friends was that that document could have been made available earlier so as to give Mr. Poulson an opportunity of perusing it and considering his answers, instead of having it thrown at him, as it were, stone cold.

But, of course, whilst the Official Receiver and the Trustee, and those representing them, are doing their duty, and doing it properly, there are others who are using the public examination for their own purposes in a way which can only be described as character assassination combined with an effort to whitewash themselves.

MR. HUNTER: Is this referring to me as Counsel, using the public examination for character assassination. I take the greatest exception to that outrageous suggestion.

MR. SAFFMAN: Sir, I said a moment ago that whilst I have no complaint whatsoever about the way in which the Official Receiver and the Trustee, and those acting for them, have dealt with this matter, there are those who have used the public examination for a different purpose. Let me make it quite clear, and I tried to make it quite clear before, that I was not making any complaint whatsoever; my learned friend has, I am afraid, misunderstood what I said, and I am sure that the transcript will show that I did not say that there was any complaint whatsoever in that regard.

It is that type of action by other people - and I can give examples if required - which again would make any fair trial difficult. And, of course, there is also the fact that the perfectly proper selectivity of questioning on behalf of the Official Receiver and Trustee, presents, as it must, an unbalanced view of the whole of the position. And this brings in, of course, the wider issues of pre-trial, pre-judging of issues affecting, as I have said, not only those who may ultimately have to face criminal charges, but also those publicly named who are pre-convicted by public opinion who, in fact, may be completely blameless in every way. This is an evil which to some extent it was attempted to eradicate by s.3 of the Criminal Justice Act, 1967, which forbade the reporting of committal proceedings unless the restriction was lifted by the defence, and I would ask in the circumstances that a similar rule be imposed by analogy in this case by adjournment of the public examination indefinitely, with liberty to apply available to all parties for reinstatement as and when it is found to be necessary, and also liberty to the Trustee and Official Receiver to examine the debtor either voluntarily or, if they wish it, under s.25.

THE REGISTRAR: Thank you, Mr. Saffman. Mr. Bennett?

MR. BENNETT: Sir, I am instructed on behalf of the Official Receiver to appear before you today, and as the Official Receiver is an official both of the Court and of the Department of Trade and Industry, I am instructed by the solicitor for the Department of Trade and Industry, and it is in that capacity that I appear before you this morning. And I do so, sir, to support the application made by my learned friend Mr. Saffman, but before I go on to specify the grounds on which I support his application, may I deal with a minor matter -- mention a minor matter - first, sir,

If you proceed, having heard me and all my learned friends on this matter, to order that the Public Examination be adjourned, then before you make such an order, sir, I would ask that you take steps to ensure that the debtor signs the notes of earlier hearings. That, in fact, has not been done.

THE REGISTRAR: No, it has not.

MR. BENNETT: Then, sir, if you would do that before you make any order to adjourn, which you may see fit to make.

Now, sir, may I now deal with the main substance of this application, and I will try to do so without repeating the matters put before you by my learned friend, Mr. Saffman, but I fear that I shall have to touch on some of them.

Sir, your powers, of course, are set out in s.15(3), and the occasion for the exercise of your powers, in my submission, is this, that since the last day's hearing of the Public Examination, there has been the announcement of the investigation by the Metropolitan Police. That announcement was made in Parliament by the Prime Minister quoting a statement of the law officers, indicating that that investigation was to be held and a report was to be made to the Director of Public Prosecutions, and, of course, I adopt what my learned friend has said. Clearly, the purpose of that inquiry, as was stated in the House at the time, was for consideration as to whether criminal offences had been committed either by the debtor or by others.

And, sir, you have heard enough evidence in this court to indicate sufficiently clearly to you already what the nature of such criminal offences may be. And, sir, I say no more about that save to say this, that their nature is such, if they have occurred, as to be of the highest public importance, and, sir, no doubt it is for that reason that the matter has been dealt with at that level.

Now, sir, the announcement of that investigation has, in my submission, changed the picture completely. I am very well aware, of course, that the Public Examination has already started and you have heard a good deal of evidence given in public. The ground on which I now support my learned friend's application is this, that it is now - that is today - in the public interest that the Public Examination be adjourned so that the police enquiries may proceed without hindrance or without obstruction.

THE REGISTRAR: There would be no obstruction, surely, by the Public Examination continuing.

MR. BENNETT: If you will bear with me, sir, I will attempt to

indicate what I mean by using the deliberately chosen word "obstruction". I hasten to add, of course, that I am not suggesting for a moment that any person concerned in the affairs of the debtor to date would attempt to obstruct the inquiry.

I want to make clear, sir, at the outset that I support this application not with the intention of depriving the Court, the creditors, the Trustee, or the public of their rights to be informed, but simply to defer the completion of the Public Examination so as to allow free and full range to the police enquiries. And, sir, it is my submission that balancing the interests of all parties to have information given in public today against the public interest in having a full and complete police enquiry into all these matters, without at the same time other enquiries running, then balancing those two public interests, the weight must come down on the side of allowing the police enquiries to proceed without at the same time other investigations going on into the same matters but for different purposes.

This, in my submission, is a very special case, and I wish to make clear that I do not seek in any way to derogate from the requirements of the Act which are imposed upon the Official Receiver, and I do not in any way seek to say that the Official Receiver's duties should be, or have been, taken over or performed by somebody else.

Now, sir, it may be said, first of all, what standing has the Official Receiver for making such an application or for supporting such an application before this Court. In my submission, it is this, sir; that it is the right and, indeed, the duty of the Official Receiver to take this very point, because, sir, by the provisions of s.70 of the Act he is not only an officer of the Department of Trade and Industry, but an officer of this Court, and it is his duty, as I see it, as an officer of the Department to take points which bear on the interests of the public, and it is his duty as an officer of this Court to take any point material to the interests of justice.

He is, therefore, in my submission, the right person to submit to you, sir, that an adjournment is advisable both in the interests of the public and in the interests of justice.

Now, sir, the duties of the Official Receiver, as you well know - his status and duties - are set out in s.72 and s.73 of the Act, and the Official Receiver has to date performed those duties in respect of this debtor, and will continue to do so. But, sir, turning now from this particular point, if you were to take the view, sir, that the Official Receiver was not the proper person to take these points in this court before you, then there is present separately instructed by the Attorney General my learned friend Mr. Coles who will take such points as he thinks proper on behalf of the Attorney General.

May I turn now, sir, to consider the nature of the enquiry, namely the nature of the Public Examination. As you know, sir, s.15(1) requires that the debtor shall be examined as to his conduct, dealings and property, and it inevitably follows that any such enquiry may be wide-ranging, because there is authority which my learned friend has already referred to,

namely the case of "re Atherton", for the proposition that the enquiry may properly extend to all matters which the court may take into consideration on the debtor's application for discharge; to questions with regard to the tracing of assets, and to elicit any matters affecting the debtor's conduct that may be relevant. Now, sir, it is for the purpose of effecting that purpose that the public examination is held, and it has been made clear in a number of cases that the public itself has an interest in being informed of the debtor's activities. May I cite from "re Padgett", which my learned friend has already referred to? If I may read a short passage from Lord Hamworth's judgment at page 87, he says this in the second sentence :

> " The debtor in the present case came up for public examination on December 21st, 1926, under the provisions of s.15 of the Act which require that a debtor against whom a receiving order has been made shall be publicly examined as to his affairs. I use that word comprehensively" - I presume the learned Master of the Rolls was referring to the word "publicly" or to the word "affairs".

He goes on :

> " I use that word comprehensively, the object of the examination being not merely for the purpose of collecting the debts on behalf of the creditors, or of ascertaining simply what sum can be made available for the creditors who are entitled to it, but also for the purpose of the protection of the public in the cases in which the bankruptcy proceedings apply, and that there shall be a full and searching examination as to what has been the conduct of the debtor in order that a full report may be made to the court by those who are charged to carry out the examination of the debtor".

He then continues :

> " To concentrate attention upon the mere debt collecting and distribution of assets is to fail to appreciate one very important side of bankruptcy proceedings in law".

By so saying, sir, I understand him to be saying that to concentrate attention upon the mere debt collecting would be to ignore the interests of the public, or the purposes of protecting the public by the conduct of a public examination.

And so, sir, it is quite clear in the statute and on the supporting authorities, and in that authority in particular, that one of the major matters for consideration in all bankruptcy proceedings, and in particular the public examination, is the interests of the public.

Sir, there are other interests, of course; firstly, that of the debtor; secondly, that of the creditors, represented by the trustee; thirdly, the interests of third parties who may be named in a public examination; and fourthly, the interests of the public. Now, sir, so far as the interests of the debtor are concerned, I need say little because my learned friend Mr. Saffman has dealt with the debtor's case fully. I need only point to the fact that it is the debtor who makes this application for an adjournment. So that so far as his interests are concerned, one must assume that having been fully and properly

advised he takes the view that it is in his interest that the Public Examination should be adjourned.

Sir, I need only say one word in support of the ground my learned friend has put on behalf of his client, and it is this. When one looks at "re Atherton", as he invited you to do, sir, where the learned judge there speaks of a rule of tenderness and convenience for criminal proceedings not to continue against a debtor - or, rather, for a public examination not to proceed in the case of a debtor who is in custody or under remand, one sees that in this case the debtor has not reached that stage, and may never do so, but a criminal investigation is in train, a criminal investigation which may result in criminal charges against him, and he is, therefore, in my submission, just as much entitled to the benefit of that rule of convenience and tenderness as is a man who has proceeded one or more stages further and is actually in custody or on remand.

Sir, so far as the creditors are concerned, my learned friend has again dealt with how their interests may be safeguarded. One appreciates their interest in seeing that the administration of the bankrupt's affairs proceeds; in particular, that such assets as there may be are recovered from wherever those assets may be, but one sees their interest in pursuing investigations not only with the debtor but with third parties. But, sir, s.25 provides a means whereby the interests of the creditors in all those matters can be safeguarded, and if it be said that procedure under s.25 may not be as effective as other procedures, one points to the fact that whereas under s.15 the examination is of the debtor only, under s.25 there is power to examine others, and there is power under Rule 83 of the Bankruptcy Rules to compel answers from the person so examined.

Now, sir, if this application for an adjournment of the Public Examination is granted, it will not delay the bankruptcy proceedings, it will not interfere with the supervision by the Court or of the officers of the Court in the administration of the bankrupt's affairs, and it need not interfere with the pursuit or recovery or tracing of assets.

My learned friend appearing for the Trustee has already, as you will know, sir, initiated action under s.25 in respect of a number of witnesses who have already been examined in the court. That procedure can continue with others; it will enable him fully to satisfy the interests and requirements of the creditors and of the Trustee.

Now, sir, as to the third point, the interests of third parties who may well be named by the debtor in the course of the Public Examination and so inevitably attract publicity in proceedings in which they are not represented by solicitor or counsel, and cannot be; they have no right of attendance or of cross-examination; they have right to attend but no right to appear to cross-examine, and have no right of reply. Now, sir, it may be said - no doubt it will be said - that this applies to every public examination, but, sir, I answer that by saying that the circumstances in this matter are so exceptional as to place a very heavy burden of prejudice on any third party who may be named by the debtor in the course of this public examination, a prejudice which may persist so as to make any fair trial in the future difficult if not

impossible; and difficult indeed for a third party who may hold a position in public life, or may have held until recently a position in public life, to deal adequately with these allegations which cannot be met and countered when they are made.

Now, sir, I say no more on that topic save to say that there is a public interest - I move on now to the public interest, but I say that there is a public interest which I am entitled to point to, that third parties who may be named shall not be unduly prejudiced. Sir, I turn now to the interests of the public, and, sir, the main interest I wish to stress is this; that it would be a hindrance to a full and complete enquiry by the police, conducted in whatever way they may choose to do it, if there were to be further public evidence given relating to the matters into which they have to enquire. Well, sir, if persons are named at this public examination, it may give such persons warning, firstly of the fact that they are said by the debtor to be concerned in the matter; secondly, of what their interest in the matter is said to have been, and it may, sir, present an opportunity to such persons to take such steps as they may think proper to take which, in fact, might hinder or obstruct police enquiries.

Now, sir, the second point is this; it is an important matter in making enquiries, in my submission, that those into whose conduct the enquiry is being made shall not be aware of what information is already in the hands of the authorities. Sir, if the person whose conduct is being enquired into has knowledge, or some knowledge, of what the police already know, it may well interfere with the techniques of investigation and the proper conduct of the enquiry.

The third point I make is this, that to name such persons and to give some indication of what the debtor says has been the parts they have played, it may mean that access may be gained to such persons by others before the police are ready to conduct an interview with that particular person.

Sir, I have already dealt with the public interest and the fact that there should be, if possible, no prejudicial publicity, that is prejudicial to any person in case of a later trial, and I point also, sir, to the difficulties which such persons so named by the debtor can be put. Sir, the matter really can be looked at, so far as the public interest is concerned, in two ways; the person named may be prejudiced, and, secondly, the police in conducting their investigation may be prejudiced for different and opposing reasons, but all together add up to support my submission that it is in the public interest generally that the Public Examination should be adjourned.

I wish to end, sir, as I began, by stressing that there is no relinquishment, or intention of relinquishment, by the Official Receiver of his duties. His duties are stated for him; he will perform them conscientiously as he always has done. There is no wish to deprive the public of their right given by statute to be informed of the bankrupt's affairs. All that is asked for, sir, is that that right to be informed at a public examination should be deferred for such period as may be necessary for the police to complete their enquiries.

Sir, I can put the matter, as I attempted to do earlier, in this way; there are, as it were, two categories of the public

interest. Firstly, there is the interest of being informed now, or today, and in succeeding days of the affairs of the bankrupt by means of this Public Examination; but there is secondly the public interest that the police shall not be hindered or impeded in their investigation, for eventually, sir, whether as a result of the police enquiries or whether as a result of the continuance of this Public Examination, all will be revealed, and, sir, in my submission, the greater public interest is that the police should not be impeded in their enquiries and that you should order, sir, in the very special circumstances of this case that this Public Examination should be adjourned generally with, of course, liberty to the parties to apply when the time arrives and the matter can be properly resumed.

So, sir, it is that order which I ask you to make for the grounds I have stated, and I support my learned friend's application.

THE REGISTRAR: Before you sit down, Mr. Bennett, can you give me any idea how long these police enquiries will take?

MR. BENNETT: Sir, I have no instructions on that matter. I can only say this, appearing on behalf of the Official Receiver, that he is aware, of course, firstly of the extent of the enquiries, but, of course, he is not in a position to say how long it will take the police to deal with the matter, but there have been public statements made, sir, mentioning six months or twelve months, and I have sought information from the Official Receiver as to what his ideas are on that subject, and he would not dissent from those estimates.

THE REGISTRAR: Plus a further six months for (inaudible).

MR. BENNETT: Well, sir, one would have to look at the situation as it developed, but may I throw out this suggestion? If you were minded to grant an adjournment but were unhappy about an indefinite adjournment, it would be possible for you to state a date on which the matter could be resumed - could be brought before the Court again - but, of course, I would in those circumstances invite you, sir, to make it clear to all concerned that if you were to name a date or a period of time, it would be open both to the Official Receiver and to other interested parties at that stated date, or after that stated length of time, to return to your court, sir, to ask for a yet further adjournment, which would enable you, of course, to deal with the whole matter in the light of the situation then prevailing, and it would leave it open for you then, sir, to balance the rights and interests of the various parties in accordance with the situation as it may then be.

THE REGISTRAR: Thank you, Mr. Bennett. Yes, Mr. Coles.

MR. COLES: May it please you, sir; as you know, I am instructed to appear by the Attorney General in this matter simply to support the application for an adjournment of this matter. Perhaps I should explain the reason why it is that the Attorney General takes an interest.

It is simply this, that as an officer of the Crown he is an officer of the public, and it is in the public interest that I appear to support the application on the grounds generally

which my learned friend, Mr. Bennett, has set out. The Attorney certainly is mindful of the public interest in bankruptcy proceedings and a public examination, and mindful also, of course, of the interests of the various parties such as the debtor and the creditors who are concerned. But the overwhelming point is that in this particular case matters have emerged which, as my learned friend has said, clearly concern matters of very great public importance and interest, and in my submission, the interest of the public and the various parties to these bankruptcy proceedings can be adequately protected without the Public Examination continuing in circumstances which might well prejudice the fair trial of any persons who it may turn out are to be prosecuted as a result of these matters.

My learned friend Mr. Bennett has taken all the points I would have desired to take as illuminating the point why the Attorney considers it of public interest that the matter should be adjourned, and the merit of those points could not be improved by repetition. Suffice it to say, sir, that I affirm and confirm what he has said on behalf of the Attorney General.

THE REGISTRAR: Yes, Mr. Hunter.

MR. MUIR HUNTER: May it please your Honour; I have practised at the bankruptcy bar continuously for 28 years, and, in my experience, such an application as has been made both by my learned friend Mr. Saffman for the debtor, and by my learned friends for Her Majesty's Government in two separate capacities, has never been made before and therefore requires, perhaps, some close examination.

It is, in fact, perhaps somewhat singular that a debtor involved in such a notorious bankruptcy case, who collapsed while being examined on one aspect of his affairs, and is now applying not to be further examined thereon in public, or, it seems to me at all - and I will explain why I say that in a moment - should have his application supported by the Secretary of State for the Department of Trade and Industry on behalf of the Official Receiver - but that is his ministerial superior - and by the Attorney General, for there seems to us in the examination of the powers of this Court imposed in yourself and in your learned judge to be a complete inconsistency between the two applications.

One of the duties imposed on the Official Receiver and on the Trustee is, in fact, under s.161 to which reference has not yet been made, and perhaps I might ask you to look at it, which in Williams is at page 572. This is the duty to report to the court - this court and yourself - where matters have come to light suggesting that the bankrupt had been guilty of offences under the Bankruptcy Act, "and where an official receiver or a trustee in a bankruptcy reports to any court exercising jurisdiction in bankruptcy that in his opinion a debtor who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, has been guilty of any offence under this Act, or any enactment repealed by this Act, or where the court is satisfied upon the representation of any creditor, or member of the committee of inspection, that there is ground to believe the debtor has been guilty of any such offence, the court shall, if it appears to the court that there

is a reasonable probability that the debtor will be convicted and the circumstances are such as to render a prosecution desirable, order that the debtor be prosecuted for such an offence", and if such a prosecution is conducted, it is conducted either by the Director of Public Prosecutions, who is answerable to the Attorney General, or by the Board of Trade, what is now the Department of Trade and Industry.

Now, one of the principal ways in which evidence is discovered tending to show that a bankrupt has been guilty of a bankruptcy offence - which are numerous and quite different from the offences which, although undisclosed, appear to be in the mind of the Administration - is at the public examination itself. A bankrupt is, under s.15, and has been since 1883, if not earlier, compelled to answer all such questions as the court may allow to be put to him, and his answers may be used against him.

Now, this singular power, which was much discussed in such cases as Harts where the section of the statute was in a different form, means that the bankrupt can be compelled to answer questions which may be used against him "save as in this act provided", and that exemption is contained in s.166 which provides that certain offences under what was then the Larceny Act, 1961, and which is now the Theft Act, 1968, are not to be supported by evidence obtained by a bankrupt's examination. Save as therein contained, the bankrupt's evidence can be used against him, and this is one of the purposes for which public examinations are conducted.

Therefore, we have the singular situation that the public officer, who is rightly said to be both an officer of this Court and of Her Majesty's Administration, whose duty it is to pursue the debtor himself, now wishes to be relieved, as I understand it, of one means of investigation to pursue that end.

Now, of course, as I ventured to point out - I hope not disrespectfully - during Mr. Saffman's address, the police possess no power of compulsory examination, not of Mr. Poulson in his civil capacity, not as a bankrupt, nor of anyone else, and in the famous Harts and Simmons cases the police were accused of having used compulsory powers of interrogation and then of having used answers against the persons in proceedings. The police do not possess that power, and anyone that they choose to go and see can tell them that they wish to say nothing, including Mr. Poulson. It is only in this court that Mr. Poulson can be made to give an account of himself; not necessarily an incriminating account of himself - an account of himself, and I hope that anyone who has read the transcripts will feel - I should like to think they feel - that both Mr. Bishop in his firm but courteous examination of the debtor, and my own, being not responsible for Mr. Poulson's collapse; that was Mr. Poulson's colon, it seems, or else his conscience; that we did not abuse or harass the debtor in any way. We wished to receive information regarding massive expenditures representing £330,00, that is to say a sum equal to, if not exceeding, the debtor's whole deficiency.

Now, this, it seems, it is not desired that we should continue to do in public, although, as the cases show - and there are others as strong if not stronger than those to which

reference has been made - that one of the points of the public examination, in which this country is outstanding in the matter of bankruptcy law, is that the public and the creditors, of whom there are at least 78, if not far more numerous, have the right to hear the debtor and his explanations, and every single creditor under s.15 itself has the power to question him. That is provided by s.15(4): "Any creditor who has tendered a proof or his representative authorised in writing may question the debtor concerning his affairs and the causes of his failure". So that, for example, Messrs. Dunlop-Semtex, who are creditors of the debtor and a member of the committee of inspection, could ask the debtor why he ordered floor-covering for his offices for which he was unable to pay, or Mr. Thomas, the debtor's former partner, could enquire why he was not paid the agreed damages for a breach of his partnership agreement.

Well now, whatever may be the merits of the s.25 private examinations, they are not heard in public and they are not available to be participated in by the creditors, and these seem to me matters much to be considered in deciding whether the statutory rights and duties are to be abrogated.

Now, the next question, which is perhaps, if I may say so with the profoundest respect, the most singular. Why has this great scandal, or alleged scandal, burst on this country and its public life? On the first day of the examination as long ago as 13th June, the Official Receiver, who bats first in this matter, was examining the debtor on the causes of his failure and the history of his business affairs. He had come to what is known as the Wilson memorandum, a memorandum prepared by Mr. W. G. Wilson, a former distinguished civil servant now working for Mr. Poulson at this time, and two of his colleagues, which said that Mr. Poulson was hopelessly insolvent and that payments to consultants of £2,000 a month should cease forthwith.

THE REGISTRAR: This was the memorandum of June, 1969?

MR. MUIR HUNTER: The 9th November. On the 30th June, Mr. Wilson made a verbal statement; the Wilson memorandum itself was 9th November. Mr. Bishop, very rightly if I may say so with respect, then began an examination of who the consultants were to whom £2,000 was paid, and he began with the Dan Smith account. He then went on to certain public servants to whom, out of commiseration, I will not further refer to, and certain presents that they appear to have received. In my examination I did not touch on this matter at all; I concerned myself more directly with the bankrupt's conduct of his business, his wife, and so forth.

During the adjournment between 13th June and 3rd July, the Official Receiver and his officers, with what appears to me to be exceptional diligence and attention to public duty, had prepared what became known as the Official Receiver's schedule, a document about the size of a pillowslip with about eight pages, on which they had, working, I believe, night and day, prepared a list dating from 1962 of the presents that Mr. Poulson appeared, according to his cash-books, to have made to his friends. This came to £334,000, of which £155,000 had been received by his old friend Mr. Dan Smith.

The Official Receiver then from questions 1023 to 1182

pursued a detailed examination of the payments on this schedule. When I took up the running, I asked about certain of them, and it was during the questioning about Mr. Dan Smith I read from the transcript.

THE REGISTRAR: Is this day 1?

MR. MUIR HUNTER: Day 2.

THE REGISTRAR: At page?

MR. MUIR HUNTER: At page 42, question 1440 - this is within five minutes of the drawing of stumps - "Q. What you are saying is that you were paying money to Mr. Smith for no consideration that you can recall and would you, therefore, like to say that this was a gift as well? All of these were gifts?" Answer: "No, no." "Q. Not gifts? You will not say any other reason?" Answer: "Well, I don't know what to say, sir, I just don't know what they were, except that they are just absolutely ridiculous". "Q. You did at one stage to the Official Receiver say that you thought that Dan Smith would recommend you to people?" Answer: "That's right". "Q. Well, did he?" Answer: "I'm afraid not". "Q. No. And you said, 'It didn't work out, I never got anything out of it'. Nothing positive to show, and yet you went on paying him. Had you any other reason to pay him, Mr. Poulson?", Answer - "(Inaudible)". I said, "The witness is not feeling very well", and your Honour rose and Mr. Poulson was taken to hospital suffering from "severe shock".

Now, it is that that has set the country on fire, that examination initiated and conducted - and quite rightly conducted; I never saw a stronger, a better case for investigation - by the Official Receiver himself. Now, having set the country on fire and attracted attention measured by the presence of the representatives of the press today, it is now desired that none of these matters should be further pursued in public. Not even the innocent people who Mr. Poulson may have falsely produced are to have their names cleared by the questions of counsel acting for the Trustee, or for the debtor, or for the Official Receiver himself. The Official Receiver is going to take no further part in this investigation at all, as I understand it, for his only means of investigation is by the public examination or by the questioning of the debtor in his office.

It is now possible to say, with the aid of the examinations that you, sir, have allowed us to conduct in your chambers to the exclusion of the public, a procedure which I am bound to say I have found embarrassing since we are all accused of having hidden justice under a wrap of secrecy, so much so that I had to prevail upon The Times to publish an explanation of what s.25 was about, it is only by means of these procedures that we have discovered that some of the statements by Mr. Poulson are plainly not true. I say "not true"; not true according to my judgment of the evidence which you, sir, have heard, both oral and documentary. It may well be that Mr. Dan Smith - and I say this firmly and according to my duty as Counsel - it may well be that Mr. Dan Smith has an explanation for some of the enormous sums that have been paid to him. He has at least produced one contract for services. Similarly, there are persons who have been referred to who have explanations of what

their involvement was. None of this is to come out in public at all. And for how long? Firstly, whilst a police investigation of an unspecified character, with unspecified targets and an unspecified duration is to be conducted.

What is to be the first terminus of this? It is, as you yourself, your Honour, intervened to say, presumably the committal proceedings. At that point, if the Court had held its hand until then, the Atherton rule, if it is a rule, would come into force, so that the Court would then, by its own rule of procedure, be precluded from any further Public Examination until after some prosecution of somebody had been concluded. Now, what I find very troublesome about this are two things, and I say this with the greatest deference to my learned friends appearing for Her Majesty's administration. In the first place they are talking, as Mr. Saffman himself is talking, as if Mr. Poulson is going to be prosecuted. This I think most unjust, most unjust. If Mr. Poulson is to be protected from further questioning by the advocacy of the powerful advocates it must be because they either know or strongly believe that he is to be prosecuted.

What evidence is there of that? My learned friend Mr. Bennett has been good enough to let me see the Hansard Report of this. No reference to Mr. Poulson having committed offences appears. There are references to certain civil servants having been suspended from duty, and having consulted the Corrupt Practices Public Authorities Act it seems to me that there may well be some charge against some public servant for accepting a present which he is precluded from accepting, but not necessarily the donor is precluded from giving. That is the first thing. I see no reason to believe that Mr. Poulson will be prosecuted for anything outside the Bankruptcy Act, though I am bound to say I can think of two or three things that he could be prosecuted for under the Bankruptcy Act, which the Official Receiver and my client, the Trustee, have a duty to proceed with and which we shall be hampered in proceeding with by the cessation of the Public Examination.

The second thing which is very singular is this, and I say this in accordance with my duty as counsel. On the day that Mr. Saffman wrote his letter of the 19th of July asking for an adjournment to be agreed by the Trustee's solicitor, a letter which he had written, he appeared on all the national television and radio networks in this country and made statements. Counsel are not supposed to give evidence, but I think that a number of persons in this Court must have heard them.

THE REGISTRAR: I certainly heard one on sound radio.

MR. MUIR HUNTER: I have, in fact, had a transcript prepared of the greater portion of what he said. Now I must, because I have the greatest respect for Mr. Saffman, believe that he made those statements on instructions, and that means to say that after the last hearing, at which Mr. Poulson collapsed, he caused to be made on his behalf statements which, when transcribed, came to two and a half pages, in which he makes positive averment of fact about the nature of his transactions. I feel myself that that having been seen and heard by about fifteen million people, it would be desirable that the record should be checked by submitting Mr. Poulson to an equally public examination

of the accuracy of the facts alleged such as that everything he has always done has been done in the course of his business and in good faith, and it would seem to me unfortunate that my friend Mr. Saffman should have on the same day asked me for an adjournment whilst making ex parte statements on television which, if that adjournment was granted, could never publicly be verified.

MR. SAFFMAN: Sir, I wish to interrupt to say this, that I was asked if I would be interviewed. I agreed to be interviewed on the instructions and with the consent of my client. I made it clear in the course of that interview, and I have not been shown this transcript and so I cannot comment on its accuracy, but I made it clear that all that I ever said about Mr. Poulson was to repeat what Mr. Poulson had said at his Public Examination and which either had, or could have been, reported. You will remember, sir, that this was not on the day when Mr. Poulson was taken ill, it was some time later.

MR. MUIR HUNTER: The 19th of July.

MR. SAFFMAN: I am obliged.

MR. MUIR HUNTER: The day of your letter.

MR. SAFFMAN: Yes. As I say, I made it clear in the course of that interview that I was myself expressing no opinion whatsoever, I was only repeating things that Mr. Poulson had said, and the only reason I went on television on that day was because, as I said in addressing you, sir, the Official Receiver and Trustee, quite properly, select certain matters relating to Mr. Poulson's affairs for investigation and, of course, all that was ever publicised was the matters as to which Mr. Bishop, the Official Receiver, and my learned friend Mr. Hunter, had asked Mr. Poulson. Once the police investigation had been announced I considered it my duty to at least attempt to inject a little balance into the matter by seeing that there were reported some of the things which Mr. Poulson had said, which had not been reported.

I do not, sir, with the greatest possible respect, regard that in any way as being any different from what my learned friend Mr. Hunter did when, as he just said and I did not know it before, he prevailed upon "The Times" to print, or explain, the reasons and the meaning of Section 25. I did not make any comment during that interview, or if I did, and, of course, in the course of an interview you will probably be aware, sir, it is very difficult to avoid comment with the best will in the world, it was inadvertent, but it was, as I said when addressing you before, and why I said that the image in the public mind is unbalanced, it is because the Official Receiver and the Trustee seek to investigate the matters with which they are concerned, not all of the matters regarding the debtor's affairs, and I do not refer now, sir, to this particular debtor, I refer to every debtor.

MR. MUIR HUNTER: I do not wish, your Honour, to bandy details of what my friend said in the transcript which I have. All I am saying is that it appears to be admitted now that it was a form of special pleading to set the record straight on behalf of his client, and I am sure he did it very well, but that does not

derogate from my point that statements have been made which unfortunately go far further than a mere reproduction of the Public Examination in my view which this Court may wish to hear Mr. Poulson about.

The last matter of substance, and perhaps the most important matter, and one on which I feel the Court could have been more extensively assisted is this matter of the public interest. One recognises the public interest in the concealment of facts from the public, or the hearing of cases behind closed doors, really in three fields. There is firstly, of course, the interest of infants well established. Secondly, there is the matter of national security or the protection of patents, and the third class is where communications are to be disclosed which are contrary to the proper administration of either justice or the police.

Now, this matter has received considerable attention in recent years owing to a great debate between two divisions of the Court of Appeal represented by the cases of re Grosvenor Barnes on the one hand and Conway and Rimmer on the other as to what was the criteria for withholding evidence from Courts in the public interest. In Conway and Rimmer, in the House of Lords, the Court laid down the modes in which this was to be done and the criteria by which it was to be judged. I do not wish to trouble you with the speeches in Conway and Rimmer save to point out two factors. Firstly, that in my experience, though I am very willing to be corrected by my learned friend appearing for the Secretary of State and the Attorney General, no plea of public interest has ever been advanced in any Court except on either a certificate from a Minister of the Crown, as in the diplomatic immunity cases, or on an affidavit by the Minister or a very senior officer - usually the Minister. In Conway it was the Home Secretary.

Now, I asked my learned friends on Saturday if it was proposed to adduce evidence, either in the form of an affidavit or a certificate from any Minister of the Crown to this effect and I was told "No" and, of course, none has been produced, and what you, therefore, have been asked to do is accept from my learned friends, as counsel, an allegation that there is a public interest here involved which should induce you, your Honour, to abrogate the statutory duties imposed on us all for an indefinite period. There is not even an affidavit from the Chief Officer of the Matropolitan Police or the Director of Public Prosecutions. In fact, I am instructed to say, very much to my surprise, Commander Crain and his officers are not even in Court today to see what Mr. Poulson might say and what kind of witness he might shape up to be, but no doubt they have many other important duties in Pontefract, Newcastle, or Nottingham, or Glasgow, or Wandsworth and, therefore, you have been asked to accept the ipse dixit of counsel appearing for Ministers of the Crown that there is here a public interest to be defended which is superior to the public interest of publicity.

I would have thought that this again makes this case one of great originality and a precedent which requires to be closely examined. As to the extent to which the doctrine of publicity has been enforced, I do not wish to multiply authorities but perhaps I might be allowed to refer to others in the line of cases. In the case of re a solicitor, whose citation is 25

Queens Bench Division, page 17, the decision of the Queens Bench Divisional Court. The debtor was a solicitor, and he had made in the course of his Public Examination admissions of what was believed by the Official Receiver to be professional misconduct. The Official Receiver applied to the Law Society for an enquiry into the allegations, and it was alleged that he had been asked incriminating questions at the Public Examination, and the Court, refusing to stay the proceedings against the solicitor, said that even on an application against a solicitor for professional misconduct the notes of the Public Examination could be referred to as they were to be used in any proceedings.

The passage I wish to refer to, if your Honour has been provided with the book, is at page 25 in the decision of Lord Coleridge, the Chief Justice, half way down after the citation of the Queen against Scott, about the middle of the first paragraph :-

> "Whether Parliament was aware of the Queen against Scott, which had dealt with incriminating questions, I do not know, but it has done so because it has in express terms enacted that which, of course, if it had been enacted at the time of the Queen against Scott, it would have taken away from the dissenting judge any ground whatever for his argument. Therefore, it is plain that a bankrupt is bound to answer questions which the Court allows to be put and that the answers though they tend to incriminate him may by the express words of the Act of Parliament afterwards be read in evidence against him. A further argument was that these questions must be limited to matters of the bankruptcy, but the words of the Act of Parliament, then the 1883 Act, differ from the earlier Acts, because Section 17 ..."

Now Section 15.

> "Says that the debtor shall attend the examination, shall be examined not only as to his dealings and properties, but as to his conduct. Unless dealings and conduct mean exactly the same thing, dealings are a matter connected with his bankruptcy and conduct is a man's general conduct, and there seems to be nothing improper or unfair to regard being had to what the bankruptcy law now is and to the administration of it in saying that a man of good character who becomes a bankrupt may be dealt with by the Court in one way, but a man of bad character, long antecedent of fraud and so forth may be treated very differently. The word conduct seems to me to be used with great accuracy to enlarge the scope of the enquiry and to make the general conduct of the bankrupt as a part that ought to be of the materials which are before the Court when it has to consider what on the whole is the just way of dealing with a bankrupt after the adjudication proceedings".

In a later case, Jarrett in 1929, the questions which were being put to the bankrupt before the learned Registrar related to his actions in infringing a patent, and when ordered to answer this question, which was put by the petitioning creditors who were the owners of a patent which had been infringed, he refused to answer on the ground that it did not relate to his affairs and the learned Judge ordered him to answer as to where he had got the articles which infringed the patent, since those answers might be used to sue other persons and the concluding

words in 1929 Chancery Division at page 112. Now, remember this is purely a civil matter between the bankrupt, the person who supplied the infringing materials, theowner of the patent and the purchasers, and at page 112 Mr. Justice Ashworth says :-

> "He is now unwilling to throw any light on his business dealings, and though he has kept books of his sales he has not thought fit to produce them. There are many reasons why the answer to the Registrar's question may be relevant. The bankrupt had practically no assets of his own and yet he dealt in these infringing lamps. How did he get the money to pay for them? He may have worked on commission or on a fixed remuneration or otherwise. If the name of the man who supplied them is obtained that man can be examined with a possible disclosure of further assets. Secondly, the answer may also be relevant in the interests of the public. There is a very large trade in these infringing lamps involving innocent members of the public who purchased them in litigation. It is in the public interest that the bankrupt should disclose his source of supply. I order him to answer the question".

That bears not merely on the matter of publicity, but it is rather interesting in applying, or seeking to apply the proposition that you must not mention third parties who might be hurt. Well, there the bankrupt was to be ordered under penalty of commitment to say from whom he got the lamps and that person could immediately be sued by the owner of the patent for infringement.

I will not trouble you with further cases, but as I say the doctrine is absolutely clear. The bankrupt can be compelled to answer any questions relating to his dealings and conduct or his property. Now, I could well understand a debate of this kind taking place on a specific question. Let me take a purely hypothetical question. I ask your Honour to remember that no such question was ever put by me. "Did you not pay Mr. X the sum of Y pounds in order to give you the plans of the new town hall?" You, sir, might think it right to order that question not to be answered, or alternatively that a name should be put forward written down, as is the custom. If you had taken that course it might have been appealed against, or vice versa, and then we would have had a Jarrett situation, which is not unknown, but this is a blanket inhibition. This is not that the examination shall continue, but that the Court shall be asked to refrain from allowing questions to be put which affect third party or that the bankrupt shall not be asked questions of whether he paid money for an improper purpose. This is that the bankrupt was not to be asked in public questions about anything and this appears to me to involve a departure from the bankruptcy laws of this country which have continued substantially unchanged for a hundred years, if not, indeed, in principle for three hundred years, of an extremely far reaching character.

Now, as counsel I hope I can say I have no desire to harm any person, nor have my professional clients, nor the Trustee. Our sole purpose is to seek to recover, by the questioning in this Court, and by the effect of the questioning in this Court may have in bringing evidence to light of assets of enormous value, discovering the bona fides of debts of enormous size,

and incidentally, if one may inject yet a further public interest, of recovering for the tax payers of this country assets which may discharge income tax debts owed by Mr. Poulson approaching £150,000. I would have thought that itself was a public interest to be put into the balance. On all these grounds, and I am afraid I have taken much too long to expound them, I oppose both of these applications and ask that you should order that the Public Examination should continue today.

THE REGISTRAR: Do you wish to reply, Mr. Bennett?

MR. BENNETT: If you please, sir, and I think I can do so on behalf of all three parties to the application. So far as my learned friend's point concerning Section 161 is concerned, you will appreciate, sir, that that Section relates only to offences against the Bankruptcy Act, and my learned friend then went on to say that the Official Receiver appeared to wish to be relieved of his duty under Section 161. Nothing could be further from the facts.

THE REGISTRAR: I think Mr. Hunter really means he desired it to be postponed.

MR. BENNETT: To be postponed. That, sir, is the way I would wish to put it. Sir, my learned friend went on to say of course the police in their investigations cannot compel answers. That, of course, is true, but this Court can in Section 25 Examinations.

THE REGISTRAR: Well, there must be a warning against incrimination.

MR. BENNETT: As regards third parties, sir, yes, but so far as the debtor is concerned then, of course, you are in a position to compel answers under Section 25 proceedings.

THE REGISTRAR: Well, can Section 25 be used against the debtor?

MR. BENNETT: Certainly, sir. May I invite your attention to ----

MR. MUIR HUNTER: Sir, it so provides.

MR. BENNETT: "The Court may on the application of the Official Receiver or Trustee at any time after the Receiving Order has been made against a debtor summon before it the debtor, or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the Court may deem capable of giving information in respect of the debtor, his dealings or property and the Court may require that any such person should produce any documents in his custody or power relating to the debtor, his dealings or property", and the succeeding sub-sections, sir, go on to deal with what the position is if the person so summoned refuses to attend and, sir, I think I have already mentioned Rule 83 of the Bankruptcy Rules which make provision for a person brought before the Court to be reported to the Judge and for a committal of a contumacious debtor or witness.

As I say, sir, although the police cannot compel answers, that, of course, is a matter for them, but this Court can in

Section 25 proceedings and so overcome the difficulties in which my learned friend contends he will be placed. It is true that the proceedings under Section 25 will not be in public and they will not be participated in by the creditors, but in my respectful submission their interests could surely properly be safeguarded in the interim period, before the Public Examination is continued, by my learned friend who is instructed on behalf of the Trustee whose duty is to, of course, act in the interests of the creditors.

Now, sir, my learned friend then went on to make the point asking why had this public scandal burst on the country and so on. He went on to say that if the Public Examination continued, innocent people who may have been named by the debtor so far will be cleared ----

MR. MUIR HUNTER: I said might be cleared by questions put by me or by the Official Receiver.

MR. BENNETT: Certainly; might be cleared by questions put by my learned friend or the Official Receiver. Well, one knows, of course, my learned friend would do just that if his instructions were to that effect, if his duty so required, but it is, with the greatest respect to my learned friend, a faint hope that if innocent persons have already wrongly been named by the debtor that such damage as may have been done can be made good by a continuation of the same procedure. If that be right then all we ask for is a deferment of that procedure, and we say that a Public Examination by its very nature is not apt to clear persons who may already have been wrongly named. Of course, my learned friend is right in saying that some of these persons who have been named may have explanations. So indeed they have. Indeed, one hopes they have, but those explanations will not appear in the course of the Public Examination which is limited to the debtor alone.

Now, sir, the next point is this. My learned friend said the counsel appearing for the Government Departments have been talking as if Mr. Poulson was to be prosecuted. Of course, only to this degree, that that is a possibility which inevitably must arise when any criminal investigation is to be made into his activities but, of course, be that as it may, Mr. Poulson alone in a Public Examination could take such steps as he thought right to counter any such suggestions that might be made to him in the course of that Public Examination but, as I have said, if other persons are named they do not have that opportunity in these proceedings.

So far as the public interest is concerned, I must object very strongly to the use of such phrases as "The concealment of fact", or "Hearing behind closed doors" or to any suggestion that the Official Receiver should abrogate his performance of his duties. This is not an application to cancel a Public Examination, or to stop it, or to prevent any proper enquiry; it is simply an application for it to be deferred.

Now, the next point, and one of great importance so far as public departments are concerned, were matters raised by my learned friends that in all cases where public interest has been put to a Court as a ground for the Court to take any action, it has been done in pursuance of three principles;

either for the protection of infants, for the protection of the national security or for patents, or for the protection of communications of confidential privilege of the Crown. I want to make it absolutely clear, sir, there is no attempt in these proceedings by the Crown Departments to claim any kind of Crown privilege. That simply does not arise in these proceedings, and so the cases which my learned friend cited, which related to the confidentiality of communications between Crown servants and so on and public servants simply do not apply in this instance, and I do not seek to say that there is any question of Crown privilege in this matter.

Then my learned friend goes on to say that I take the point of the public interest and that in so doing I ought to do so not by way of submission, but ought to furnish the Court with evidence in some form or another, be it an affidavit by a public official such as the Official Receiver, or of a certificate of the Attorney General or some Minister of the Crown. Sir, such certificate, or such affidavit could only, in the case of an affidavit, set out evidence of fact which the Court would be asked to take into consideration in coming to its decision, and a certificate from the Attorney General, or the head of any Government Department, could only express the opinion of the officer concerned that it was or was not in the public interest that certain matters should not be revealed to the public gain.

Now, sir, in this matter there is no need for an affidavit in my respectful submission because the facts are before you already, sir, and I have not sought to adduce any new fact before you, save for the fact, which is a matter of public knowledge because of parliamentary proceedings, that a police enquiry has been ordered. Now, sir, again it is not sought to say in this case that it is a matter of Crown privilege that there should be no further public disclosure. What is sought to be said is that on the facts known to you, sir, it is right that these present proceedings in Public Examination should be deferred for a number of reasons which I venture to put before you by way of submission, which in my respectful submission I am entitled to do. If for various reasons, which one might mention in particular, one were to call before this Court a police officer to describe precisely how the police intend to go about their investigations and what matters they intend to put it would indeed destroy the whole purpose of the police enquiry.

Now, sir, I can end my reply to my learned friend's submissions by saying two matters. One accepts it is in the Trustee's duty and the creditors interests that assets should be traced and such further investigations made into the whereabouts of assets as is possible. That, as I have said many times now, can be done in other ways, and just as effectively. We do not seek to abrogate the performance of any duty but simply to defer the performance of those duties until the police have had time to carry out their investigations and, sir, although I do not appear for Mr. Poulson personally - I am not instructed on his behalf in any way, but replying as I do to the submissions made by my learned friend can I say, at my friend Mr. Saffman's request, that Mr. Poulson's illness, or difficulties, in which he was placed at the last hearing came about just after being presented with a very large schedule, a

document setting out in great detail matters of which he had had no prior warning, and I am asked to say that it was that, rather than any other matter, which was the immediate cause of his difficulties.

Sir, those matters apart, I rely upon the matters I have sought to put before you in support of this application and in rebuttal of the grounds put forward by my learned friend in which he seeks to ask for a continuation of the Public Examination

THE REGISTRAR: Mr. Hunter, is there any objection to Section 25 being used in relation to the bankrupt?

MR. MUIR HUNTER: The bankrupt himself?

THE REGISTRAR: Yes.

MR. MUIR HUNTER: Your Honour, procedurally any difficulties?

THE REGISTRAR: Rather than it being in public, examining him in private?

MR. MUIR HUNTER: The bankrupt can be asked the same kind of questions in private as in public. Of course, he will not be subjected to the cynosure of the public and the possibility that his answers may be contradicted by creditors or members of the public who are present who are cognisant of the facts, for without your leave, which it would be unusual to give, nothing that passes in your chambers could ever be published at all and, therefore, it has always been, if I read the cases correctly and we have only seen a selection of them, considered essential that the bankrupt should be examined in public. That is why it is called a "Public Examination" and, therefore, Section 25, on those occasions when one has used it, has been either when it was wanted to have an intermediate short examination of the bankrupt or his wife inbetween hearings of the Public Examination, or when the Public Examination has been concluded and it is not considered necessary to re-open it, otherwise one does it at the Public Examination itself. That is the practice, but I cannot say that bankrupts are not examined privately if occasion should demand.

MR. SAFFMAN: It may be of assistance to you, sir, and I would repeat what I said before, that the debtor is happy to co-operate with the Trustee in any information required and would not object to examination under Section 25 if application were made.

MR. MUIR HUNTER: I must remind my learned friend Mr. Saffman that the debtor is under a statutory duty under Section 22 to do that and many other things on pain of commitment. This is no offer of co-operation which really has any statutory relevance at all.

MR. SAFFMAN: Well, sir, the fact is that he is willing to co-operate, which must be better than being forced to co-operate.

THE REGISTRAR: Mr. Saffman is making application on behalf of Mr. Poulson for this Public Examination to be postponed to a date to be fixed in the future in view of the enquiries which are at present being conducted by a select body of the police into the case. He concedes it is not known if charges will be preferred, or who they will be preferred against. He cited a number of cases this morning which indicate the nature of the Public Examination, the duty of the Official Receiver and the Trustee in conducting that examination and the nature of the questions which have to be asked, and he says that if the Public Examination is adjourned to a date to be fixed, neither the Official Receiver nor the Trustee would be prejudiced by an adjournment as evidence can be obtained as to his conduct and as to further assets by other means, and that the continuation of the Public Examination would prejudicially affect any possibility of a fair trial if charges were brought, not only against Mr. Poulson, but also against others.

Mr. Bennett appeared on behalf of the Official Receiver, instructed by the Department of Trade and Industry, and he supported Mr. Saffman's application. He said that since the last hearing of the Public Examination it had been announced that an investigation was to be conducted and that a report was to be submitted to the Director of Public Prosecutions as matters of the highest public importance had been raised. In his submission he said that the continuance, or the postponement of the Public Examination was of interest to the debtor, creditors, third parties who may be named, and to the public.

He did not deal with the debtor as that, from his point of view, had already been dealt with by Mr. Saffman. He supported Mr. Saffman's arguments that the continuance of the Public Examination was of importance to creditors and third parties who may be named in the Public Examination, who had no right to

appear at the Public Examination and had no right to reply, and then he dealt with the question of public importance and outlined the ways in which the continuance of the enquiry may constitute a hindrance to the enquiries by the police. In particular he mentioned that people should not know what information is in the hands of the authorities, and access may be gained to such persons as are named in the Public Examination before the police have had an opportunity of interviewing them. He said that although he could not be definite on this, he would not disagree with the opinions expressed that these enquiries might take between six and twelve months. Mr. Coles on behalf of the Attorney General supported the arguments which have been put forward by both Mr. Saffman and Mr. Bennett.

Then Mr. Hunter, on behalf of the Trustee, expressed that he had never known such an application to be supported by an Official Receiver or the Attorney General during his long experience at the Bankruptcy Bar. He dealt with the duty of the Official Receiver to investigate and report offences under the Bankruptcy Act, a duty which was reposed in him by Section 161 of the Act. He also dealt with other arguments which have been put forward this morning, that the police possess no compulsory powers of investigation, that people being interviewed can remain silent in the face of a police enquiry, and then he mentioned the vast sums which appear to have been given away by the bankrupt.

As to an examination of the debtor under Section 25, he quite rightly pointed out that the public could not be admitted to such an enquiry, nor could any creditors, and that at the Public Examination of the debtor, both the public and creditors were entitled to be present and that creditors were entitled to ask questions. The case of re Atherton has

been mentioned on two or three occasions this morning, a case which is directly in point to the application for an adjournment of the Public Examination.

This case of Atherton concerned the Public Examination of a man who was charged with a criminal offence and an application was made for his extradition. Mr. Saffman called my attention to a passage in Mr. Justice Phillimore's judgment on page 255. "The point was very properly raised by the Registrar and referred to me, because the practice in London has been, where a debtor is in custody, or under remand, on a criminal charge, not to press such questions while the charge is hanging over the bankrupt, but to adjourn the Public Examination until after the trial, but such a rule may, as has been pointed out, lead to mischief where it might be necessary to examine at once, in order to trace assets which might be lost if prompt measures were not taken. It is anyhow only a rule of convenience and tenderness and though I hope it will be followed generally, both in London and in the country, there may be occasions where it will be desirable not to follow it. Such an occasion would occur where the bankrupt is likely to be extradited or to be handed over to colonial authorities under the Fugitive Offenders Act. In such a case the bankrupt might leave the country and perhaps not come within the jurisdiction again. There it would be the duty of the Official Receiver to examine him before he leaves the country". In applying that case to the present circumstances I ought to note that in this case, the bankruptcy of Mr. Poulson, there has been no criminal charge made and, of course, no arrest.

Now, turning to the background of the Poulson bankruptcy, Mr. Poulson is a professional man, an architect, and may be described as a member of one of the older professions, charging

and receiving fees, as he did when he was in practice, based on a percentage of the cost of the building that he was designing or the erection of which he was supervising. By 1968 he was employing 750 people and had the largest architectural practice in Europe, with international connections. He was doing work for breweries, Government Departments, local authorities, he was building all manner of buildings from car showrooms to hospitals, schools, harbours; you name it, he has built it.

From 1932 to 1958 his drawings from his practice started in a modest way, but increased to the large amount of £20,000 per annum, and I mention these figures here to show the scale of his drawings from his practice, and the size of the practice, by reference to the gross fees earned. In 1959 his drawings were £23,000 on a net profit of £9,000, nearly £10,000, and gross fees of £109,000. Of course, his drawings during that year were drawings not only on account of net profit, but also on his capital account. It is fair to say that the drawings also included payment of income tax and surtax. In 1960 his drawings had risen to £38,000 on gross fees of £162,000 and a net profit of £27,000. These, incidentally, are figures which can be drawn from the notes of the Public Examination in various places, but which I mention here now for the convenience of having all the figures in one place in the transcript.

In 1961 his drawings were £28,000 on gross fees of £241,000 and a net profit of £29,000. In 1962 they dropped to £26,000 on gross fees of £395,000 and a net profit of £59,000. In 1963 his drawings rose to £40,000 on gross fees of £526,000 and a net profit of £68,000. I will miss three years and go to 1967 where his drawings were £127,000 on gross fees of £1,159,000 and a net profit of £112,000. In 1968 the accounts were not agreed; accounts were prepared in draft. The gross

fees as calculated by his accountants at that time were £1,034,000. By November of 1968 judgment was obtained by the Inland Revenue for just over £211,000. This was for unpaid income tax, surtax and tax under P.A.Y.E., so that here was a practice of immense size earning vast fees, and Mr. Poulson, drawing large sums of money out of his practice, found himself in difficulty by late November of 1968.

By June 1969, he was told by his staff that he was insolvent. Immediately he consulted what he thought was the best professional advice, a firm of solicitors in London and a firm of accountants in London. A report was prepared by the accountants which attempted to show that in their view he was insolvent. This report was seen by Mr. Poulson later in the year. In November of 1969 there was the document prepared which Mr. Hunter has referred to as the "Wilson memorandum", again attempting to show Mr. Poulson's insolvency.

Then I heard evidence of a meeting on the 31st of December 1969, at the Queens Hotel in Leeds, when in the early hours of the following morning, to quote his own words he "signed away his business". In March of 1970 a company which we have come to know as I.P.D. was formed to acquire, as I understand it, the good will of the practice of Mr. Poulson and shares were allotted to trustees. There was an assignment dated March of 1970 which so far as I can tell at this stage attempted to put the assets of the bankrupt out of the reach of his creditors. The propriety of that deed and the way it would work to pay the creditors has not in my view been properly or satisfactorily explained.

Ultimately Mr. Poulson filed his own Petition in Bankruptcy and a Statement of Affairs was produced. This Statement of Affairs disclosed in his view that there would be a surplus of

some £44,000. That surplus could only arise if the other figures which he showed in the statement were accurate figures, and there was a sum of some £200,000 described as "Work in progress". In my view, that figure is open to speculation. During the Public Examination it emerged that sums described as being paid by way of consultancy fees totalling £334,000 had been paid over a period of eight years. Part of this large sum has been accounted for properly in respect of services actually rendered, but for by far the larger part of that large sum no proper explanation has been given as to why the payments were made. It was agreed by the debtor, in answer to question 1,229 that these immense expenditures must be regarded as having contributed to his insolvency.

The question I have to decide today is whether the continuing interests of the creditors in the Public Examination/should be subordinated to the convenience of the bankrupt and in the public interest. I have heard arguments by counsel on both points of view. At one stage I wondered whether it would be right to order an enquiry of the bankrupt under Section 25, but, of course, that is an enquiry behind closed doors; no word of what happens at such an enquiry is disclosed to the public or to the creditors, and I have come to the conclusion that such a private examination would not be appropriate. The postponement of a Public Examination is described in Atherton as being a rule of convenience only. We know that there is a criminal enquiry opening, but no charges have been brought. In my view, this Public Examination should continue without prejudice to any further application when charges are brought.

MR. MUIR HUNTER: Will you dismiss both the applications?

THE REGISTRAR: I will indeed.

MR. MUIR HUNTER: In the circumstances I will not ask you to deal

with the costs of today although, of course, we have lost half a day, but if you proceed after the adjournment I shall be asking whether it would still be convenient to the Court, notwithstanding the adjournment of the two pending examinations on the 7th and 8th, whether you would allot one or other of those days for the continuation of today, if the material is still required to be investigated. Mr. 'S' and Mr. 'K', as you know, are proposing to ask for the adjournment of the examination for the purposes of discussions.

THE REGISTRAR: I can certainly allot the 7th of August without any difficulty. The 8th of August, I will have to confer with my staff on first.
