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Business on Trial

The Tobacco Securities Trust and the 1935 Pepper Debacle

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Abstract

The prosecution and imprisonment of Lord Kylsant in 1931, following the collapse of the Royal Mail Shipping Group, has long been acknowledged as a landmark event in the history of financial accounting. Far less attention has been given to the equally high profile conviction and imprisonment of three businessmen four years later in the wake of the notorious pepper scandal. This paper examines the background to the scandal, particularly the role played by an investment vehicle called the Tobacco Securities Trust, and compares the subsequent trial and conviction to that of the Royal Mail case. The findings of the paper serve to endorse studies by accounting historians arguing that Britain's legal environment played a critical role in promoting improvements in the financial disclosure policies evidenced amongst leading British companies during the second quarter of the twentieth century.

Business on Trial: the Tobacco Securities Trust and the 1935 Pepper Debacle

The Tobacco Securities Trust (TST) has remained a barely visible presence in accounts of British business history between the wars. And yet, when this substantial enterprise was created in 1928 by Sir Hugo Cunliffe-Owen, as a subsidiary of British-American Tobacco, it was placed under the chairmanship of the towering figure of Reginald McKenna,¹ chairman of the Midland Bank and previously Chancellor of the Exchequer under Asquith, and included on its board of directors Lord Bradbury, late of the Treasury and another figure of considerable significance in City circles between the wars. Set up as an investment trust with a capital of £5 million, TST stood in a position to provide some of the financial resources needed to support new business initiatives in Britain that were soon to be identified by the Macmillan Committee; indeed during the 1930s TST did promote the development of such significant and enduring British companies as Taylor Woodrow and Marley Tile.²

In employing its resources, however, TST was also designed to provide the racehorse-owning Cunliffe-Owen with the opportunity to engage in financial activities of a more speculative nature, and the share structure of the company was designed to provide a high risk investment to the owners of its £862,000 deferred shares, the bulk of which were in private hands.³ Consequently, it is for the more adventurous side of its activities that TST has been generally remembered, due in particular to its involvement in the notorious affair known as the pepper scandal. Although TST was only indirectly implicated in this scandal, it nevertheless served to bring the company's financial speculations to an abrupt end in 1935 and to significantly damage the reputations of both McKenna and Cunliffe-Owen.

The pepper scandal itself has tended to be overshadowed by the earlier financial imbroglio that brought down the Royal Mail Shipping Group, and its chairman Owen Philipps (Lord Kysant).⁴ The group had been struggling financially throughout the 1920s and during these years Kysant, with the knowledge of the group's auditor, H.J. Morland a partner in Price Waterhouse, had been transferring increasingly large sums from undisclosed internal reserves to help pay dividends.⁵ In 1931 both Kysant and Morland were controversially charged with issuing false annual accounts for 1926 and 1927 under Section 84 the 1861 Larceny Act. The case that followed at the Central Criminal Court in July 1931 generated immense public interest and became something of a watershed in the history of British financial accounting. Although both Kysant and Morland were eventually acquitted, the accounting profession as a whole clearly felt itself to be on trial and the presiding judge, Mr Justice Wright, took the opportunity to warn professional accountants that if a similar situation recurred they were unlikely to be treated so leniently.⁶

Whilst the acquittal of Kysant and, in particular, Morland of publishing false accounts was greeted in many quarters with relief, it did not constitute the end of the affair. In addition to the main charge of false accounting, Kysant alone had also been prosecuted in relation to a debenture prospectus that he had issued in 1928.⁷ After some confusion on behalf of the jury, a verdict of guilty was brought and Kysant was sentenced to 12 months' imprisonment.⁸ Thus although the 1931 Royal Mail case is generally held up for its significance in relation to accounting practice and the reforms that were eventually brought into effect by the 1948 Companies Act, the case also demonstrated that company directors could be successfully prosecuted if they issued misleading financial information to the public and, as a result, private investors suffered a subsequent loss. The Royal Mail case has recently been taken by Arnold

and Matthews to be a critical factor in promoting greater managerial discretion in relation to financial disclosure after 1935.⁹ The jailing of Kysant certainly set an important legal precedent, and one which was to be invoked again in the wake of the pepper scandal.

I

To a large extent, the origins of the pepper scandal can be seen to lie in the production restriction schemes supported by the British government in relation to colonial commodities such as tea, rubber and tin.¹⁰ In the tin industry, the International Tin Committee (ITC) was established as a producer cartel in 1931 in an effort to control supply and stabilise the price.¹¹ A key mover in this scheme was John Howeson, an entrepreneur of German background who during the boom years of the 1920s had floated a succession of tin mining companies.¹² With financial support from McKenna and the Midland Bank, amongst others, Howeson ultimately created a group of operations centring around the Anglo-Oriental Mining Corporation, which became a publicly listed company in 1928. Howeson propounded the thesis that the rapidly expanding demand for tin would create a long-term condition of famine on the world market for the commodity. When the price of tin actually began to fall from around 1927, as a result of expanding supply outstripping the rising demand, Howeson began to withhold metal and encouraged a programme of voluntary restrictions in output through the formation of the Tin Producers Association.¹³ It was the failure of this voluntary scheme to bolster the price of the metal that led directly to the formation in 1931 of the ITC, following a series of negotiations involving the governments of

Bolivia, Nigeria, Federated Malay States and the Dutch East Indies in which Howeson's Anglo-Oriental operation played a pivotal role.¹⁴

In developing his business activities, Howeson had cultivated a wide range of connections within British financial circles as he extended his influence over the tin industry and as well as his links with McKenna, Howeson had also formed an association with Cunliffe-Owen. Before his ventures in the tin market, Howeson had inherited control of an Indian-based managing agency that was active in the jute industry.¹⁵ In the early 1920s his firm briefly acquired a cigarette manufacturing concern near Calcutta in which Cunliffe-Owen was reputed to be an interested party.¹⁶ Although this initiative proved to be a failure, Howeson and Cunliffe-Owen clearly forged a link at that time which was to prove of great significance.

Cunliffe-Owen had effectively succeeded James Duke as the head of BAT Co. after the First World War and oversaw a period of rapid expansion in the geographical scope of company's activities.¹⁷ By the late 1920s, the company controlled subsidiaries in a wide range of countries and was generating sufficient profits to enable ordinary shareholders to receive annual dividends of between 20 and 25 per cent. As the potential for continued investment in the tobacco industry began to reach its limits, Cunliffe-Owen sought to create a new corporate vehicle which would allow some of British American's profits to be directed into more adventurous areas, whilst maintaining BAT Co. as a purely tobacco-based concern.¹⁸ In order to do this, in 1927 he gathered together portions of the stock from a wide range of BAT Co.'s overseas subsidiaries and used this as the basis for setting up a new subsidiary called Tobacco Investments, Ltd., capitalised at £2 million. The next step in the process was the formation of the Tobacco Securities Trust (TST). This was floated in September 1928 with an authorised share capital of £5 million, including the £2 million capital of

Tobacco Investments Ltd., which now became a subsidiary of TST.¹⁹ Reginald McKenna, who had made Cunliffe-Owen a director of the Midland Bank in 1925, was recruited to act as TST's chairman,²⁰ whilst the Imperial Tobacco Co. (who at this time still controlled, pro rata, around one-third of all BAT Co. shares) appointed on to the board of directors Lord Bradbury.²¹

An early use of TST finances was to enable BAT Co. to set up its own insurance arm, Tobacco Insurance Co., which it did in 1929.²² Later that year another company was set up by TST, this time as a subsidiary of Tobacco Investments, called the Dean Finance Co. whose object was to engage in various financial investments. The Dean Finance Co. provided Cunliffe-Owen with an investment vehicle that, whilst falling under the umbrella of TST, obliged him to report to the directors of the holding company only indirectly through Tobacco Investments Ltd. This arrangement gave Cunliffe-Owen, as chairman of Dean Finance, a good deal of latitude to engage in financial manoeuvring.

One such example of an investment opportunity for the Dean Finance Co. arose in 1931 as a result of Cunliffe-Owen's link with Howeson. Shortly after the formation of the International Tin Committee, Howeson, with McKenna's assistance, successfully promoted the creation of a tin pool. The pool drew on the resources of a combined Dutch and British syndicate of private firms, with the idea of holding a sufficient stock of the metal to manipulate the market price. Only when the price of tin had reached an agreed level would the syndicate release a certain quantity of its stock of tin on to the market.²³ Both Cunliffe-Owen, in a personal capacity, and the Dean Finance Co. provided financial support for this enterprise, and when the pool was liquidated between November 1933 and April 1934 the metal was sold at a significant premium.²⁴ Later in 1934, Dean Finance also joined a syndicate organised

by Howeson's Anglo-Oriental to purchase the shares in a group of Australian tin companies operating in South East Asia.²⁵

II

During 1933, TST became involved in the financial machinations that developed around the repatriation of the Nottingham firm, Boots Pure Drug Co. Ltd. In 1920 Jesse Boot, the company's founder, had sold his controlling interest in the company to the United Drug Co. of America, whose president Louis K. Liggett had successfully bid the sum of £2.75m. for it.²⁶ When financial difficulties obliged Liggett to put in place a scheme to sell the company back to British interests in 1932 a number of prospective providers of finance became involved in the negotiations.²⁷ Although Jesse's son, John Boot (the second Lord Trent), had assembled the required finance through a syndicate backed by Morgan Grenfell, Fleming & Co. and the Prudential Insurance Co., in doing so he had attempted to browbeat the Americans into accepting the low price of £5 per share.²⁸ On arriving in London in December 1932, Liggett quickly began to engineer an alternative deal, involving Hambros Bank and Erlangers, and using the issuing house of Philip Hill & Partners, whose chairman, Philip E. Hill, had successfully overseen the flotation of Woolworth's shares in Britain.²⁹ This syndicate was prepared to offer in excess of £7 per share for Liggett's firm. Boots' management was concerned that Hill, with a number of existing interests in the pharmaceutical industry, was intent on rationalising the retail chemists' sector and were bitterly opposed to the deal.³⁰

In the event, the Hambros-led deal was to collapse in acrimonious circumstances. The difficulties arose from an embargo on foreign issues that the

Treasury had imposed following the suspension of sterling's convertability to gold in 1931.³¹ A further complication had arisen towards the end of 1932 as a result of a series of critical negotiations on the question of German reparations. At an international conference in Lausanne in June 1932 Britain and France had agreed to scale down Germany's obligations with a three year moratorium, and France had then attempted to link the Lausanne agreement with a similar scaling down of its American war debts. When the United States rebuffed this proposal, however, France defaulted on its instalment due in December 1932.³²

In Britain, reaction to the French decision led to a division of opinion between the Treasury and the Bank of England. At the Treasury, Sir Richard Hopkins, the under secretary, was concerned that in sterling's weakened state the continuation of war debt repayments would place severe pressure on the balance of payments. At the Bank, however, Norman argued that the failure to pay the December instalment would damage British credit and lead to a further devaluation in sterling. Chancellor of the Exchequer Neville Chamberlain had grudgingly accepted Norman's advice, but sought negotiations with the Americans to reduce the debt burden.³³ These considerations now spilled over on to the Boots share issue.

Treasury papers make it clear that the Boots deal was discussed at a committee meeting between Bank and Treasury officials in December 1932.³⁴ On 12 January 1933 Basil Catterns, Deputy Governor of the Bank, wrote to A.P. Waterfield at the Treasury noting that 'a memorandum of the interview shows quite clearly that the question of a public issue [of Boots shares] was definitely turned down.'³⁵ This correspondence had been prompted by Waterfield's letter to Olaf Hambro three days earlier in which the Treasury official stated that 'there will be no objection on the part of the Treasury to an offer for sale being made for shares [in Boots]' but that

‘remittance of the purchase price to the U.S.A. shall only take place under conditions to be approved by the Bank of England.’³⁶

Word of the Treasury’s letter to Hambros reached the Governor of the Bank on the afternoon of the 11 January, with the deal itself scheduled to take place the following day.³⁷ Norman immediately summoned the directors of Hambros Bank and told them that they must expect the Treasury authority to be revoked. Officials at the Treasury now began to back-pedal furiously. Hopkins, who assumed responsibility, wrote a file note to Neville Chamberlain outlining the situation and requesting his authority to prevent the share issue. In it he stated that ‘just at the time we are using the transfer difficulty as one of the grounds for cancellation of the war debt, we could not afford to have it said that it was no embarrassment to the Treasury for British investors to subscribe \$24 million to the coffers of an impecunious American Company.’ His note concluded, ‘The Governor is satisfied that the matter has not gone so far as to give the American company [Drug Inc.] any right of action against Boots for the implementing of a contract and also that the revised Treasury ruling will be obeyed.’³⁸ Chamberlain duly gave his assent to the volte-face.

Liggett, whose ‘Dutch auction’ negotiating tactics of playing off different financial interests had created much consternation amongst the City establishment, was now left badly exposed by the breakdown of the deal. With his business interests in the United States in urgent need of financial support, he was forced to reconstruct the sale of Boots from a position of weakness bordering on desperation. Salvation for Liggett came in the shape of TST, but it came at a price. In May 1933 it became known that the Dean Finance Co., was arranging a private placement of shares in Boots using the City firm of Rowe, Swann & Co. When the news broke, it inevitably generated consternation at the Bank of England and the Treasury, since it flew in the

face of Chamberlain's embargo on foreign issues. Olaf Hambro was particularly incensed, writing to the Chancellor of the Exchequer to demand an explanation.³⁹ On this occasion, however, the Treasury found itself powerless to intervene.

McKenna and his co-directors at TST had neatly circumvented the Treasury's earlier decision to embargo the Boots share issue in Britain by effectively tying up the deal with Liggett's firm in the United States directly, and only then attempting to issue the shares in Britain. Initially, McKenna and Cunliffe-Owen had negotiated an option to buy one million Boots shares and had told the Treasury that, if the option was exercised, TST would retain the equity as an investment. However, with the U.S. dollar now off gold and depreciating significantly against sterling, TST had exercised its option to buy and were reaping the financial rewards by placing the Boots shares - which had cost them around £6 5s. - with British investors at £6 15s.

Hopkins now penned another note to his Chancellor.⁴⁰ In exasperation, he recognised that 'the shares were bought out of dollar holdings that the company ordinarily has: but they [the dollars] should have been brought back rather than used for this.' It had been this overseas transaction, rather than the subsequent share issue, which had actually broken the embargo on foreign exchange transactions; providing an early example of the way in which transnational companies like BAT Co. could circumvent national-based financial controls. Hopkins urged Chamberlain to seek an explanation on behalf of the directors of the Dean Finance Co. and a meeting duly took place between McKenna, Cunliffe-Owen and the Chancellor. Hopkins also wrote to the chairman of the Stock Exchange Committee, Archibald Campbell, to raise the possibility of the London Stock Exchange refusing to quote the new share issue, but was informed that nothing could reasonably be done along these lines. Ultimately, the only action that was implemented was the drafting of a press release by Chamberlain,

reiterating that the embargo on foreign issues was still in force and that the Treasury were to be consulted before any such transaction was set in hand.

The successful completion of the Boots acquisition was trumpeted in the British press as a triumph. Greenwood's account of the transaction cites the report published in the *Financial News* of 9 May 1933:

This is a highly remunerative transaction to the Tobacco Securities Trust and its associates. It will be remembered that under the January deal, which was then upset by the Treasury, British interests were to purchase the shares at a price of about £7.15s. Who can doubt that Mr. Liggett met his match when he came up against Sir Hugo and his friends? It is felt in the City that this deal is an excellent solution to the impasse created, partly by Mr. Liggett's tactics and by the attitude adopted by the Treasury.⁴¹

For TST shareholders the deal certainly brought windfall profits, which rose from £672,000 in 1932 to £802,000 in 1933.⁴² Although the financial success continued in 1934,⁴³ the Boots transaction had raised the hackles of the Treasury and the Bank of England. Thus when, in 1935, the board of TST was forced to report a significant fall in profits for the year to £527,000, as an outcome of its involvement in a major financial scandal, it was clear that they would find few sympathetic friends in Whitehall or Threadneedle Street.

In popular accounts looking back at the pepper scandal, the figure most closely associated with the episode was an Armenian-born commodity broker, Garabed Bishirgian, whose flamboyant lifestyle in London during the early 1930s had created a stir in City circles.⁴⁴ Bishirgian & Co. had been established in 1922 as a stock broking firm, but from around 1928 it had entered the London Metal Exchange and had become especially involved in the market for tin. As a result, Bishirgian & Co. had acted for Howeson in numerous share transactions on behalf of his various tin companies. In 1930, Bishirgian had become a major shareholder in a trading company named Williams, Henry & Co. Ltd. that since 1923 had operated within Howeson's Anglo-Oriental group.⁴⁵ Using the experience in the mechanics of price control that Howeson had employed to support the market for tin, the two began to look for opportunities to turn a profit by buying up large quantities of other commodities in order to create a shortage, and then selling their accumulated stock on a rising market.

One commodity that seemed ripe for such a treatment was shellac, an insect residue which provided the principal material for producing gramophone records,⁴⁶ an expanding industry in Britain around this time. In October 1933, Williams, Henry and Co. began to buy quantities of shellac on forward contract, with Bishirgian & Co. acting as brokers.⁴⁷ In this financial exploit, Williams, Henry and Co. had clearly acquired the support of McKenna and Cunliffe-Owen. Acting without the knowledge of the majority of TST's directors, the pair used the Dean Finance Co., to become directly involved in the shellac scheme. In December 1933, the Dean Finance Co. purchased on its own account a quantity of shellac, and made a loan to Williams, Henry and Co. which was secured against further purchases of shellac.⁴⁸

With the price of shellac rising during the first half of 1934, Howeson and Bishirgian were now open to ideas for other commodities in which they could speculate. At a luncheon party on 8 February it was suggested to them by a produce dealer from Figgis and Co. that a purchase of 3000 tons of white pepper, at a cost of around £250,000, would secure sufficient control over the market supply of the commodity to generate significant profits.⁴⁹ Over the ensuing months, Bishirgian began to steadily accumulate on behalf of Williams, Henry and Co. the required stock of white pepper.⁵⁰ Of this latter scheme, neither McKenna nor Cunliffe-Owen appears to have had any inkling, despite their support for the heavy shellac commitments being conducted through the same firm.

The dealings in shellac continued throughout 1934 and in August a further loan was provided to Williams, Henry and Co. through the Dean Finance Co. on the authority of McKenna and Cunliffe-Owen.⁵¹ From around this point, however, the market price of shellac began to decline.⁵² Moreover, despite having purchased the full quota of 3000 tons of white pepper, significant further supplies continued to become available. Bishirgian was forced to commit additional resources to purchase pepper and by September had accumulated commitments to a total of 11,640 tons out of an estimated total annual world output of white pepper of 12,000 tons.⁵³

Aware that future commitments in shellac and pepper were in danger of overwhelming their financial capacity, Howeson and Bishirgian looked for alternative methods of raising capital to keep the enterprise afloat. Their solution was to purchase a small and respectable firm of metal brokers named James and Shakspeare and then re-float the company as a public concern.⁵⁴ A prospectus was drawn up in which the authorised capital value of James and Shakspeare was raised from £17,000 to £500,000 on the strength of acquiring substantial assets in both Williams, Henry and

Co. and the Bishirgian metal dealing business. Crucially, the prospectus made no reference to the future shellac and pepper commitments of Williams, Henry and Co.

During the summer of 1934 Howeson cast around amongst his network of fellow businessmen in an effort to find an underwriter for the James and Shakspeare issue. In August he approached Lord Chandos, chairman of the British Metal Corporation, who had earlier helped him to finance Anglo-Oriental, but Chandos declined his invitation, arguing afterwards that the prospectus had grossly inflated the potential profits of the company.⁵⁵ The issue was ultimately underwritten by the firm of Cull & Co.⁵⁶ although only after two of the firm's partners had discussed the matter with McKenna.⁵⁷ Both TST (through the Dean Finance Co.) and Cunliffe-Owen personally acted as sub-underwriters. McKenna invested his own money in the James and Shakspeare floatation, ultimately owning 5206 preference shares and 5166 ordinary shares⁵⁸ and Midland Bank also provided finance to support the issue.⁵⁹ In spite of this additional funding, the difficulties faced by Howeson and Bishirgian continued to mount over the remainder of 1934. The next payment against the shellac commitments fell due in December 1934 and required further finance of £364,000 for which a loan was raised as to two thirds from Dean Finance and one third from Howeson's own resources.⁶⁰

By the closing months of 1934, the scheme to manipulate the markets in shellac and white pepper was disintegrating into a financial calamity. As the price of white pepper rose from 9d to 1s. 5d (17d) per lb the effect was merely to bring forth yet further supplies of the spice.⁶¹ The financial protagonists had committed a critical miscalculation based on the potential size of the stock of such pepper available in the world. The blunder centred on the distinction between white and black pepper. Unlike white and black grapes, which are distinct varieties, black pepper merely derives from

berries picked before they are fully ripe which and then dried whole. White pepper, on the other hand, is produced from fully ripe berries from which the outer husks are removed – a process known as decortication – and the remaining kernels ground into white pepper.⁶² The global stock of white pepper could thus be expanded simply by allowing berries that were normally used to produce black pepper to ripen sufficiently for them to be processed into white pepper.

Despite having accumulated stocks of white pepper amounting to almost 12,000 tons, therefore, further quantities continued to be shipped to Britain until, approaching the settlement date of 8 February 1935, the market price for the commodity gravitated towards 8½d whilst the average contract price of the pepper bought through James and Shakspeare was 1s. 2½d (14½d). As a result, forward contracts in white pepper amounting to between £1.5 to £2 million were falling due and could not be covered. As the financial consequences became clear, Howeson used his tin connections to initiate negotiations with the government of the Dutch East Indies in Batavia, with the idea of arranging a scheme for the control of the export of pepper, but to no avail. He also approached the British Colonial Office on 21 January 1935 with the same object, but was told that there would be no question of that office or any other colony taking action.⁶³

In desperation, Howeson approached Midland Bank but found that McKenna was on holiday, travelling on board a ship bound for South Africa. In his absence, the matter was dealt with by the managing director of Midland, Frederick Hyde, who called a meeting of the leading banks in London to explore the possibility of forming a pool to lift the surplus quantity of pepper off the market. Despite the fact that Midland had advanced James and Shakspeare £100,000, and against the pressings of an ad hoc committee of other commodity brokers caught up in the impending disaster,

led by Figgis and Co., Hyde was reluctant to push the case and in the final analysis merely offered the solace that each of the banks' customers would be treated sympathetically.⁶⁴

The matter was then taken up by the Bank of England who suspended trading in pepper until the financial consequences could be accurately gauged. Montagu Norman, who had been aware of the situation since the previous November, now managed the unwinding of the crisis. James and Shakspeare was declared bankrupt on 7 February, the day before trading in pepper recommenced, and a compulsory winding up order was then issued by the Official Receiver. The leading banks were now forced by Norman to mount a rescue scheme and the outcome was the formation of the London Pepper Sales Control Committee (known as the London Pepper Pool), which ultimately had forty-one participants and over the course of the next six years disposed of over 20,000 tons of white pepper.⁶⁵ In effect, the Governor of the Bank of England was able to oversee a salvage operation which, despite widespread losses for many financial institutions caught up in the scandal, including TST, led to the demise only of those firms and individuals considered to be the parties mainly at fault in creating the financial mayhem.⁶⁶

IV

The affair sullied the reputations of both McKenna and Cunliffe-Owen. McKenna in particular was pilloried in the left-leaning popular press when his personal investments in the James and Shakspeare firm became known. For a period it was unclear whether McKenna himself would face the prospect of prosecution. On his return from South Africa in April 1935 he was summoned by the Senior Official

Receiver, E.T.A. Phillips, to give an account of his involvement in the drawing up of the James & Shakspeare prospectus.⁶⁷ Shortly after the meeting, McKenna must have been highly relieved to receive the following letter from Phillips:

Dear Mr McKenna,

I am very much obliged to you for your letter of the 13th instant, enclosing a statement relating to your interview with Mr Marx and Mr Gilbert Russell [both of Cull & Co.] on 29th August... As the prospectus was issued on the 3rd September it is quite obvious that nothing you said at the interview can have influenced Messrs. Cull & Co. to underwrite the issue.⁶⁸

If the timing of his involvement was the key issue, then McKenna can be considered to have been fortunate indeed to have escaped so easily from any blame for the information contained in the prospectus. In August 1934, McKenna had on two occasions discussed the draft prospectus with Howeson, a fact that he later explained to the Official Receiver,⁶⁹ and he had provided a testimonial for Howeson which was given to Hermann Marx of Cull & Co. prior to that firm's agreement to underwrite the James & Shakspeare issue.⁷⁰ At the time of the discussions concerning the prospectus McKenna had been seeking an investment in preference shares for a trust fund, and he had given Howeson his view early in August 1934 that the James & Shakspeare proposal appeared to lack sufficient assets on which to base an issue of £300,000 5½% preference shares.⁷¹ Cull & Co. had clearly taken this point into account in their redrafting of the prospectus by making the preference shares fully redeemable and creating a sinking fund for the purpose of redemption.⁷² When Marx showed the

revised prospectus to McKenna on 29 August 1934, therefore, the chairman of Midland Bank acknowledged that this provision was a satisfactory solution to the problem of the limited asset base that he had earlier raised with Howeson.⁷³ What seems clear is that the redeemable nature of the preference share issue was designed to allow the opportunity to treat the bulk of the money raised through the James & Shakspeare prospectus as debt rather than equity, which more closely reflected the short-term speculative nature of the events taking place on the ground, and the form of funding consequently required.⁷⁴

Whilst it is evident that McKenna made a significant contribution to assisting Howeson's quest for an underwriter, it is appears equally clear that the pepper dealings were unknown to him.⁷⁵ His denial of any knowledge that the floatation had been engineered to meet future liabilities against shellac – less still those involving pepper – led naturally to accusations of professional negligence, forcing him to offer his resignation as chairman of Midland Bank.⁷⁶ Although this sacrificial offer was not accepted, McKenna's appetite for work sharply declined as the scandal left his reputation for sound financial management severely compromised. He also faced a very uncomfortable meeting with Montagu Norman at the Bank of England on 1 May 1935 at which he protested his complete innocence of the pepper scheme.⁷⁷ Seven days after his interview with Norman, McKenna wrote a letter of grovelling apology to Lord Bradbury at the Bank of England, who as a director of TST found his name caught up in the scandal.⁷⁸ In this letter McKenna made it clear to Bradbury that he would not resign his post as chairman of TST until after the Annual General Meeting, at which he was thus obliged to explain to the shareholders the circumstances that had led to the sharp fall in the company's profits (if not in its dividends, which were still

paid to ordinary shareholders at a handsome 15 per cent).⁷⁹ He resigned as TST chairman immediately thereafter.⁸⁰

McKenna's replacement as chairman of TST was Lord Catto from the firm of Morgan Grenfell, a decision which Montagu Norman, rather than Cunliffe-Owen, was clearly the instigator.⁸¹ For his part, Cunliffe-Owen was severely censured by the other directors of TST who had remained shockingly unaware of the reckless financial speculation that their company had become embroiled in, and was forced to help deal with the huge quantity of shellac against which TST had secured its loans. In June 1935 Cunliffe-Owen received the following letter from Hermann Marx, the partner in Cull & Co. who had overseen the James & Shakspeare flotation:

Dear Sir Hugo,

Since I left you this morning I have seen Mr Bishirgian, who is agreeable to the proposition you made... This proposition I understand to be that a Selling Pool is formed consisting of 50,000 cases of Shellac, to which we contribute 25,000 cases and your group 25,000 cases, your portion to include 5,000 cases belonging to the Midland Bank, Ltd., provided you can induce the Bank to join this arrangement. This Selling Pool is to last for six weeks, the selling to be left in your hands, and all sales effected in this country or anywhere abroad to be for account of the Pool. The minimum selling price to be 51/- [shillings] per cwt... Mr Bishirgian's total holding of Shellac amounts to 25,386 cases.⁸²

For Bishirgian and Howeson, the scandal did more than inflict damage to their reputation and financial position, as both were sentenced to prison for a term of 12 months in 1936 in punishment for their role in the debacle. As with the Bank of England's selective rescue operation following the financial collapse, the prosecution of Bishirgian and Howeson seems to have been designed to demonstrate that the authorities were not prepared to tolerate speculative schemes of the type that destabilised the markets for shellac and pepper. Questions relating to the collapse of the James and Shakspeare firm were raised by MPs in the House of Commons. On 7 March 1935 the issue was debated at length and demands for a Public Inquiry were deflected by the President of the Board of Trade, Walter Runciman, who stated that the compulsory liquidation of the company would allow the Senior Official Receiver to mount a full investigation into the circumstances that had led to the collapse of James and Shakspeare, although strong concerns were voiced in some quarters that the powers of the Official Receiver were inadequate in such cases.⁸³

During the course of the Parliamentary debate, a question had been raised as to the adequacy of the prospectus issued in connection with the flotation of James and Shakspeare. This direct connection to the Kysant prosecution was reflected in the appointment as liquidator of Sir William McLintock, who had led the investigation into the Royal Mail companies.⁸⁴ The report of the Official Receiver directly implicated Bishirgian, Howeson and Louis Hardy, who was managing director of Williams, Henry and Co., as the culprits in the James & Shakspeare debacle.⁸⁵ Bishirgian was then charged under the Larceny Act with exactly the same form of malpractice for which Kysant had earlier been successfully tried: namely, issuing a prospectus known to be false in a material particular. Howeson and Hardy, neither of

whom were directors of James and Shakspeare, were charged with aiding and abetting Bishirgian. In addition, all three were charged with conspiracy to defraud.

The case turned on the absence in the James and Shakspeare prospectus of any reference to the forward commitments held by Williams, Henry and Co. in both pepper and shellac. Crucially, and in contrast to the Kysant case in which secret reserves had knowingly been accounted for as profits, the prospectus issued by Bishirgian had transgressed only by omission. There had been no false statement made, and the prospectus had merely followed the standard used hitherto in its accounting conventions. Bishirgian, it was claimed, had relied on the suggestion of his accountants who had examined the various accounts for the purposes of the prospectus and had agreed that there was no need for reference to be made to forward commitments in shellac and tin, as they were future matters. It was, however, acknowledged that the accountants had no knowledge of the pepper position, which had never been referred to in the minutes of Williams, Henry & Co. For this omission, the third defendant, Hardy, had accepted the blame.⁸⁶

Thus although the charges brought against Bishirgian and Howeson were effectively the same as those that had been used to convict Kysant, the actual circumstances related to a quite different type of accounting issue. Rather than actively deceiving would-be investors through the reporting of reserves as profits, the charge of issuing a false prospectus now also extended to the failure to disclose future liabilities which had not, hitherto, been considered as standard accounting practice. In the trial, however, it was successfully argued by the prosecution that the future commitments were beyond those that could be reasonably assumed to make up the normal day-to-day operations of a company of the size of James & Shakspeare and should thus have been referred to in the prospectus.

Howeson's defence Counsel, Sir William Jowitt, K.C., had earlier held the office of Attorney General and in this capacity he had successfully led the Crown prosecution of Kysant in 1931. Throughout the committal proceedings, the trial and the subsequent appeal, Jowitt had argued that the circumstances of the James and Shakspeare prospectus were materially different to those of the Royal Mail case, but both the trial judge, Mr Justice Atkinson, and the appeal judge, Lord Chief Justice Macnaghten, were unwilling to accept a distinction in principle. In his final ruling following the appeal, the Lord Chief Justice reduced weeks of legal argument to the following simple platitude: 'When one analysed the excuses offered on behalf of the appellants they came to no more than the excuses of an office boy who took half-a-crown out of a till because he had a good tip for the Grand National.'⁸⁷

One critical distinction to the Kysant case, however, lay in the social consequences that followed from serving a term in prison. On his release from Wormwood Scrubs Kysant continued to be accepted into the best society, for his offence was considered to be only a technical one.⁸⁸ Howeson, on the other hand, was ostracised. Shortly after he had been sentenced to jail, Montagu Norman was asked privately what Howeson should do when he came out: 'I say go far East, or far West: never show his nose in London: he can and sh'd have no moral standing & is not welcome here, ever.'⁸⁹

The stigma attaching to TST ended Cunliffe-Owen's financial adventures. TST's auditor, Lord Plender, stood down following the scandal, although Deloitte, Plender, Griffiths and Company continued to act for the company. Plender had earlier been intimately involved in the Kysant case, providing critical testimony in the trial that ultimately acquitted Morland of false accounting,⁹⁰ and had subsequently argued strongly in favour of legislation to provide ethical guidelines for accountants. TST's

connection with the pepper scandal must have served to cause him severe embarrassment.

Although TST continued to operate (eventually becoming the vehicle through which BAT Co. created the holding company BAT Industries in 1976) under Catto's chairmanship it ceased to act as an investment trust. In his later life, Cunliffe-Owen must have regretted his involvement with the shellac gamble that prevented him from being able to continue using the resources of TST for more sound purposes. During the Second World War his Cunliffe-Owen Aircraft Co. Ltd. undertook contract work for the Air Ministry, Lord Rootes, Shorts and Armstrong Siddley worth £1.5 million. After the war, however, the company began to face financial difficulties and in February 1947 a request to Midland Bank to extend the company's overdraft was refused. In November of that year it became necessary to suspend production of the Concordia aircraft - upon which all the company's future hopes rested - and its financial collapse became inevitable.⁹¹ Less than a month later, Cunliffe-Owen died of a heart attack: the final victim of the financial catastrophe wrought by the pepper debacle.

V

It is now recognised that the legal framework in which business is conducted constitutes a critical factor determining the performance of a market-based economic system.⁹² Central to this issue of legal responsibility is the approach that countries have adopted to dealing with the problem of business failure. The ability of entrepreneurs to adopt high risk business strategies, in the hope of high returns, can be adversely affected by bankruptcy laws that impose too severe a penalty for failure. It

has recently been argued that under the system of English common law, the evolution of bankruptcy regulations, particularly through the winding up rules that were developed in the Victorian era, an efficient balance was attained between supporting the legal rights of creditors without unduly undermining entrepreneurship.⁹³

The Royal Mail case of 1931 has long been held up within the literature of legal accounting history as a key demonstration of the importance of developing ethical guidelines in the practice of financial disclosures.⁹⁴ Notwithstanding the acquittal of the Royal Mail group's auditor, the decision by the Attorney-General to employ the criminal sanctions of the Larceny Act demonstrated that accountants stood liable to legal sanction and imprisonment for failing to provide accurate financial information to the general public. Likewise, but perhaps less remarked upon, the conviction and imprisonment of Kysant under the same Act for issuing a false prospectus showed that company directors also stood exposed to criminal charges. The precedent set by the case of *Rex v. Kysant* raised the stakes for company directors far beyond any of the measures that had been brought into existence by the time of the passing of the 1929 Companies Act.⁹⁵

By convicting and imprisoning three businessmen against a charge of issuing a false prospectus under the provisions of criminal law, the outcome of the James and Shakspeare case brought into stark relief the obligations that went along with financial disclosure when these activities resulted in business failure. The case against Bishirgian, Howeson and Hardy rammed home the lesson that in Britain financial probity was not merely a moral, but a legal obligation. In reviewing the case in detail, it can be seen that the degree of fraud perpetrated by Bishirgian and his accomplices, in relation to the prospectus they issued, was at worst questionable, and at best

insignificant. It is certainly not clear that the case put in their defence was without any legal merit.⁹⁶

However, in the view of the City establishment, the activities of Birshirgian, Howeson and Hardy in the markets for both pepper and shellac were highly undesirable. They sought to generate profits in a way that threatened the orderly operations of the commodity markets on which much of the City of London's financial reputation rested.⁹⁷ In meting out justice to the key actors behind the pepper scandal, the legal and political infrastructure in Britain demonstrated that it had the effective power to impose a heavy sanction against those who abused their financial position. TST paid the price for its involvement in the scandal through moral approbation and the long arm of Governor Norman; Howeson and Bishirgian, in contrast, were simply ruined. Perhaps even more than the conviction of Kysant, the outcome of the pepper scandal showed how an effective legal sanction helped to encourage the improvement in financial disclosure practices evidenced by Arnold and Matthews in the period between 1935 and 1948.⁹⁸

NOTES

¹ On McKenna see the forthcoming biography by Martin Farr, *Reginald McKenna: A Statesman among Financiers: 1916-1943*. A brief biography is provided by E. Green, *McKenna, R.* in David J. Jeremy and Christine Shaw (eds.) *Dictionary of Business Biography*, Vol.3 (London, 1985), p.

² J. Eden et al, 'TIC: the Story of Tobacco Insurance Company', *BAT News*, Spring 1988, pp.17-18.

³ Around half of the £4 million ordinary shares were held as investments by BAT Co. or Imperial Tobacco Co. See H. Cox, *The Global Cigarette: Origins and Evolution of British American Tobacco, 1880-1945* (Oxford, 2000), pp.318-9.

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- ⁴ E. Green and M. Moss, *A Business of National Importance: the Royal Mail Shipping Group, 1902-1937* (London, 1982), espec. pp.139-46.
- ⁵ E. Jones, *True and Fair: A History of Price Waterhouse* (London, 1995), pp.145-57.
- ⁶ J.R. Edwards, *A History of Financial Accounting* (London, 1989), p.152.
- ⁷ P.N. Davies and A.M. Bourne, 'Lord Kysant and the Royal Mail', *Business History*, Vol.14 (1972), pp.118-120.
- ⁸ Green and Moss, *Business of National Importance*, p.142.
- ⁹ A.J. Arnold and D.R. Matthews, 'Corporate financial disclosures in the UK, 1920-1950: the effects of legislative change and managerial discretion', *Accounting and Business Research*, Vol.32 (2002), p.13.
- ¹⁰ M. Havinden and D. Meredith, *Colonialism and Development: Britain and its Tropical Colonies, 1850-1960* (London, 1993), p.191.
- ¹¹ J-J. van Helten and G. Jones, 'British Business in Malaysia and Singapore since the 1870s' in R. T.P. Davenport-Hines and Geoffrey Jones (eds.), *British Business in Asia since 1860* (Cambridge, 1989), p.169.
- ¹² J. Hillman, 'Malaya and the International Tin Cartel', *Modern Asian Studies*, Vol.22 (1988), pp.239-40.
- ¹³ Ibid, p.242.
- ¹⁴ J. Hillman, 'The Impact of the International Tin Restriction Scheme on the Return to Equity in Tin Mining Companies, 1927-39', *Business History*, Vol.39 (1997), p.73.
- ¹⁵ In the trial proceedings it was stated that Howeson had first gone to India in about 1904, at the age of 20, to work for a firm of discount brokers and had remained there until 1923. *The Times*, 19 Feb. 1936. In fact, he went to work for his father's agency house which dealt in jute. Personal communication with John Hillman.
- ¹⁶ Cox, *Global Cigarette*, p.229.
- ¹⁷ Cunliffe-Owen succeeded to the chairmanship of BAT Co. when Duke formally resigned in 1923, but he had effectively assumed overall control when his main rival for the position, Joseph Hood, became an MP in 1919. Ibid, p.242.
- ¹⁸ D.M. Oppenheim, *Memoirs*, Unpublished typescript, 1988, p.79.
- ¹⁹ For details of the share structure of Tobacco Investments and TST see Cox, *Global Cigarette*, pp.314-9.

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- ²⁰ *Tobacco*, (London), 1 Nov. 1928, pp.vi-vii.
- ²¹ Oppenheim, *Memoirs*, p.79. Bradbury had earlier been joint permanent secretary to the Treasury between 1913 and 1919.
- ²² Eden et al, 'TIC', 17-18.
- ²³ The operation of the tin pool, and its relationship with the ITC producer cartel, is explained in detail in Hillman, 'Malaya', pp.250-6.
- ²⁴ Personal communication with John Hillman.
- ²⁵ J. Hillman, 'Australian Capital and South-East Asian Tin Mining, 1906-40', *Australian Economic History Review*, Vol.45 (2005), p.181.
- ²⁶ S. Phillips, *Industrial Welfare and Recreation at Boots Pure Drug Company 1883-1945*, PhD, The Nottingham Trent University, 2003, p.67; P. Whysall, 'Interwar Retail Internationalization: Boots under American Ownership', *The International Review of Retail, Distribution and Consumer Research*, Vol.7 (1997), p.160.
- ²⁷ S. Merwin, *Rise and Fight Againe: The Story of a Life-long Friend* (New York, 1935), pp.232-3.
- ²⁸ J.E. Greenwood, *A Cap for Boots: An Autobiography* (London, 1977), pp.35-8.
- ²⁹ *Ibid*, 42.
- ³⁰ S. Chapman, *Jesse Boot of Boots the Chemist: a study in Business History* (London, 1974), p.157; T.A.B. Corley, 'Hill, Philip Ernest (1873-1944)' in David J. Jeremy and Christine Shaw (eds.) *Dictionary of Business Biography*, Vol.3 (London, 1985), p.237.
- ³¹ G.C. Peden, *The Treasury and British Public Policy, 1906-1959* (Oxford, 2000), p.258.
- ³² *Ibid*, pp.276-7.
- ³³ H. Clay, *Lord Norman* (London, 1957), p.447.
- ³⁴ Treasury papers relating to the Boots share deal are contained in T160/530, File F13071/01.
- ³⁵ Letter B. Catterns to A.P. Waterfield dated 12 Jan. 1933, T160/530.
- ³⁶ Letter A.P. Waterfield to Olaf Hambro dated 9 Jan. 1933, T160/530.
- ³⁷ Greenwood's inside account of the negotiations suggests that an American merchant bank had used its influence with Norman to scupper the deal. Greenwood, *Cap for Boots*, pp.47-8.
- ³⁸ Memorandum R. Hopkins to N. Chamberlain dated 12 Jan. 1933, T160/530.
- ³⁹ Letter Olaf Hambro to N. Chamberlain dated 9 May 1933, T160/530.
- ⁴⁰ Memorandum by R. Hopkins to N. Chamberlain dated 9 May 1933, T160/530.

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- ⁴¹ Greenwood, *Cap for Boots*, p.51.
- ⁴² TST, *Annual Report and Accounts*.
- ⁴³ During 1934 TST was one of nine members of a syndicate, convened by Morgan Grenfell, which purchased the shares of United Steel Companies and floated them to the public in a highly remunerative operation. K. Burk, *Morgan Grenfell, 1838-1988: The Biography of a Merchant Bank*, (Oxford, 1989), pp.160-6.
- ⁴⁴ *Time*, 18 Feb. 1935; J.A. Fallows, 'The Pepper Paper', *The Fortnightly Club of Redlands, California*, <http://www.redlandsfortnightly.org/papers/pepper.htm>. Accessed 19 April 2006, pp.10-11; A. Jenkins, *The Thirties* (London, 1976), p.159.
- ⁴⁵ BT31/32285/155366.
- ⁴⁶ *Investors Review*, 2 Feb. 1935.
- ⁴⁷ *Economist*, 30 Nov. 1935.
- ⁴⁸ *Tobacco*, (London) 1 Jan. 1936.
- ⁴⁹ Anon., *Two Centuries of Lewis & Peat, 1775-1975*, (published privately, 1975), p.46.
- ⁵⁰ *Time*, 2 Mar. 1936.
- ⁵¹ *Tobacco*, (London) 1 Jan. 1936.
- ⁵² R.S. Sayers, *The Bank of England, 1891-1944* (Cambridge, 1976), p.544. According to newspaper reports of the time, Eastern merchant banking houses, whose principals viewed with disfavour the entry of a speculative syndicate into what had previously been regarded as their private preserves, brought on to the market substantial hidden stocks of shellac, thus causing the price to drop sharply. *Investors Review*, 2 Feb. 1935.
- ⁵³ *The Times*, 17 Mar. 1936; Anon, *Lewis and Peat*, p.46.
- ⁵⁴ *Economist*, 30 Nov. 1935.
- ⁵⁵ O. Lyttelton, *The Memoirs of Lord Chandos* (London, 1962), pp.142-4.
- ⁵⁶ D. Kynaston, *The City of London: Illusions of Gold, 1914-1945*, Volume III (London, 1999), p.425.
- ⁵⁷ Farr, *Reginald McKenna*; *The Times*, 15 Feb. 1936.
- ⁵⁸ Fallows, 'Pepper', p.11.
- ⁵⁹ A.R. Holmes and E. Green, *Midland: 150 Years of Banking Business* (London, 1986), p.195.
- ⁶⁰ *Economist*, 30 Nov. 1935.
- ⁶¹ Sayers, *Bank of England*, p.544.

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- ⁶² Fallows, 'Pepper', p.4.
- ⁶³ Report of the Official Receiver in the Matter of James and Shakspeare, Limited, dated 9 July 1935, 12. McKenna Archive, Churchill College, University of Cambridge, MCKN 7/16.
- ⁶⁴ Kynaston, *City*, pp.426-7.
- ⁶⁵ *Ibid*, p.428.
- ⁶⁶ Sayers, *Bank of England*, pp.545-6. Two other brokers who had purchased pepper on behalf of James and Shakspeare, Rolls and Sons and J.F. Adair, were also posted as defaulters and were bankrupted as a consequence of their inability to obtain the money required to pay for the pepper they had contracted to buy. *News Chronicle*, 15 Feb. 1935.
- ⁶⁷ MCKN 7/16, Letter E.T.A. Phillips to McKenna dated 12 Apr. 1935.
- ⁶⁸ MCKN 7/16, Letter E.T.A. Phillips to McKenna dated 15 Apr. 1935.
- ⁶⁹ MCKN 7/16, Statement by McKenna to the Official Receiver dated 8 July 1935.
- ⁷⁰ *The Times*, 19 Feb. 1936.
- ⁷¹ MCKN 7/16, Statement by McKenna to the Official Receiver dated 8 July 1935.
- ⁷² MCKN 7/16, James & Shakspeare Prospectus issued 3 Sept. 1934.
- ⁷³ MCKN 7/16, File note made by McKenna relating to the James & Shakspeare prospectus dated 25 June 1935.
- ⁷⁴ Marx had gained a reputation in the City for his financial creativity and his method of devising the James & Shakspeare prospectus would seem to be a case in point. Kynaston, *City*, p.338.
- ⁷⁵ In his report the Senior Official Receiver noted that there was no foundation for the suggestion that McKenna was interested in pepper. MCKN 7/16, Report of the Senior Official Receiver in the Matter of James & Shakspeare, Limited dated 9 July 1935, 8, para. 18.
- ⁷⁶ Holmes and Green, *Midland*, p.195.
- ⁷⁷ Norman noted in his diary: "An hour protesting pain, surprise & innocence as to any knowledge of or dealings in pepper." Kynaston, *City*, p.429.
- ⁷⁸ MCKN 7/16, Strictly private letter from McKenna to Lord Bradbury dated 8 May 1935.
- ⁷⁹ *Tobacco*, (London) 1 Jan. 1936.
- ⁸⁰ *The Times*, 13 Mar. 1936.
- ⁸¹ In June 1935 Norman discussed with a visitor the reconstruction of TST, advising strongly against the appointment of Philip E. Hill as chairman to succeed McKenna. Kynaston, *City*, p.394. Norman

personally chose a number of new company chairmen and directors to fill the places of those discredited by the pepper scandal. R. Roberts, 'The Bank and the City' in Richard Roberts and David Kynaston (eds.), *The Bank of England: Money. Power and Influence, 1694-1994*, (Oxford, 1995), p.173. Lord Catto succeeded Norman as Governor of the Bank of England in 1944.

⁸² MCKN 7/16, Copy of correspondence between Hugo Cunliffe-Owen and Hermann Marx forwarded to McKenna by Cunliffe-Owen as enclosure with his letter dated 20 June 1935. Annual consumption of shellac in Britain at the time was estimated to be between 300,000 and 350,000 cases. *The Times*, 14 Feb. 1935.

⁸³ 298, H.C. Deb. 5 s., 2194-2212.

⁸⁴ M. Bywater, 'McLintock, Sir William (1873-1947)', in David J. Jeremy and Christine Shaw (eds.) *Dictionary of Business Biography*, Vol. 4 (London, 1985), p.73.

⁸⁵ MCKN 7/16, Report of the Official Receiver in the Matter of James & Shakspeare dated 9 July 1935.

⁸⁶ *The Times*, 17 Mar. 1936.

⁸⁷ *The Times*, 19 Mar. 1936.

⁸⁸ P.N. Davies, 'Philipps, Owen Cosby: Lord Kysant of Carmarthen (1863-1937)', in David J. Jeremy and Christine Shaw (eds.) *Dictionary of Business Biography*, Vol. 4 (London, 1985), p.674.

⁸⁹ Kynaston, *City*, p.428. Note that in this account Howeson's name is mistakenly translated into Harrison. Howeson's full name was John Henry Charles Ernest Howeson, his surname having earlier been changed from von Ernsthausen. *Time*, 2 Mar. 1936. Howeson's father had emigrated from Prussia in 1849. John Hillman, private correspondence.

⁹⁰ J.R. Edwards, 'Plender, William (1861-1946)' in David J. Jeremy and Christine Shaw (eds.) *Dictionary of Business Biography*, Vol. 4 (London, 1985), p.740.

⁹¹ R.T.P. Davenport-Hines, 'Cunliffe-Owen, Sir Hugo Von Reitzenstein (1870-1947)', in David J. Jeremy and Christine Shaw (eds.) *Dictionary of Business Biography*, Vol. 1 (London, 1985), pp.867-8.

⁹² For example see, R. La Porta, F. Lopez-de-Silanes, A. Shleifer and R. Vishny, 'Law and Finance', *Journal of Political Economy*, Vol.106 (1998), pp.1113-1155.

⁹³ P. Di Martino, 'Approaching Disaster: Personal Bankruptcy Legislation in Italy and England, c.1880-1939', *Business History*, Vol.47 (2005), pp.26-7.

⁹⁴ Cf. C. Brooks (ed.), *The Royal Mail Case* (London, 1933).

⁹⁵ Before the 1948 Companies Act the legal position relating to the disclosure requirements and the responsibility for information contained in a prospectus was quite unsatisfactory. The first concerted attempt to regulate the information contained in a prospectus was in the 1867 Companies Act. This led to the case of *Oakes v. Turquand* (1867) in which a prospectus issued by Overend Gurney & Co. was considered to be technically 'true' but not 'fair' in the impression it conveyed. The Directors Liability Act of 1890 made directors and promoters liable for misstatements, even though not fraudulently made, but this liability was not extended to accountants until 1948. In the first three decades of the twentieth century various attempts were made to improve disclosure requirements, although many loopholes remained, until in 1926 at the prompting of the Law Society it became a requirement to report profits made and dividends paid during the three preceding years. Edwards, *History of Financial Accounting*, pp.220-24.

⁹⁶ Defence Counsel for Bishirgian, Sir Patrick Hastings KC, had earlier defended Morland successfully against the charge of false accounting. His view, concerning the subsequent conviction of Kysant for issuing a false prospectus, was that he 'was never completely satisfied of the justice of that conviction.' P. Hastings, 'The Case of the Royal Mail', in W.T. Baxter and Sidney Davidson (eds.), *Studies in Accounting Theory* (London, 1962), p.461. In his autobiography, however, he makes no reference to the James & Shakspeare case, cf. P. Hastings, *Cases in Court* (London, 1949), although there is a brief reference to the case in his biography, H. Montgomery Hyde, *Sir Patrick Hastings: His Life and Cases* (London, 1960), pp.307-12.

⁹⁷ One consequence of their speculative scheme, for example, was the transfer of a substantial share of the world's pepper trading to New York when, in 1937, the New York Produce Exchange inaugurated trading in pepper futures. *Time* 28 June 1937.

⁹⁸ Arnold and Matthews, 'Corporate financial disclosures', pp.3-16.