

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN MISCELLANEOUS
IN THE FULL COURT

CORAM: THE HON. MR. JUSTICE LANGRIN, J.
THE HON. MR. JUSTICE CLARKE, J.
THE HON. MR. JUSTICE COOKE, J.

(1) IN THE MATTER of Application No.65/91
of LESTER COKE for a Writ of Habeas Corpus
ad Subjiciendum

AND

(2) IN THE MATTER of Application No.18/91 of
RICHARD MORRISON for a Writ of Habeas
Corpus ad Subjiciendum.

AND

IN THE MATTER of SECTIONS 10, 14 and
15 of the Extradition Act 1870.

(1)	BETWEEN	LESTER COKE	APPLICANT
	AND	THE SUPERINTENDENT OF PRISONS -- GENERAL PENITENTIARY	RESPONDENT
	AND	THE HONOURABLE ATTORNEY GENERAL	INTERVENER

Bertram Macaulay Q.C. and George Soutar instructed by T. Tavares-Finson
for Applicant.

E. H. Onnis and Miss D. Little instructed by Director of State Proceedings
for Respondent and Intervener.

Miss C. Reid for Director of Public Prosecutions as *amicus curiae*

(2)	BETWEEN	RICHARD MORRISON	APPLICANT
	AND	SUPERINTENDENT OF PRISONS -- GENERAL PENITENTIARY	RESPONDENT
	AND	THE ATTORNEY GENERAL	INTERVENER

G. Soutar for applicant

E. Onnis and Miss D. Little for Respondent and Intervener

Miss C. Reid of the Department of Public Prosecutions as *amicus curiae*

Heard: April 15, 16, 17, 18, & 19, 1991
& July 18, 1991

LANGRIN, J.

On the 19th April, 1991 at the conclusion of the hearing of applications
for Habeas Corpus of Lester Coke, Counsel representing Richard Morrison

adopted the arguments advanced on behalf of Lester Coke.

We dismissed both applications with costs to the Respondents and promised to put our reasons in writing. This we now do.

These are applications for Orders of Habeas Corpus to secure the release of Lester Coke and Richard Morrison from the General Penitentiary, Kingston where they were placed in custody by order of warrants dated 19th February, 1991.

The extradition of the applicants was requested by the Government of the United States of America.

The allegations are that on September 8, 1988 Lester Coke one of the leaders of a racketeering enterprise commonly known as the Shower Possee was indicted along with Richard Morrison and others by a Federal Grand Jury in the Southern District of Florida. The indictment charged Lester Coke with four violations of law, three of which are the subject for the request of extradition. These three violations are all offences committed in connection with trafficking in dangerous drugs and Murder. Count 1 of the Indictment charges Lester Coke, Richard Morrison and others with conspiracy to distribute and to possess with intent to distribute cocaine and marijuana.

Count 3 of the Indictment charges Lester Coke, Richard Morrison and others with conspiracy to conduct and participate in the conduct of the affairs of an enterprise through a pattern of racketeering involving among other things:-

- (a) Conspiracy to distribute cocaine and marijuana as well as
- (b) Murder of 5 persons and attempted murder of another person.

Count 4 of the Indictment charges Lester Coke and Richard Morrison with the substantive violation of the charges contained in Count 3.

To justify the committal of the fugitive the respondents relied upon evidence contained in a bundle comprised of statements, affidavits, warrants of arrest, indictments inter alia tied together by red ribbon emanating from beneath the seals to which they are attached.

The first document bears an indorsement as follows:

"I certify that the document hereunto annexed is under the seal of the Department of Justice of the United States of America, and that such

seal is entitled to full faith and credit.

In testimony whereof, I, James A. Baker III, Secretary of State have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication officer of the said Department, at the City of Washington, in the District of Columbia, this Nineteenth day of June 1990.

James A. Baker III
Secretary of State.

By Annie K. Haddix
Authentication Officer, Department of
State."

This document bears the seal of the Department of State while the document immediately below in the bundle bears the seal of the Department of Justice and is signed by the Attorney General, Dick Thornburgh and dated June 18, 1990 certifying that Rex Young whose name is signed to the accompanying paper is duly commissioned and qualified to certify that the attached documents are prepared in support of the request for extradition. The document following Rex Young's certificate is the original affidavit of Andrew J. Reich, Assistant United States Attorney. Further, attached to Reich's affidavit are a number of exhibits including true and accurate copies of indictments, warrants of arrest and United States Code applicable to the alleged offences committed by Lester Coke and Richard Morrison. The original affidavits of Cecil Connor, Ronald Jones, Eduardo Roque, Dr. Valerie J. Kao, Barrington Anderson were attached as exhibits to Reich's affidavit.

It is significant to observe that except for the first two pages of the bundle which bears the seal of the Secretary of State on the first page and the seal of the Minister of Justice on the second, none of the accompanying documents including the affidavits physically bears the seal of the Minister of State. Neither is there a certificate by Rex Young appended to every single document.

The matter is governed by the following sections of the Extradition Act 1870.

Section 10 - "In the case of a fugitive criminal accused of an extradition crime, if the foreign

warrant authorising the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provision of this Act) would, according to the law of Jamaica, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in Jamaica, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged...."

Section 14 - Depositions or statements on oath, taken in a foreign state, and copies of such original depositions or statements, and foreign certificates of or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under this Act.

Section 15 - Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of or judicial documents stating the fact of a conviction, shall be deemed duly authenticated for the purposes of this act if authenticated in manner provided for the time being by law or authenticated as follows:-

- (1) If the warrant purports to be signed by a judge, magistrate, or officer of the foreign state where the same was issued;
- (2) If the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate, or officer of the foreign state where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require; and
- (3) If the certificate of or judicial document stating the fact of conviction purports to be certified by a judge, magistrate, or officer of the foreign state where the conviction took place; and

If in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the minister of justice, or some other minister of state? And all courts of justice, justices, and magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof."

The following questions therefore arise for determination by the Court: Were the abovementioned documents:-

- (1) Certified by an officer of the Foreign State
- (2) Authenticated "by being sealed with the official seal of the Minister of Justice or some other Minister of State."

Certification

A document appears at the second page of the bundle which has a red ribbon going through and tying the rest of the documents together. A seal of the Minister of Justice is affixed on this document.

The material part of the document reads as follows:

"I certify that Rex Young whose name is signed to the accompanying paper, is now, and was at the time of signing the same Deputy Director, Office of International Affairs, Criminal Division, United States Department of State, Washington D.C. duly commissioned and qualified.

In witness whereof, I, Dick Thornburgh Attorney General of the United States, having hereunto caused the seal of the Department of Justice to be affixed and my name to be attested by the Deputy Assistant Attorney General for Administration of the said Department on the day and year first above written.

Sgd. Dick Thornburgh
Attorney General.

by Stephen R. Colgate
Deputy Assistant Attorney General for Administration."

The following document bearing the seal of the Minister of Justice is a certification by Rex L. Young that he has attached in support of the request for the extradition of Lester Coke the original affidavit of Assistant United States Attorney, Andrew J. Reich. Rex Young further certifies that attached to and included as part of Reich's affidavit are a number of exhibits.

Among these exhibits is Exhibit R which is described by Rex Young as the original affidavit of Cecil Connor sworn to on March 30, 1990 before a duly authorized Notary Public. When Reich's affidavit is examined it is stated at paragraph 10 as follows:-

"10. I have attached to this affidavit as Exhibit R through V true accurate copies of the statements of Cecil Connor. (Exhibit R) Ronald Jones (Exhibit S) Edward Roque (Exhibit V). Each of these affidavit was sworn to

before a notary public duly and legally authorized to administer an oath for this purpose."

Counsel for the applicant argued that the documents were not validly certified and that Connor's affidavit was a photocopy of a copy. Is Exhibit R which was certified by Rex Young as an original the same affidavit which is attached to Reich's Affidavit and referred to as a true and accurate copy of the statement of Connor? All that Reich is saying is that the Exhibit R is a true and accurate copy of the statement of Connor. When the affidavit of Cecil Connor is examined it bears the seal of the Notary Public indicating that it was an original affidavit sworn to by Cecil Connor on 30th March, 1990 and signed by Cecil Connor. Even if, ex facie, it appears to be a photocopy the fact that it was signed, sworn and subscribed before the Notary Public with the seal of the Notary Public affixed, it could no longer be a mere photocopy since it bore its own independent certification. Because these affidavits bear seals they are deemed to be original documents.

All these documents are certified as originals and true copies by Rex L. Young, Deputy Director, Office of International Affairs, Criminal Division, United States Department of Justice, Washington. Rex Young's accreditation is verified by the Attorney General of the United States of America who has caused the seal of the Department of Justice to be affixed by Stephen R. Colgate, Deputy Assistant, Attorney General for Administration.

Rex L. Young having certified that the affidavits were all originals and no evidence was adduced before the Resident Magistrate to suggest otherwise, the certification must be taken as conclusive. There is therefore no basis for saying that what was produced before the Resident Magistrate was a copy of a certified affidavit. I am in no doubt that Young provides the necessary certification.

The certification by Rex Young and the affidavit with exhibits attached form a bundle of documents which purports to set out the evidence and subject to the question of due authentication was admissible in evidence before the Resident Magistrate pursuant to Section 15(2) of the Extradition Act.

I turn now to question of authentication.

Authentication

There are two certificates in the bundle each bearing a seal.

The first certifies that the document hereunto annexed is under the seal of the Department of Justice of the United States of America. This certificate purports to be that of the Secretary of State, James A. Baker III, subscribed by Annie R. Maddix, Authentication Officer, Department of State. The other certificate which bears the seal of the Department of Justice attests to the accreditation of Rex Young as duly qualified and commissioned and is under the hand of the Attorney General; Dick Thornburgh.

When one examines the bundle of documents tied together with red ribbon emanating from beneath the seals to which they are attached, both the seals of the Department of Justice and the Department of State respectively are intended to authenticate all the documents comprised in the bundle.

Counsel for the applicant argued with force that the words "being sealed with the official seal" of the Minister of Justice or some other Minister of State means that every single document must physically bear such a seal in order to satisfy the requirement for authentication under Section 15 of the statute. The intention of the legislature in the Extradition Act is to provide machinery whereby if it can be shown by sufficient evidence to the proper tribunal in this country that a person who has committed an offence in another country has come here to escape the ends of justice such person may be committed until there is an opportunity of surrendering him to the proper authorities of that other country.

Looking at the statute in that light, the question is what precautions are taken by the legislature to ensure the proper jurisdiction of the Magistrate. The question then arises as to how far some irregularities in the procedure, whereby a fugitive is arrested and brought before a magistrate is fatal to the jurisdiction of the magistrate to hear and to determine the question of committal of the fugitive.

In my view it is not necessary to consider any similar question with respect to the present case since it appears that the proceedings here were free from irregularities. It was submitted by Learned Counsel for the fugitive

that there had been no proper authentication of the documents, therefore the evidence before the Resident Magistrate was inadmissible. He argued that the seal of the Secretary of State authenticated merely the document immediately below which bears the seal of the Department of Justice.

He contends that the Fugitive Offenders Act 1967 which regulates extradition within the Commonwealth Countries has deleted from the section which corresponds with the Extradition Act - the words, "being sealed with" and therefore what remains is "by the official seal." That being so the sealing of every single document is unnecessary.

He referred to a number of authorities in relation to the sealing of documents in extradition proceedings and it may be helpful if I deal with some of these cases.

The Queen v. Ganz (1881 - 82) 9 QB p.93. This case was cited to show that every single document must be sealed with the seal of the Minister. Here the document under consideration before the Magistrate was the foreign warrant authorising the arrest of the prisoner in the Netherlands and upon production of which the prisoner was committed to prison under Section 10 of the Extradition Act 1870. It was sealed with the seal of the Department of Justice. This warrant of arrest contained all the evidence upon which the prisoner was committed. Unlike the instant case, there was no bundle of documents. The issue there was the admissibility of a copy warrant. Consequently, this case can be of no assistance to the applicant.

The following cases must be considered in light of the deletion of the words authenticated by "being sealed with" and the meaning of the words "by the official seal" which are found in the Fugitive Offenders Acts.

It must be emphasized that the requirements to surrender within the Commonwealth are different from those under the Extradition Act 1870 for surrender to foreign countries. A decision under the Fugitive Offenders Acts where the statutes are different are not necessarily relevant to proceedings under the 1870 Act and so great reliance ought not to be placed on them. However, bearing that in mind it maybe useful to see how the Courts treat the question of sealing under these statutes where the authentication "by the official seal" appears.

(1) Re ESPINOSA Transcript Co/1193/85

A Divisional Court of the Queens Bench Division presided over by Lord Justice Watkins in dealing with similar submissions upon the question of sealing under the Fugitive Offenders Act had this to say at p.18.

"As one looks at the bundle it is plain to see that the seals to which I have referred including that of the Secretary of State, embrace every document which the ribbons which flow from them pass through. It is impossible I think, to fail to recognise that as regards the whole bundle a proper example of sealing as required by the Act and treaty is revealed."

(2) Benwell vs. Attorney General (1986) Law Reports of the Commonwealth - the Supreme Court of Sri Lanka in dealing with the question of sealing under the Fugitive Offenders Act had this to say at p.253:-

"The fact that the certificate of the stipendiary Magistrate and the Authentication of the Attorney General relate to the entirety of the depositions and the exhibits does not in my view detract from the validity of the certificate or the authentication. The certificate of the stipendiary Magistrate and the authentication of the Attorney General of the entire set sufficiently vouch for the genuineness of each of the documents comprising the bundle. There is no mandatory requirement as urged on behalf of the appellant, that each deposition and each exhibit (or a true copy thereof) should ex facie be individually and separately certified by the Judge and sealed by the official seal of the Attorney General. To uphold the intention of the appellant would do violence to the ordinary and natural meaning of the clear and unequivocal words of the sub section."

(3) In Oskar v. Government of the Commonwealth of Australia and Others (1988) 2 WLR 82 H.L. Lord Ackner in dealing with the question of sealing where the documents relied upon by the respondents were contained in a bundle tied together and endorsed as follows:-

"Given under my hand and the official seal of the Attorney General of Australia affixed to the tape binding all the annexed documents."

Lord Ackner had this to say:-

"I agree with the Divisional Court that the section does not require each state

ment to carry on its face a certificate from the magistrate. Such a requirement would be highly artificial. The section is complied with if there is a separate certificate which sufficiently identifies all the statements which it certifies, as in the instant case where they are all tied together."

It was held that it was not a requirement of Sec.11 of the Fugitive Offenders Act of 1967 that each witness's statement furnished to the English Court had to contain a certificate from the Magistrate of the requesting state that the evidence contained therein had been confirmed before him and that the single certificate by the Australian Magistrate identifying all the statements which it was authenticating met the requirements of the section.

The distinction which Learned Counsel for the applicant sought to make between the words authenticated by "being sealed with the official seal" appearing both in the Extradition Act 1870 and the Fugitive Offenders Act 1881 and the words authenticated by "by the official seal" in the Fugitive Offenders Act 1967 and 1976 does not assist the applicant.

The essence of both sets of words dictates that the documents must be sealed and the same question arises as to whether each single document must physically bear the seal. There is nothing in his submission to suggest that the judgments in the decided cases would have been different if the words "being sealed with" were not deleted from the Fugitive Offenders Act 1881. There was no basis for the submission that the deletion of the words "being sealed with" from the provision in the 1881 Fugitive Offenders Act which was in pari materia with the 1870 Extradition Act was to suppress the mischief of affixing a seal to each individual document.

In my view the presence of the words "being sealed with" in the 1870 Extradition Act should bear the same construction as that of the Fugitive Offenders Acts subsequent to 1881 where the words "by the official seal" of the Minister appear.

To say then "being sealed with" should bear the meaning that every single document should have the seal physically affixed to it is a matter of reductio ad absurdum.

The role of the Court is confined to ascertaining from the words that Parliament has approved as expressing its intention, what that intention was, and to giving effect to it. Further the statute should be construed as to provide the general legislative purpose.

The submissions advanced by Mr. Macaulay were pregnant with technicalities without seeking to apply principle and commonsense. Such narrow technical legislative interpretations cannot assist the development of any law. I have no difficulty in rejecting his submissions.

The statutory requirement that the document must be authenticated by being sealed with the official seal of the Minister of Justice is satisfied. Such authentication is clearly established by the presence on the document of the seal of the Department of Justice in respect of the accreditation of Rex Young. That document creates a nexus between the seal of the Department of Justice and the accompanying documents.

The verification of the seal relating to Rex Young's accreditation is authenticated by Anne Maddix, Authentication Officer, Department of State. James Baker, Secretary of State has signed the document and caused the seal of the Department of State to be affixed to the document. These acts provide additional support to the fact of authentication.

Accordingly, it is my judgment that the documents under consideration were properly certified and authenticated and were therefore admissible evidence pursuant to Section 15 of the Extradition Act for the Resident Magistrate to consider.

Both applications for Orders of Habeas Corpus are refused with costs to Respondents to be agreed or taxed.

CLARKE, J.

Mr. Lester Coke and Mr. Richard Morrison (the applicants) move for writs of habeas corpus to secure their release from the General Penitentiary. On 19th February, 1991 a Resident Magistrate for the parish of Kingston committed them there pursuant to section 10 of the Extradition Act, 1870 (the Act).

Requisitions consistent with the extradition treaty in force between Jamaica and the United States of America had been served in July 1990 on the Minister of Foreign Affairs by the United States Government. They requested the extradition of the applicants to the United States to face charges of conspiracy to distribute and possess with intent to distribute cocaine and marijuana, murder, attempted murder and conspiracy to commit murder. The applicants had been indicted on those charges in their absence by a Federal grand jury in the Southern District of Florida in September 1988.

Two bundles of documents (one bundle in relation to each applicant) support the requests for their extradition. Each bundle is bound together compositely and is prefaced by certificates under the hands of the United States Secretary of State and Attorney General respectively. The Attorney General's Certificate bears the seal of the United States Department of Justice, a fact certified by the Secretary of State whose certificate bears the seal of the Department of State.

Each bundle bound together by ribbons emanating from beneath the seals on the certificates to which they are attached, includes a certification by Rex Young a duly commissioned and qualified officer of the Department of Justice. He certifies in each bundle that attached to his certificate and prepared in support of the request for extradition is the original affidavit of Assistant United States Attorney, Andrew Reich. Mr. Reich is responsible for preparing and prosecuting felony cases in the Southern District of Florida where the applicants were indicted. Mr. Young further certifies that attached to and forming part of Mr. Reich's affidavit are *inter alia* five specified original affidavits of particular persons. Three of those persons appear to be accomplices and they depose to facts connecting the applicants to the charges.

The applicants were apprehended in Jamaica on warrants and brought before a resident Magistrate for Kingston. The magistrate proceeded to hear the cases for their extradition under the Act, a United Kingdom statute passed 121 years ago. (It still governs these matters in this country and will continue to do so until the Extradition Act, 1991, passed by the Parliament of Jamaica, comes into force). The said five affidavits were proffered at the hearing. Objection was taken to their admissibility on the ground that they had not been duly authenticated. The magistrate ruled that they were, and admitted them in evidence. At the conclusion of the evidence and submissions the applicants were committed to prison to await their surrender to the United States.

They have however availed themselves of their right to apply to this Court for writs of *habeas corpus subjiciendum*. They contend that their detention is unlawful in that:

- "(a) the authentication of the statements on oath in support of [their] extradition was neither valid pursuant to section 15 of the Extradition Act 1870 nor pursuant to any other law in Jamaica;
- (b) what should have been produced are the certified affidavits and not, as was produced, copies of the certified affidavits."

If the applicants' contention on either ground is correct there plainly would be no admissible evidence to justify their committal under section 10 of the Act. The committal in each case would be bad. They would therefore be unlawfully detained by their gaoler, the respondents, and would be entitled to the writs *ex debitate justitiae*.

Learned counsel for the Attorney General submitted that the applications must fail because the affidavits had been duly authenticated and so were properly received in evidence.

The provisions of the Act which are relevant to this issue are:

"14. **Depositions to be evidence**

Depositions or statements on oath, taken in a foreign state, and copies of such original depositions or statements ... may, if duly authenticated be received in evidence in proceedings under this Act.

15. **Authentication of depositions ...**

Foreign ... depositions or statements on oath, and copies thereof...shall be deemed duly authenticated for the purposes of this Act if authenticated in manner provided for the time being by law or authenticated as follows:

(1) ...

(2) If the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate or officer of the foreign state where the same were taken to be original depositions or statements, or to be true copies thereof as the case may require ...

(3) ... and

if in every case the ... depositions, statements, copies ... (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the minister of justice, or some other minister of state: And all courts of justice, justices, and magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof."

It is common ground that the affidavits or copies in the instant cases were admissible only if they were duly authenticated in the manner ordained by section 15(2) and the final paragraph of that section, that is to say, the originals or copies thereof must have been (a) certified by an appropriate official of the United States and (b) "authenticated by the oath of some witness or by being sealed with the official seal" of the United States Attorney General or Secretary of State.

As to the question of certification Mr. McCaulay submitted that in relation to each case the aforesaid five original affidavits were certified but were not produced at the committal proceedings. He further submitted that what were produced were uncertified copies of those original affidavits because, according to him, that is the import of paragraph 10 of Andrew Reich's affidavit. That submission, as will be seen shortly, has nothing to recommend it.

Paragraph 10 of Mr. Reich's affidavit so far as is relevant says:

"I have attached to this affidavit as Exhibits R through V true and accurate copies of the statements of Cecil Connor (Exhibit R), Ronald Jones (Exhibit S), Eduardo Lopez (Exhibit T), Valerie J. Rao (Exhibit U) and Harrington Anderson (Exhibit V). Each of these affidavits was sworn to before, a notary public duly and legally authorized to administer an oath for this purpose."

Observe that Mr. Reich says he has attached true and accurate copies of the statements of the deponents. He does not say he has attached true and accurate copies of the deponents affidavits. On the contrary, he says that each of these affidavits (obviously meaning those attached to his affidavit and designated as Exhibits R through to V) was sworn to before a notary public authorized to administer an oath for the purpose. He is saying that the affidavits are true and accurate copies of the statements of the deponents. But that does not make those affidavits copy affidavits. Indeed, each bears the features of an original affidavit, such as the signature of the deponent and the seal of the particular notary public before whom the document is said to have been sworn. On top of all that Rex Young certifies that the affidavits attached to Andrew Reich's affidavit are original affidavits.

Mr. McQuinn had argued before the magistrate that to satisfy the first condition for admissibility an appropriate official must have certified each affidavit separately on its face. That argument was, of course, not pursued before this court. The section does not require each affidavit to carry on its face a certificate from the officer of the foreign state. The section is complied with so far as concerns certification if there is a separate certificate which sufficiently identifies all the affidavits which it certifies, as in the instant cases, where they are tied together in their respective bundles: see Oskar v. Government of Australia [1988] 2 WLR 82 at 90G where a like provision in Section 11 of the Fugitive Offenders Act, 1967 (U.K.) was construed to the same effect.

The magistrate therefore had before him sufficient evidence to show that the affidavits, certified as originals, were the ones produced before him and that they were not, as was urged before us, copies of the

certified affidavits.

Now, take the requirement that the certified affidavits be "authenticated by the oath of some witness or by being sealed with the official seal of the Minister of Justice or some other Minister of State." It is abundantly clear that in an appropriate case one oath may be given by a witness in attestation of the authenticity of each of a number of certified affidavits. The section plainly does not require separate oaths to authenticate each affidavit.

Since in each of the instant cases the affidavits were not authenticated by the oath of a witness they could only be "authenticated ... by being sealed with the official seal" of the minister. According to Mr. McCaulay that requirement could only be satisfied if each and every affidavit bore on its face the official seal of the Minister. As authority for that proposition he cited R. v. Ganz (1882) 9 Q.B.D 93.

There, Edward Ganz had been committed to prison in England with a view to his extradition in respect of a crime he had allegedly committed in the Netherlands. A document had been produced before the Magistrate which purported to be a copy of the record of a certain order of the Criminal Court of Justice at the Hague. The document bore the seal of the Department of Justice there and set forth the charges against Ganz and authorised proceedings against him and his arrest.

On an application to the Divisional Court for a writ of **habeas corpus** it was argued on his behalf that as section 15 speaks of warrants and not copies of warrants an original warrant duly authenticated had to be produced and that the document produced was a mere copy of the minutes of court proceedings not in the nature of a warrant of arrest.

That court (Pollock, B. and Manisty, J.) held that the document was a duly authenticated foreign warrant. It was treated as an original foreign warrant duly authenticated for the purposes of the Act, for as Manisty, J. said at page 100.

"I am clearly of opinion ... that the document relied on was a foreign warrant of arrest duly authenticated for the purposes of the Act ... I was not at first aware that the document bore the official seal of the department of justice and was an order of the High Court of Justice at the Hague. I think it is clearly a judicial document authorising the arrest within the 20th section of the Act, and that it is authenticated as required by the 15th section. Though headed "copy" it seems to me really for this purpose to be an original document."

I have set out that passage as well as the facts and decision to show that that case is no authority for the proposition contended for on behalf of the applicants. The case did not even decide that to be duly authenticated an original foreign warrant, must bear on its face the official seal of the Minister.

I am not aware of any decided case - and none was cited to this court - in which the words "authenticated ... by being sealed with the official seal," as set out in the section, were construed to bear the meaning ascribed to them by learned counsel for the applicants. That apart, there is no warrant to read into the **language of the subsection** "a compulsory" requirement that each affidavit should bear on its face the official seal of the Minister. As Lord Mersey trenchantly put it in Thompson v. Gould [1910] A.C. 406 at p. 420:

"It is a strong thing to read into an Act of Parliament words which are not there, and, in the absence of clear necessity, it is a wrong thing to do."

Reference was made to section 11 (2) of the Fugitive Offenders Act, 1967 (U.K.) and to section 14 (2) of our Extradition Act 1991 where the phrase "authenticated ... by the official seal" of a Minister appears and not the phrase "authenticated ... by being sealed with the official seal" of a Minister. The latter phrase appeared in the repealed Fugitive Offenders Act, 1961 and, of course, it appears in section 15 of the Extradition Act, 1870. It is true that the words "authenticated ... by the official seal" of the Minister have been judicially construed as not requiring that each deposition or affidavit bear *ex facie* the Minister's official seal: see, for instance, Benwell v. Attorney General (1986) LRC (Const.) 248 where the Supreme Court of Sri Lanka construed identical words in the Extradition Law, 1977 (Sri Lanka) to the same effect.

It is, of course, a **non sequitur** to conclude that the words, "authenticated by being sealed with the official seal" should not be given that same meaning merely because they are not the **ipsissima verba** of the other phrase. Mr. McLaughlin, however, stated obliquely that in interpreting that other phrase, "authenticated ... by the official seal" of the minister found in the later statutes, a court would have employed the mischief rule. I give that statement the short shrift I think it deserves, for it has not been even remotely established that there was some mischief, defect or wrong occasioned by the use of the phrase "authenticated ... by the official seal" of the minister. Nor has it been shown that the other phrase quoted above was employed to remedy the alleged mischief. In my view both phrases have the same import and whether the one phrase or the other was used in section 15 of the Act the meaning and effect would be the same.

I also hold the view that under section 15, a single official seal of the appropriate Minister may authenticate all the documents in a composite bundle to which the seal relates and of which it forms a part. This is in keeping with the purpose and scheme of the section which, as already noted, does not require each affidavit to bear on its face separate certification, or where applicable, does not require separate oaths of a witness to authenticate each relevant document. Looking at each bundle in the instant cases it is manifest that the seal of the United States Attorney General as well as that of the Secretary of State embraces, and gives authenticity to, with the aid of ribbons emanating beneath the seals and passing through them, every document including the affidavits in each bundle.

The affidavits in each bundle were in my judgment duly authenticated as required by section 15 and so were admissible evidence under section 14 for the magistrate to consider whether committing the applicants to prison under section 16 of the Act would be justified.

For the above reasons I, too, would dismiss the applications.

COOKE, J.

There were two motions by which Lester Coke and Richard Morrison applied for writs of Habeas Corpus ad Subjiciendum. All the submissions addressed to the court were made by or behalf of Coke. Morrison contented himself in adopting those submissions as his own. The ground filed on behalf of both applicants was identical, the complaint being that each applicant was unlawfully detained

"... in that the authentication of statements on oath in support of his extradition were neither valid pursuant to section 15 of the Extradition [Act] 1870 nor pursuant to any other law in Jamaica."

Subsequently, leave was granted to the applicants to argue a further ground that the magistrate had wrongly admitted into evidence affidavits which had not been certified and thus there was non-compliance with section 15 of the Extradition Act (the Act).

A convenient starting point is section 14 of "the Act". This section which provides the criteria of admissibility of evidence states:-

14. Depositions to be evidence

Depositions or statements on oath, taken in a foreign state, and copies of such original depositions or statements, and foreign certificates of or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under this Act.

Section 15 which sets out the conditions which will satisfy authentication states:-

15. Authentication of depositions and warrants:

Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of or judicial documents stating the fact of a conviction, shall be deemed duly authenticated for the purposes of this Act if authenticated

in manner provided for the time being by law or authenticated as follows:

- (1) If the warrant purports to be signed by a judge, magistrate, or officer of the foreign state where the same was issued;
- (2) If the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate, or officer of the foreign state where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require; and
- (3) If the certificate of or judicial document stating the fact of conviction purports to be certified by a judge, magistrate, or officer of the foreign state where the conviction took place; and

if in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the minister of justice, or some other minister of state: And all courts of justice, justices, and magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof.

The applicants complain that the affidavits upon which the magistrate relied as a basis for making his order of committal were not certified [s.15(2)] nor authenticated by the oath of any witness nor sealed with the requisite official seal [s.15(3)] and therefore inadmissible in evidence. The source material before the magistrate consisted of a beribboned bundle, the pages of which were securely bound together and numbered in such a way as to leave no doubt that this bundle was a composite whole.

Included in this bundle were the affidavits which were subject to question. It cannot therefore be said that these questioned affidavits were not part of this bundle. It is a fact that there is no certification, oath of any witness or seal on each of the several affidavits. This the applicants say is fatal non-compliance with "the Act".

On the first page of the bundle, James A. Baker, III, the Secretary of State of the requisitioning country stated:-

"I certify that the document hereinto annexed is under the seal of the Department of Justice of the United States of America, and that such seal is entitled to full faith and credit."

The question is whether or not this statement is such that it attaches itself to all the contents of the bundle. The applicants say no. It refers only to the next page which deals with the qualification of Rex Young, the certifying officer. There is no reason why any distinction should be made between the page immediately following that page on which the Secretary of State made his statement and any of the other pages in the bundle. Nor is there any reason why the word "document" should be construed as to include only that page. The word "document" must be construed to mean the entire bundle. Having come to this view, I now examine the issue of whether the statement of the Secretary of State is sufficient to satisfy the statutory requirement of section 15(3) of "the Act" which demands that the affidavits should be sealed. To show that each affidavit must be sealed the applicants placed great reliance on The Queen v. Ganz [1881-82] 9 Q.B. p. 93. This was misplaced reliance since in that case the court was not dealing with a bundle. Other than Ganz no other authority was cited to the court which concerned "the Act". The applicants then turned their attention to the Fugitive Offenders Act. Firstly, it was pointed out that in the Fugitive Offenders Act 1881, section 29 required that:-

Warrants and depositions...by being sealed with the
official seal.....

It is to be noted that the wording "by being sealed with" is identical to the wording in "the Act". Secondly it is shown that in the Fugitive Offenders Act 1967, section 11, the words "by being sealed with" is replaced by the words "by the official seal". It is then argued that it was this change of wording which permitted a single attestation of a seal to attach itself to all the other material in a bundle. No authority has been put before this court (despite an invitation so to do) whereby under the 1981 wording of "being sealed with" there was the necessity to have each affidavit separately sealed. Accordingly, the leap in that submission is groundless. Linguistically, I find no difference in effect between the different wordings "by being sealed with" and "by the official seal".

In Oskar v. Government of the Commonwealth of Australia and Others [1988]
2 WLR 82. H.L. Lord Ackner in his speech at p. 89 F and G said:-

The documents relied upon by the respondents were
contained in a bundle tied together and endorsed as
follows:

"Given under my hand and the official seal of the
Attorney-General of Australia affixed to the tape
binding all the annexed documents."

It was signed Gareth Evans, Minister of Resources and Energy acting for
and on behalf of the Attorney-General of Australia. Thus, all the documents
contained in the bundle were authenticated by the official seal of an
appropriate minister.

This was a case under the Fugitive Offenders Act 1967 in which the words "by the official seal" is used. It is therefore clear that those words do not require each affidavit to be sealed. A single seal which purports to attach itself to the contents of the bundle will suffice. It is my view that equally under "the Act" the seal of the Secretary of State purporting to attach itself to the contents of the annexed document satisfies the statutory requirement of section 15(3) of "the Act".

The submission that each affidavit has to be separately certified can now be readily disposed of. Equally, as with sealing one certification which purports to cover the contents of the bundle is sufficient. This certification was under the hand of Rex L. Young. In his certification Rex L. Young stated:

"I further certify that attached to and included as part of Mr. Reich's affidavit are the following exhibits:

Among the exhibits mentioned by Rex L. Young were the "original affidavits" of Cecil Connor, Ronald Jones, Eduardo Roque, Doctor Valerie J. Rao and Barrington Anderson. However, in Mr. Reich's affidavit he stated in Par. 10 that:

"I have attached to this affidavit as exhibits R through V true and accurate copies of the statements of Cecil Connor (Exhibit R), Ronald Jones (Exhibit S), Eduardo Roque (Exhibit T), Valerie J. Rao (Exhibit U) and Barrington Anderson (Exhibit V)."

The applicants seized upon the words "true and accurate copies" and proceeded to argue that what was before the magistrate was not what Rex L. Young had certified since what was before him were as Mr. Reich stated, "true and accurate copies". This submission pays scant regard to the sentence immediately following the one by Mr. Reich which I have quoted supra. This sentence reads:

"Each of these affidavits was sworn to before a notary public duly and legally authorised to administer an oath for this purpose."

It follows therefore, that what was before the magistrate was an original affidavit. Further visual examination of the affidavits puts that issue beyond doubt. So, despite the use of the words "copies", I am satisfied that the so-called discrepancy is only apparent. The magistrate had before him duly certified affidavits in accordance with "the Act".

For the above reasons, both applications are refused. There will be costs to the respondents to be agreed or taxed.