

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. 13 OF 1994

BEFORE: THE HON. MR. JUSTICE CHESTER ORR
THE HON. MR. JUSTICE THEOBALDS
THE HON. MR. JUSTICE KARL HARRISON

IN THE MATTER OF THE CUSTOMS ACT

AND IN THE MATTER OF SEARCH WARRANTS
issued under Section 203 of the
Customs Act.

AND IN THE MATTER OF the seizure and
detention of documents and papers of
the Applicants.

Regina v. Commissioner of Customs and Excise, Exparte Real Farms
Limited, David Chin and David Incorporated Limited.

Mr. Ian Ramsay and Mrs. Jacqueline Samauels-Brown for Applicants.

Mr. Lackston Robinson instructed by Director of State Proceedings
for Respondent.

HEARD: July 15 , 16 and December 12 , 1996

CHESTER ORR J.

I have read the judgments of Theobalds and Harrison JJ and agree that the motion should be dismissed for the reason so fully set out in the judgment of Harrison J.

I also agree that there is no justification for retaining any goods or documents not required in the prosecution of the criminal charge herein.

THEOBALDS J.

I have read the judgment of my brother, Karl Harrison. I agree with the reasoning and the decision arrived at, but would wish to add a few brief comments of my own. I confess to having been initially attracted by the argument put forward by learned counsel for the applicant on the question of the illegality and invalidity of the search warrants upon which the customs officers purported to act. Section 203 of the Customs Act under which the search warrants

were issued seems to put that contention beyond argument. But that matter is for adjudication in another forum. No doubt, if documents are proven to have been wrongly taken and goods improperly withheld that will itself be the subject of an award of damages at the appropriate time.

What is before this Court is an application for Judicial review. This application is supported by an affidavit of one David Chin who depones on his own behalf as well as in his capacity as Managing Director of the other two applicants. This affidavit along with the affidavits of Robert Farr, Redwarse Johnson and Monica McKenzie comprised the totality of the evidence which this Court has to consider. It cannot be said that on this evidence the applicant has made full and complete disclosure to the Court. Learned counsel for the respondent based on the authority of *R v. The General Commissioners for the Purpose of the Income tax Acts for the District of Kensington Exp. Princess Edmond De Polignac (1917) K.B. 446* might with every justification have taken the point in limine that this Court ought without further discussion on the merits to refuse to grant the application.

Indeed the outspoken words of Viscount Reading C.J. at P. 495 of the *Exp. Princess Edmond De Polignac* case (supra) are so relevant to this case as to merit direct quotation for the future guidance of counsel on both sides:

"Where an ex parte application has been made to this Court for a rule or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the merits. This is

a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit."

The underlinings are mine.

This case presents an even more unacceptable state of affairs than the Exp. Princess Edmund De Polignac case above. At least the Princess sought to correct by way of a second affidavit a situation which learned counsel for the applicant in this case referred to emphemistically as a "mistake" on the part of David Chin. Mr. Chin has not up to now sought to correct "his mistake," even though he is the only party competent to do so. Without even referring to the affidavits in reply by the respondents that "mistake" is apparent on the fact of it. It is well known that nearly every citizen of this country who travels abroad returns with some article(s) either by way of gift or purchase. This per se would not classify ^{him or her} as an importer within the meaning of Mr. Chin's affidavit. But when you order and pay for vegetable oil to the extent as indicated on the affidavit(s) then it could only be false to state that you are not involved in the importation of goods. The motion ought to be dismissed with costs ^{to the Respondent} to be agreed or taxed.

Inspite of this order it is my considered opinion that there

can be no justification for retaining any goods or documents/^{not} being used for the prosecution of the criminal charge herein.

Karl Harrison J.

Application

This is an application by Real Farms Limited, David Incorporated Limited, and David Chin for judicial review.

The Notice of Motion is brought by leave granted by Edwards J. on the 24th day of March, 1994 and the applicants are seeking the following reliefs:

"An Order of Certiorari to remove into this Honourable Court and quash Search warrants issued under Section 203 of the Customs Act and executed in respect of premises situate at 1 Oval Road and 27 Tewfix Drive aforesaid on the 15th day of February, 1994 and/or an Order of Mandamus directed to the Commissioner of Customs and Excise to release the documents and papers detained and seized under the colour of the said Search Warrants."

Facts

The facts on which this application is based are briefly summarised as follows:

David Chin is the managing director of the first and third applicants and has his office at 1 Oval Road, Kingston 5. He has deponed that the first applicant carries on business in all kinds of farming and is engaged in agricultural research. The third applicant carries on the business of merchants and distributors at 27 Tewfix Drive.

The applicants claim that on or about the 15th day of February, 1994, officers from the Commissioner of Customs and Excise Department went to the second applicant's home at 27 Tewfix Drive, Kingston 20

and later to the business offices at 1 Oval Road, and effected searches whereupon a number of documents and papers belonging to him as well as documents and papers of the first and third applicants were seized.

The second applicant further depones that by letters dated 15th and 18th February, 1994, Mr. Ian Ramsay, Attorney-at-Law for the applicants had requested copies of the search warrants and information supporting them, but the respondent had failed to supply him with copies.

The applicants contend that none of the documents and papers seized related to the importation of any goods or to any uncustomed goods, that there was wrongful seizure and/or detention of the various documents and papers which have caused them great financial loss and has crippled their business activities.

Grounds

The grounds upon which the reliefs were sought are set out as follows:

1. ILLEGALITY

(A) The respondent and/or his officers misdirected themselves in the following manner:

- (i) They misinterpreted the Custom Act, in particular Section 203.
- (ii) They or either of them interpreted the discretion conferred by the Customs Act as being unfettered and/or absolute.

(B) The Search Warrants are illegal and invalid and the entry and search of the Applicants' premises and the seizure of documents and other items therein were illegal. (By Amendment granted)

2. IRRATIONALITY

No reasonable authority would have adopted such a course of conduct.

The applicants conclude therefore that:

"The Respondent and/or his said officers acted unreasonably and defeated the legitimate expectations of the Applicants in that:

1. They have no evidence of any misrepresentation made and/or fraud committed by or on behalf of any of the Applicants in the importation or clearing of the goods or of any uncustomed goods or documents relating thereto being on any premises of any of the applicants; accordingly the Respondent must have taken irrelevant factors into consideration in applying for the said search warrants and in detaining the said document and papers;
2. They have acted and are acting ultra vires the Customs Act and unconstitutionally;
3. They failed to give the Applicants any rational explanation for their actions and/or to provide the copies of the said search warrants and/or information to base the said search warrants and/or the details of or the basis for the detention and seizure of the said documents and/or papers.
4. They acted arbitrarily and/or capriciously and/or vindictively in detaining and seizing the said documents and/or papers."

Search Warrants

Section 203 of the Customs Act under which the search warrants were issued states as follows:

"If any officer shall have reasonable cause to suspect that any uncustomed or prohibited goods or any books or documents relating to uncustomed or prohibited goods are harboured, kept or concealed in any house or other place in the Island, and it shall be made to appear by information on oath before any Resident Magistrate or Justice in the Island, it shall be lawful for such Resident Magistrate or Justice by special warrant under his hand to authorize such officer to enter and search such house or other place, by day or by night, and to seize and carry away any such uncustomed or prohibited goods, or any books or documents relating to uncustomed or prohibited goods, as may be found therein, and it shall be lawful for such officer, in the case of resistance, to break open any door, and to force and remove any other impediment or obstruction to such entry, search or seizure as aforesaid."

The warrants which are being sought to be quashed and the affidavits to support the search are set out hereunder:

"To Robert Farr or any Customs Officer

WHEREAS the undersigned, one of Her Majesty's Justices of the Peace in and for the Parish of St. Andrew being satisfied upon written information on oath that there is good reason to believe that in a certain place to wit: situated at 1 Oval Road, St. Andrew has kept or concealed **uncustomed goods** on which the duty leviable by Law has not been paid or books or documents relating thereto.

THESE ARE THEREFORE, in Her Majesty's name, to authorise and command you, with proper assistance, and by such force as may be necessary by night or by day, to enter and go to the said place and to search the same and all persons found therein and to seize all such goods, documents and other articles reasonably supposed to have been used in connection with goods which may be found in the said place and to take further action in the premises as the Law allows.

Given under my hand....."

AFFIDAVIT TO GROUND SEARCH WARRANT

"The information and complaint of Robert Farr in the Parish of St. Andrew made on oath before me the undersigned one of her Majesty's Justices of the Peace in and for the Parish of St. Andrew this 10th day of February, 1994 who saith that he hath good reason to believe that in a certain place situated at 1 Oval Road, St. Andrew in the said Parish occupied by person or persons unknown and others has kept or concealed uncustomed goods or documents relating thereto, contrary to Section 210 of the Customs Act."

Submissions

Mr. Ramsay argued that in examining the provisions of Section 203 of the Customs Act, the Warrants must fulfil three functions, viz:

1. The requirement to apply to a judicial officer gives an opportunity to another person to check on the need for the warrant.
2. The warrant allows occupiers of premises to satisfy themselves that officers are acting lawfully.
3. The warrant indicates the limit of powers of officers.

In light of the above, Mr. Ramsay submitted that the warrants were defective and invalid for the following reasons:

1. Whereas the Statute required that the applicant for the search warrant must have reasonable cause to suspect, the warrants purported to say that it appeared to the Justice of the Peace that the Applicant had "good reason to believe." This he said was borne out by the information on oath of the Applicant which also stated that he had "good reason to believe."
2. The Warrants speak of the Customs Officer having good reason to believe that articles relating to uncustomed goods are on the premises whereas the statute makes no provision in relation to "articles."
3. The warrants authorised the respondent to enter the premises by such force as may be necessary, whereas the statute makes it lawful "in the case of resistance" to break open any door and to use force and remove any other impediment or obstruction to such entry.
4. The warrants authorised the search of persons found on the premises whereas no such authority was given by the statute.
5. The Warrants authorised the Custom Officer etc. to "seize articles reasonably supposed to have been used in connection with goods which may be found in the said place "whereas the Statute permits seizure of (apart from uncustomed or prohibited goods) any books or documents relating to uncustomed or prohibited goods as may be found therein.
6. The warrants did not expressly state the statutory authority under which they were issued.

It was contended therefore by Mr. Ramsay that the warrants were bad and that the court was bound by the authority of **Williams v. The Attorney General SCCA 7/94** (un-reported) delivered on December 9, 1994. He submitted therefore, that certiorari should go to quash the warrants. He also referred to and relied upon the following cases:

1. **Hope v. Evered (1886) 17 QBD 338.**
2. **R v IRC ex parte Rossminster Ltd. (1979) 3 All E.R. 385.**
3. **IRC v. Rossminster Ltd. [1980] 1 All E.R.80 (House of Lords).**

In relation to the writ of Mandamus Mr. Ramsay submitted that it would flow in a way, if the writ of certiorari was granted. He submitted that all things seized by the Respondent or the Agents of the respondent, on the basis of or in reliance on the invalid search warrant and kept by them, amounted to a trespass on the applicants' property. He further submitted that it would be an unlawful detention of that property without lawful excuse and should be immediately returned. Alternatively, he argued that for the respondent to justify detention of any of the applicants' documents they would have to show that they need to retain them for the purpose of evidence in the pending criminal case.

Mr. Robinson contended on the other hand, that it was only on jurisdictional grounds that the warrants in the instant case can be quashed. He submitted that the Rossminster case (supra) decided two issues, viz:

1. Whether or not the warrant was valid, and;
2. Whether the Revenue officers had exceeded powers conferred upon them under Section 20 of the Taxes Management Act in that they did not have reasonable cause to believe that the documents they seized may be required for evidence in the case of tax fraud.

Furthermore, Mr. Robinson submitted that the applicants in the Rossminster case were not challenging the jurisdiction of the Magistrate who issued the warrant, rather, they merely sought:

- i) a declaration that the officers were not entitled to seize goods and;
- ii) orders for mandamus and an injunction.

According to him, the judge's jurisdiction was not challenged in that case.

He submitted also that despite the principle of stare decisis, the Williams case (supra) cannot assist the applicant here, as all it established was that the warrant was not valid because of failure to comply with the provisions of Section 203 of the Customs Act. That case he said, was a motion for constitutional redress. What the

applicant sought was a declaration that the warrants were invalid and the search was therefore illegal and constituted a breach of Constitutional Rights under Section 19(1) of the Constitution. Mr. Robinson submitted that the Court in Williams' case was not concerned with the issue of ultra vires.

According to Mr. Robinson, if the applicants are seeking to have the warrants quashed, the question to ask is, whose decision it was to issue these warrants? Mr. Robinson argued that it was clear that the warrants were issued by Justice of the Peace Howard, hence, the applicants must show that the person who issued the warrants acted in excess of his jurisdiction. He further argued that neither the respondent nor any officer of the Revenue Protection Division had issued the warrants. Rather, he said, the application was made by officers of the Revenue Protection Division and it was the decision of Justice of the Peace Howard to have issued them. Consequently, if there was to be any challenge, it must be to the jurisdiction or power of the Justice of the Peace to issue the warrant. Furthermore, he said, there was no complaint that the Commissioner of Customs and Excise had acted illegally and ultra vires the Customs Act. neither was there any complaint upon examining the affidavit of David Chin, that the Justice of the Peace in issuing the warrants acted unlawfully or in excess of his jurisdiction.

In response, Mr. Ramsay submitted that it was the decision (the warrant in this case) which must be brought up before the court and not the decision-maker. He further submitted that the proper party ought to be the Commissioner of Customs as Section 203 of the Customs Act made him the prime mover. He was the one he said, who must have reasonable suspicion and he must make it appear to the Justice of Peace. According to Mr. Ramsay, the Commissioner was inextricable intertwined in the procuring of the warrant.

The real issue then, according to Mr. Ramsay is whether the Justice of the Peace had jurisdiction to issue the warrant in the

instant case under Section 203 of the Customs Act. He submitted that an identical warrant to the one in the instant case was held to be invalid in the William's case (supra). No Justice of the Peace therefore had power to grant an illegal warrant. The question therefore was whether the Justice of the Peace had jurisdiction to grant the warrants. According to Mr. Ramsay the statute did not give the Justice of the Peace power to issue a warrant to search persons and seize articles etc., so these powers were ultra vires and beyond the Justice's jurisdiction. Could this illegality therefore move for certiorari? Mr. Ramsay submitted that it could since the grant of the warrant was contrary to the enabling law (See case of C.C.S.U. v. Minister for Civil Service [1985] A.C. 407, page 407E).

By way of a comment, Mr. Ramsay observed that the Notice of Motion was filed as far back as the 31st March, 1994, so, if the respondent felt that the proper party was not before the court, the respondent ought to and should have filed a summons to strike out or set aside the leave which was granted. Also, if the point was chosen to be taken at the hearing of the Motion, it should have been taken in limine rather than being taken at this stage of the proceedings.

Mr. Robinson further developed his attack to show why certiorari ought to be refused. Firstly, he submitted that even if the applicants were entitled to an order of certiorari the Court should, in the circumstances of this case, exercise its discretion in not granting the order. He submitted that the court should do so on the basis that the applicants had not made full disclosure and had demonstrated bad faith. He argued that the affidavit of David Chin was very sparse and said very little and left a number of gaps. Accordingly, the Court had a discretion to refuse and ought to refuse an order for certiorari where the applicant has showed bad faith or suppressed material facts.

Secondly, he submitted that where the applicant has an alternative remedy the Court should refuse to make an order for certiorari unless, there were exceptional circumstances. He argued

that a suit had been filed on the 24th August, 1994 in the instant matter against the Commissioner and others claiming damages for misfeasance or abuse of power in office and damages for conversion and detinue. Accordingly, the applicants would be entitled to raise the validity of the warrants and if successful would be entitled to damages for detinue, trespass etc.

In response to alternative remedies, Mr. Ramsay argued that certiorari was a prerogative remedy to act quickly to stop or quash a wrong and that the quashing of the warrant could not be done in a civil case. Furthermore, he said it was open to the applicants to take co-existing remedies and if this court were to quash the warrants it would be an advantage to the applicants and assessment of damages would proceed before a single judge. He argued that the only alternative to certiorari was an appeal (See De Smith's "Judicial Review of Administrative Action," 4th Edn. page 425). He submitted therefore, that a person aggrieved was entitled to apply for certiorari and should not have to wait on the action for damages (See Regina v. Patents Appeal Tribunal and Others Ex parte J.R. Geigy S.A. (1963) 2 Q.B. 728).

Thirdly, Mr. Robinson submitted that the validity of the warrant could be raised at the criminal trial, It would be futile he said, if the Court were to make an order because the goods had been seized and trial in the criminal court was in progress. If the Court were to quash the warrant, it would be in effect interfering with the criminal trial.

Mr. Robinson finally submitted that the relief of mandamus was not available to the applicants in these proceedings. He submitted that an order could only be made where there was refusal to perform a public duty and in the instant matter there was no public duty which the Commissioner of Customs had refused.

Findings

Let me say at the very outset that I am not in agreement with Mr. Robinson on the issue of alternative remedies. The learned

author of De Smith's "Judicial Review of Administrative Action" has expressed the view at p. 426 that:

"The Court ought not to refuse certiorari because of alternative remedies other than appeal unless it is clearly satisfied that those other remedies are more appropriate."

Recent cases have shown where certiorari has been granted because it is more convenient and beneficial (See R v. Patents Appeal Tribunal (supra)).

It is also true to say, that an applicant need not await the criminal trial for that court to pronounce upon the validity of the warrant but I would agree with Mr. Robinson that this court ought to act cautiously if its order has the effect of interfering with the criminal trial.

I do agree that the warrants in the instant case, being identical in form to that issued in the Williams' case (supra) I am constrained to hold that they are indeed defective and contrary to Section 203 of the Customs Act. The question then, is whether they ought to be quashed. The authorities are quite clear that if no special circumstances exist, and if all that appears is a clear excess of jurisdiction, the person aggrieved by that would be entitled ex debito justitiae to his order for certiorari.

In deciding whether or not to grant the order for certiorari, the court will be called upon to exercise its discretion. I bear in mind the wise words of Sir Wilfred Greene M.R. in R. v. Stafford Justices ex parte Stafford Corporation [1940] 2 KB 33 at page 43, where he states:

"Now, in my opinion, the order for the issue of the writ of certiorari is, except in cases where it goes as of course, strictly in all cases a matter of discretion. It is perfectly true to say that if no special circumstances exist, and if all that appears is a clear excess of jurisdiction, then a person aggrieved by that is entitled ex debito justitiae to his order. That merely means this, in my judgment

that the Court in such circumstances will exercise its discretion by granting the relief. In all discretionary remedies it is well known and settled that in certain circumstances - I will not say in all of them, but in a great many of them - the Court, although nominally it has a discretion, if it is to act according to the ordinary principles upon which judicial discretion is exercised, must exercise that discretion in a particular way, and if a judge at a trial refuses to do so, then the Court of Appeal will set the matter right. But when once it is established that in deciding whether or not a particular remedy shall be granted the Court is entitled to inquire into the conduct of the applicant, and the circumstances of the case, in order to ascertain whether it is proper or not to grant the remedy sought, the case must in my judgment be one of discretion."

Bearing these principles in mind it becomes necessary to examine the circumstances leading to the obtaining of and execution of the search warrants. The affidavits which have been filed are therefore of importance. From my understanding of the facts set out by the respondent, officers attached to the Revenue Protection Division were investigating the applicants' alleged involvement and complicity with Jay's Enterprises Ltd. in the importation of certain products including milled corn cone into the Island and who were knowingly evading customs duty. As a consequence it was concluded that uncustomed goods were on the applicants' premises and that documents relating to the said good were also at these premises. On the 10th February, 1994, Robert Farr, a Customs Officer, assigned to the Revenue Protection Division obtained search warrants and pursuant to those warrants searches were carried out at the applicants' premises where certain documents were seized. Certain documents which were found revealed that the applicants had certain dealings with Sunlight Foods Inc. of Miami, Florida.

Now, paragraph 8 of the applicants' affidavit has clearly expressed that none of the applicants had been engaged in the importation of any goods into the Island, It was further deposed by the

second applicant on his own behalf and on behalf of the other applicants, that certain documents which he discovered taken from his offices were also not concerned with the importation of goods.

Redverse Johnson, a Customs Officer, has deponed inter alia, in his affidavit sworn to on the 15th day of February, 1996, as follows:

"3. On the 20th January, 1994 I was a member of a party of customs officers who examined three containers consigned to Jay's Enterprises Limited by Sunlight Food Inc. of Miami, Florida which were detained by the Revenue Protection Division at Kingston Wharves ...

4. The said containers contained 510 one hundred pound bags labelled "CON AGGRA" and the bags contained a substance resembling cornmeal.

14. On the 2nd February, 1994 I conducted an interview with Mr. Carl Thompson who introduced himself as a Director of Jay's Enterprises Ltd.

15. I enquired of Carl Thompson what was "milled corn cone" as appears on the import entry forms.

16. Carl Thompson said it was "cracked corn" which was imported by Jay's Enterprises Ltd. for Real Farms Ltd."

21. On the 7th February, 1994 I received a letter from Mr. Ian Ramsay and I handed it to Robert Farr. I exhibit a copy of the said letter marked "RJ 5."

Exhibit "RJ 4" is a letter referred to in paragraph 18 of the abovementioned affidavit. it reads as follows:

Real Farms Limited
Windsor Forest
Portland
Jamaica

The Collector of Customs
Kingston

To Whom It May Concern

This letter serves to inform and confirm that Real Farms Ltd. is a registered farm of Jamaica and has placed an order for Three Thousand (3,000) 100 lbs. bags of milled corn with Jay's Enterprises Ltd.

This product is an excellent animal feed with a high protein and fibre content. Its main application being pigs and chickens.

.....
Sgd. Michelle Tucker
Manager

Exhibit "RJ5" referred to in paragraph 21 above reads
as follows:

February 7, 1994

Revenue Protection Division
1 Shallimar Avenue
Kingston 3

Attention: Mr. Redverse Johnson

Dear Sir,

Re: Detention Orders - Containers SCZU 307584-9
and SCZU 3063874

Pursuant to our meeting on the 2nd February and to our telephone conversation on the 7th February, 1994 I have asked Mr. David Chin who is the Managing Director of Real Farms Limited to attend on you. You will recall that you asked for Ms. Michelle Tucker who is the office manager of Real Farms Ltd. Mr. Chin is the highest ranking officer of the company.

We hope that this matter can be brought to a speedy conclusion for the containers and their contents have been lawfully imported and the duty demanded has been paid.

.....
Sgd. Ian Ramsay
Attorney-at-Law

The Affidavit of Robert Farr reveals inter alia:

"3. Investigations revealed that between 22nd April, 1993 and 24th November, 1993 milled corn cone valued at J\$10.0 Million was imported by Jay's Enterprises Limited as animal feed at a duty rate of 5% ...

34. I examined documents which were seized from the said premises and observed that David Chin, through David Incorporated, is the importer of cornmeal from Sunlight Foods in Miami. (Copies of documents exhibited at "RF 9").

35. Documents found at the above premises showed that vegetable oil valued at U.S.\$34,514.00 which was purchased by David Chin from Sunlight Foods Inc. in the United States of America was imported under the name Cheapside Distributors as Chlorine Solution from United Speciality Products Inc. in the United States of America

The list of documents and documents taken from premises 27 Tawfix Drive, exhibited as "RF 8" show a number of documents which

had some connection with importation of goods. They are:

- "1. (35) C-78 Sunlight Food Inc.
Cheque for U.S.\$15,000 payable
to Sunlight Food
3. C 78 Bologh Export Inc.
7. Jay's Enterprise receipt
31. Sunlight Food Inc.
33. Copies of cheques paid to Sunlight Foods.
34. Copies of Sunlight Foods Products List
37. Copies of Bills of Lading and Invoices
for vegetable oil Bologh Invoice."

Mr. Robinson, submitted therefore that the applicants having deponed that they were not involved in the importation of goods had not been frank in their disclosure and had suppressed material facts. Accordingly, the Court has a discretion to refuse and ought to refuse an order for certiorari where the applicant shows bad faith or suppress material facts (See R. v. The General Commissioners for the Purposes of the Income Tax Acts for the District of Kensington Ex.p. Princess Edmond De Polignac [1917] KB 486).

As to materiality, Mr. Ramsay submitted that all the documents in "RF 1", "RF 9" and "RF 11" were innocuous on their face as they related to the importation of goods with no apparent irregularity. Furthermore, he said it was not every discrepancy or lie told will disentitle an applicant to relief for certiorari. In his view, it must have been a mistake when the deponent Chin stated in his affidavit that the applicants had not imported goods. However, he argued that this was not the issue, as the officers would not have been entitled to take anything if the warrants were invalid.

It seems to me that the affidavit evidence brought by the respondent has not been challenged and by rules of court the facts alleged therein are deemed to have been accepted. The affidavit evidence which I have set out in some detail above, disclose that the applicants were indeed involved in the importation of goods which were relevant to the matters under investigation by the Revenue Protection Division. I cannot accept the statement made by Mr. Ramsay that the deponent

has made a mistake in his affidavit when he deponed that they were not involved in the importation of goods at all. If indeed there was a mistake, the proper person to say so would have been the deponent himself. He has failed to do so. It seems to me therefore, that the state of affairs concerning the importation of goods are material facts which ought to have been mentioned by the deponent but for reasons best known to the applicants they have suppressed these facts. To my mind they have been far from being frank with the court. The result, therefore, in my opinion, is that the Court, having regard to all the circumstances of this case, and in particular the conduct of the applicants, ought not in its discretion to grant the reliefs asked for.

The motion ought to be dismissed with costs to the respondent to be taxed if not agreed.

CHESTER ORR, J.

The motion is dismissed with costs to the Respondent to be agreed or taxed.