

J A M A I C A

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CONSTITUTIONAL COURT

SUIT NO. M.126/93

BEFORE: The Hon. Mr. Justice Patterson J.
The Hon. Mr. Justice Ellis J.
The Hon. Mr. Justice Smith J.

BETWEEN DANHAI WILLIAMS 1ST APPLICANT
AND DANWILLS CONSTRUCTION LIMITED 2ND APPLICANT
AND THE ATTORNEY GENERAL FOR JAMAICA RESPONDENT

Ian Ramsay, Enos Grant & Jacqueline Samuels-Brown for Applicants
Lennox Campbell & Neil Hamaty, for Respondent.

Frank Phipps Q.C., Dr. Lloyd Barnett & Catherine Phipps for interested party (by leave of the Court).

January 17, 18, 19 & March 10, 1994

PATTERSON, J.

The applicants moved the court for declarations that their fundamental rights and freedoms, enshrined in the Constitution, had been and were being contravened, and they sought redress. The notice of motion was couched in the following terms:-

"TAKE NOTICE THAT the Constitutional Court will be moved
..... for the following orders:-

(A) Declarations that:-

- (i) The Search Warrants issued on or about the 5th day of November, 1992, on the written information on oath of one Arthur McNeish and purporting to authorize entry upon the Applicants' premises were invalid and the search made thereunder illegal and unconstitutional as being contrary to section 19(1) of the Constitution of Jamaica; and/or
- (ii) The use of and participation by members of the Jamaica Defence Force on the 26th November pursuant

to the aforesaid search warrants were illegal and that such illegality rendered the said search under the warrant invalid and unconstitutional as being contrary to section 19(1) of the Constitution of Jamaica and/or without due process and/or an abuse of process;

- (iii) The seizure of the documents, files and other property pursuant to the aforesaid search under the said warrant was illegal and unconstitutional as being contrary to section 18(1) of the Constitution of Jamaica and/or made without due process and/or an abuse of process;

(B) Orders that

- (i) All the said documents, files and other property seized by the Customs Officers be returned to the Applicants; and/or
- (ii) All use of the said documents, files and other property by the prosecution be prohibited; and/or
- (iii) All or any charges, information or indictments connected to or flowing from or in any way dependent or touching upon the said documents, files or other property obtained as a result of the aforesaid search be stayed.
- (iv) The trial of the 1st Applicant upon informations pending against him in the Resident Magistrates Court at Sutton Street, Kingston, be stayed until the above Orders are complied with.
- (v) Compensation.
- (vi) Such other relief as to the Honourable Court seem just.

We dismissed the motion, and I now state the reasons for so doing.

Danhai Williams is the managing director and majority shareholder in a company, Danwills Construction Limited. Both Williams

and the company own and occupy premises located at 105½ Windward Road, Kingston 2. Williams also owns and occupies premises located at 15A Homestead Road, Kingston 2, and he and his wife own and occupy premises at 2, Belgrade Loop, Kingston 8, St. Andrew.

Superintendent McNeish and a customs officer attached to the Revenue Protection Division of the Ministry of Finance were assigned to investigate a case of illegal importation of motor vehicles in which the applicant Williams was allegedly involved. Their investigations led them to the premises of the applicants at 105½ Windward Road, Kingston 2, on the 12th May, 1992, but they encountered hostility. They continued their investigations, and Superintendent McNeish said that as a result of evidence he gathered, he "had reason to believe that there were uncustomed goods or books or documents relating to Section 210 of the Customs Act at three premises owned or operated or frequented by Danhai Williams." As a consequence, on the 5th November, 1992 he "swore out search warrants" relating to the three premises previously mentioned. The warrants were executed by the police and customs officers, with assistance from members of the Jamaica Defence Force. A quantity of documents and books, as well as other property were seized and carried away.

The applicants contended that the searches were "completely unlawful, illegal and unconstitutional and not saved by any of the exceptions to SS.19 & 18 of the Constitution of Jamaica."

The Fundamental Rights and Freedoms enshrined in Chapter III of the Constitution are not new provisions; they are an embodiment of the common law rights and freedoms that existed before the written Constitution came in force in 1962. In particular, the protection for privacy of home and other property (S.19) and protection from the compulsory acquisition of property (S.18), have been rights guaranteed to all persons in Jamaica by the common law. But they are not absolute rights, as various Acts of Parliament have been enacted from time to time to protect the public interest, and to limit the enjoyment of such rights and freedoms of individuals

where they may prejudice or impinge on the rights and freedoms of others. S.19(1) of the Constitution provides that:-

"Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises."

But that provision is not contravened if a law makes provision for such search or entry when it is reasonably required "for the purpose of preventing or detecting crime". (S.19(2)(c))

Similarly, S.18(1) of the Constitution provides that:-

"No property of any description shall be compulsorily taken possession of except by or under the provisions of a law"

But again, that section is not affected by any law which provides for the taking of possession of property for so long only as may be necessary for the purposes of "any examination, investigation trial or enquiry" (S.18(2)(k))

So, it is necessary to decide whether or not the search of the applicants' premises and the taking of documents and other property was done under and in accordance with the provisions of any law. It is common ground that the relevant provision under which the search warrants could properly be issued is S.203 of The Customs Act, which reads as follows:-

"203. If any officer shall have reasonable cause to suspect that any uncustomed or prohibited goods, or any books or document 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 authorise 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 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".

It appears that Superintendent McNeish attended before a Justice of the Peace and swore "affidavits" to ground the issuance of each search warrant. The "affidavits" are similarly worded but for the names and descriptions of the persons and premises, and this is how that relating to premises at 105½ Windward Road is worded:-

"JSB 2B"

AFFIDAVIT TO GROUND SEARCH WARRANT

JAMAICA S.S.

The information and complaint of Arthur McNeish in the parish of Kingston made on oath before me the undersigned one of Her Majesty's Justices of the Peace in and for the Parish of Kingston this 5th day of November in the year of Our Lord One Thousand Nine Hundred and Ninety Two who saith that he hath good reasons to believe that in a certain place situated at 105½ Windward Road, in the said Parish, occupied by Danwills Construction Limited and Danhai Williams is kept or concealed uncustomed goods or books or documents relating thereto, contrary to Section 210 of the Customs Act.

Sworn before me this 5th day of November, 1992.

Sgd: A.R. McNeish

Sgd: R.W. Stewart
Justice of the Peace Kgn."

The search warrants relating to the premises are in the same form, and the one in respect of 105½ Windward Road reads as follows:-

"JSB 1B"

JAMAICA S.S.

PARISH OF KINGSTON

TO Arthur McNeish or any Customs Officer

WHEREAS the undersigned, one of Her Majesty's Justice of the Peace in and for the Parish of Kingston being satisfied upon written

information on oath that there is good reason to believe that in a certain place, to wit:

Danwills Construction Limited and Danhai Williams
105½ Windward Road
Kingston

is kept or concealed uncustomed goods on which the duty leviabale by Law has not been paid or books, documents or instruments 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 or go to the said place and to search the same and all persons found therein and to seize all such goods 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 and seal at the Parish of
5th
aforesaid the day of November in the year of Our Lord
One Thousand Nine hundred and Ninety Two.

R. W. Stewart
JUSTICE OF THE PEACE, KGN.

The validity of the search warrants lies at the heart of the legality and constitutionality of the entries on the premises, and the searches for and seizure of the documents, books and other property found thereon. It was contended on behalf of the applicants that on a proper construction of the provisions of S.203 of the Custom Act, the warrant can only be validly issued for the search and seizure of the documents, books and other property if the following conditions precedent exist:-

- (a) An officer must have reasonable cause to suspect that uncustomed goods etc, are on the premises,
- (b) he must disclose facts on oath to a Resident Magistrate or a Justice of the Peace for such Resident Magistrate or Justice of the Peace to form his own opinion if there is reasonable cause to suspect.

- (c) The Resident Magistrate or Justice of the Peace must form his own opinion that there is reasonable cause to suspect. Only then can the Resident Magistrate or Justice of the Peace issue the warrant under his own hand to authorise the search and seizure.

It was submitted that on the face of the affidavits, no reasonable cause was disclosed by the police officer to the Justice of the Peace, who relied on the affidavits to issue the warrants, and accordingly, there was no basis in law for the issue of the warrants; they were therefore invalid, and any action taken under them was illegal. It was finally submitted that "since the Constitution provides, under S.19(1), to protect the rights to person and property from invasion by others, then if the warrant fails, there has been an infringement of the Constitution as alleged under grounds (a) and (b) as set out in the notice of motion". In support of these submissions, great reliance was placed on the House of Lords opinion delivered in the case of Inland Revenue Commissions and Another v. Rossminster Limited and related appeals [1980] 1 ALL ER 80. In that case, their Lordships were faced with a similar question as to the validity of search warrants issued under the provisions of S.20(c) of the Taxes Management Act 1970 (U.K.). That section makes it abundantly clear that the warrant may only be issued if the appropriate judicial authority is satisfied on oath given by an officer of the Board that (a) there is reasonable ground for suspecting that an offence involving tax fraud has been committed, and (b) the officer is acting under authority of the Board. Their Lordships were of the opinion that although the appropriate judicial officer (a circuit judge) who issued the warrant "was himself required to be satisfied that there was reasonable ground for suspecting that a tax fraud had been committed and that evidence of it was to be found on the premises to be searched, the fact that the judge was so satisfied was not required to be stated in the warrant." Their Lordships found that the warrants were not invalid.

The provisions of Sec.20(c) of the Taxes Management Act, 1970 (U.K.) are not the same as the provisions of S.203 of The Customs Act, and validity of the warrants in the instant case depends on the construction to be placed on the relevant statute in our law, viz, S.203 of the Customs Act. It seems to me that the first requirement is that the officer must "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". It is not required that the officer should have evidence of any offence committed; he is at the stage where he is investigating whether or not an offence has been committed under the Customs Act, and to that end he is seeking evidence. He must be seized of some information which gives him reasonable cause to suspect the existence of some sort of evidence on certain premises. But he cannot enter on those premises unless he is lawfully authorised to do so. The next requirement is that he must attend before a Resident Magistrate or a Justice of the Peace, and by information on oath, make his suspicion appear to such Resident Magistrate or Justice of the Peace. There is no requirement that he should satisfy the Resident Magistrate or the Justice of the Peace of the existence of the evidence on the premises. There is no requirement that the information on oath must be in writing - there is no allegation of a completed offence, nor are criminal proceedings being instituted. The question arises then, should the officer particularise in the information to the Resident Magistrate or Justice of the Peace the grounds upon which his suspicion is based? It is common knowledge that police officers, in the course of investigations, receive information at times upon which they act to further their investigations, but they cannot disclose the nature and source of their information. The ends of justice demand such confidentiality at all times. With that in mind, and on considering the object of the provisions, I am of the view that the oath of the officer of his reasonable cause to suspect is what is required, and

not the particulars upon which the suspicion is grounded. The reasonable cause to suspect has its genesis in the investigations, and must be dependent on the good judgment of the officer, manifested by his oath before a judicial officer. The applicant is not at liberty at this stage to know or to question the information which gives the officer reasonable cause to suspect. Therefore, in deciding on the validity of the warrant, one must look at the warrant itself, not the information to ground it and see whether or not it conforms with the requirements of the statutory provisions. The statute requires the Resident Magistrate or Justice of the Peace to issue a special warrant to authorise the search and seizure, if it is made to appear to him on oath that there is reasonable cause to suspect etc.

The Justice of the Peace stated in the warrant that he is so satisfied, and that in my view, is sufficient to ground his jurisdiction to issue the warrants. There is no prescribed form for the warrant and I am of the view it is in sufficient form if it is directed to a named officer, it describes the premises to be searched and it authorises the officer to proceed in the manner set out in the statute. There is no requirement for naming the owner or occupier of the premises. Such persons have no right to be told what particulars were disclosed to the Justice of the Peace, and there is no requirement for such particulars to be included in the search warrant. Looking at the warrants in the present case, they are directed to a named officer, and the premises to be searched are sufficiently described. They recite the fact that the Justice of the Peace is satisfied "upon written information on oath that there is good reason to believe" etc. As Dr. Barnett rightly pointed out, this is a higher standard than what the statute requires, the statute only requires that it should appear to him by information on oath. The operative part of each warrant gives the officer the authority to enter and search the premises and to seize goods and other articles. It was contended that the warrants are not worded in the precise

terms of the statute. I agree that this is so. However, I am of the view that the words used in each warrant fairly expressed all that is required to be stated in the warrant and do not go beyond the authority permitted by the statute. I found that the search warrants issued by the Justice of the Peace in the instant case were issued in accordance with the provisions of S.203 of the Customs Act, and were reasonably required for the purpose of detecting crime and to take possession of property necessary for the purpose of investigations into customs offences and the trial of any persons charged as a result of such investigations. Accordingly, I held that there has been no infringement of the constitutional rights of the applicants as complained of, and that their motion seeking redress should be dismissed.

The validity of the entries and searches were attacked from another angle. There is evidence that several members of the Jamaica Defence Force were in attendance in close proximity to premises 105½ Windward Road at the time of the search and that a number of these members actually entered the premises and assisted the Police and the Customs Officers in the search. Counsel argued that the intervention of the military forces was contrary to law by reason of the provisions of:-

- (i) The Defence Act
- (ii) The Customs Act.

He relied on S.9 of the Defence Act which states that responsibility for the operational use of the Jamaica Defence Force is vested in the Chief of Staff subject to the overall direction of the Cabinet, and he argued that they may only be deployed if certain conditions are fulfilled. He further said that the term "Officer" is defined in the Customs Act and it does not embrace members of the Jamaica Defence Force. He submitted that "if the soldiers were there aiding and assisting in a search for which they had no statutory authority under the Customs Act, then their action was illegal and unconstitutional. If they, together with customs officers seized items, to wit, papers, documents and goods from any of the premises, then

following on the proposition that the search was unlawful and illegal, it would be a breach of S.18(1) of the Constitution."

Section 2(1) of the Customs Act provides that in that Act and in any enactment relating to Customs:

"Officer includes any person employed in the Department of Customs and Excise, and all officers of the Constabulary Force, as well as any person acting in the aid of any officer or any such person; and any person acting in the aid of any officer acting in the execution of his office or duty shall be deemed to be an officer acting in the execution of his office or duty."

There is no evidence to say whether or not the members of the Jamaica Defence Force were deployed by the Chief of Staff for the purpose of maintaining and securing public safety and public order, but that is not germane to my decision. The evidence disclosed that persons employed in the Department of Customs and Excise as well as officers of the Constabulary Force were acting in the execution of their office or duty in carrying out the search. Such persons are defined by the Customs Act as "Officers". The contention of the applicants is that the members of the Defence Force assisted such officers in conducting the search. The definition of "Officers" as stated above makes it quite clear that in any case, the person aiding the officers is himself an officer and is deemed to be an officer acting in the execution of his office or duty. The use of the term "any person" is, in my mind, all embracing and it does not exclude members of the Jamaica Defence Force as was submitted. I found that the warrants were validly issued, and therefore the entry and search by officers including the members of the Jamaica Defence Force, acting on the authority of each warrant was lawful, and did not constitute an infringement of the Constitution.

I turn now to the redress sought by the applicants. The applicants sought in their motion, five specific orders but counsel pursued only two of these orders, viz:

- "(i) All the said documents, files
and other property seized by
the Customs be returned to the
applicant' and/or
(v) Compensation."

Having regard to the conclusion we have arrived at, it is not necessary for me to consider the question of redress in great detail. However, I consider it appropriate to make a few observations. Sec.25(1) of the Constitution provides that any aggrieved person may invoke the protective provisions of Ss.14 to 24 of the Constitution by applying to the Supreme Court "for redress".

The Court has, by S.25(2), wide powers in the exercise of its jurisdiction, but there is a proviso which reads:-

"Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law."

Having regard to this proviso, the Court must decide what is the contravention alleged. It seems to me that the first contravention alleged is an unlawful entry by the officers on the premises of the applicant and the search of their property. Then there is the allegation that documents and other property were compulsorily taken possession of unlawfully. These are wrongs that may be classified as the common law torts of trespass, conversion and detinue; they are contraventions in the past. The Court must now look to see if "under any other law" there are or have been adequate means of redress available to the applicants. The meaning to be attributed to the word "redress" may be gleaned from the speech of Lord Diplock when, in Maharaj v. Attorney General of Trinidad and Tobago (No.2) [1978] 2 All ER 670 - he said this:-

"What then is the nature of the redress to which the appellant was entitled? Not being a term of legal art it must be understood as bearing its ordinary meaning which in the Shorter Oxford Dictionary is

given as 'Reparation of, satisfaction or compensation for, a wrong sustained or the loss resulting from this.'"

In the instant case, it seems to me that even if it were concluded that the applicants constitutional rights were infringed, then the redress that would be open to the court to consider would be those contended for by Counsel for the applicants, namely, the return of the property taken and/or compensation i.e. damages. The same remedies could be obtained in the common law action for trespass, conversion and detinue. Those would be adequate means of redress for the contraventions alleged, and they are or have been available to the applicants under the common law. It seems crystal clear to me, that in those circumstances, this court is estopped from exercising its powers under S.25(2). Counsel's assertion of a right to elect whether to proceed under the provisions of the Constitution or any other law is untenable.

It seems to me that there has been a basic misconception of the provisions of the Constitution. We were told that criminal proceedings under the Customs Act are pending against the applicant Danhai Williams as a result of the investigations carried out by the officers involved in the entries and searches, and that the documents, files and other property seized are now connected with the criminal proceedings. In view of the orders sought on the motion, I am of the opinion that the instant proceedings were instituted with a view to excluding evidence obtained as a result of the searches from being tendered in the criminal proceedings pending against the applicant Williams. But if that is so, in my judgment, this Court would be wrong in making any order to exclude or having the effect of excluding such evidence. In the first place, the Judicature (Constitutional Redress) Rules 1963 makes it quite clear that questions of infringements of the fundamental rights and freedoms may be determined in any action or proceedings (Civil or Criminal) before the Supreme Court. It was argued that it was the Resident Magistrate's Court that is seized of the case against Williams, and accordingly those rules were not applicable. That may be so, and

I will not attempt to decide the matter. But even if evidence is illegally obtained resulting in an infringement of a person's constitutional rights, the question of the admissibility of such evidence in criminal or civil cases rests entirely in the discretion of the trial court. Kuruma, son of Kaniu v. R. [1955] 2 WLR 223, is authority for saying that "the test to be applied, both in civil and criminal cases, in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how it was obtained". Herman King v. R. (1968) 12 WLR 268, is another case in point. The appellant in that case was searched without any legal justification and ganja, which was found on his person, was admitted in evidence on his trial for Unlawful possession of ganja. The appellant contended that the protection afforded him against search of person or property without consent enshrined in the Constitution (S.19), had been infringed and the evidence which was illegally obtained, should be excluded from his trial. Their Lordships Board expressed the opinion that "the court had a discretion whether or not to admit the evidence and this discretion was not taken away by the protection against search of persons or property without consent enshrined in the Jamaica Constitution." I find the words of Lord Hudson, who delivered the judgment of the Board, to be quite relevant in the instant case. This is what he said (p.275):-

"This constitutional right may or may not be enshrined in a written constitution, but it seems to their Lordships that it matters not whether it depends on such enshrinement or simply upon the common law as it would do in this country. In either event the discretion of the Court must be exercised, and has not been taken away by the declaration of the right in written form."

It seems to me, therefore, that even if this Court had found that the applicants' constitutional rights had been infringed, that would not be ground for making the first order contended for which would have the effect of fettering if not completely taking away the discretion of the trial judge. It would amount to an

unjustified interference by this Court in the proper administration of justice in the Resident Magistrate's Court. In passing, we were told that the trial of the criminal proceedings brought against Williams had been adjourned to await the outcome of these proceedings. I fail to see how these proceedings can have any bearing on the trial of the criminal matter pending before the Resident Magistrate. These proceedings are in the nature of a civil action, and the case of I.R.C. v. Rossminster (supra) seems to suggest that if there is to be a criminal prosecution it is, "clearly in the public interest in the proper administration of justice, both criminal and civil, that the civil action should not proceed to trial until the criminal trial is over." In any event, the applicant Williams cannot use this process to halt the trial of criminal proceedings against himself and others.

My conclusions, therefore, impelled me to hold that the motion should be dismissed.

SMITH, J.

I agree with the judgment of Patterson J. which I have had the advantage of reading in draft. However I will say a few words on the construction of Section 203 of the Customs Act if for no other reason than that the correct interpretation of this section is crucial to the determination of the issues raised.

Indeed the constitutionality or otherwise of the conduct complained of hinges on the following two questions which in turn are to be decided by the correct construction of Section 203 of the Customs Act.

- (i) Were the search warrant valid?
- (ii) Was the seizure of the goods proper?

The first applicant Danhai Williams is the managing director and majority shareholder of the second applicant Danwills Construction Limited.

Premises located at 105½ Windward Road, Kingston 2 are owned and occupied by both applicants; premises located at 15A Homestead Road, Kingston 2 are owned and occupied by the first applicant and premises at 2 Belgrade Loop are jointly owned and occupied by the first applicant and his wife Mrs. Nadine Williams.

On the 5th November, 1992 Detective Assistant Superintendent McNeish, attached to the Revenue Protection Division of the Ministry of Finance obtained three search warrants under Section 203 of the Customs Act to search the above-mentioned premises of the applicants and all persons found therein and to seize all uncustomed goods and other articles connected with such goods.

On the 26th November, 1992 officers from the Revenue Protection Division, armed with the warrants entered and searched the premises of the applicants and seized a large quantity of documents, photographs and also three Glock magazine and 42 rounds ammunition. They were assisted by police officers and soldiers.

The applicants are contending that their constitutional rights embodied in Sections 18 and 19 of the Constitution had been and are being contravened.

The relevant provisions of section 19 of the Constitution are:

- "19(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required:
 - (a) in the interest of public order
..... public revenue
 - (b)
 - (c) for the purpose of preventing or detecting crime."

Thus there can be no question of a breach of the Constitution if the action complained of was done "under the authority of any law" pursuant to one or more of the exemptive provisions of the constitutional protection.

Section 18(1) of the Constitution provides for the protection against arbitrary seizures of property of any description. However there is also a restriction on this protection by section 18(2) (k) where by operation of any law property is seized for the purpose of an examination, investigation, trial or inquiry.

Section 26(8) of the Constitution provides that:-

"Nothing contained in any law in force immediately before the appointed day shall be held to be inconsistent with any of the provisions of this chapter; and nothing done under the authority of any such law shall be held to be done in contravention of any of these provisions."

This is another restriction on the protection given in Chapter 3 of the Constitution. If the action taken was authorised by a pre Independence Statute the question of a breach of the Constitution cannot arise.

The warrants were purportedly issued pursuant to Section 203 of the Customs Act, a pre Independence Act. It is not disputed that the provisions of the said statute are reasonably required in the interests of public order, public revenue and for the detection

of crime (section 19 of the Constitution) and for the purpose of an investigation or trial (section 18). Accordingly the constitutionality of Section 203 cannot be challenged.

The contentions of Mr. Ramsay for the applicant are (i) that the search warrants were not issued in terms of the enabling statute viz section 203 and hence they are invalid and (ii) that even if the warrants are valid they authorised the seizure of goods only not books and papers. We must therefore examine closely the terms of section 203. It reads:-

"203. If any officer shall have reasonable cause to suspect that any uncustomed or prohibited goods, or any books or document 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 authorise 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 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."

This section expressly authorises the issue of a warrant to search premises and to seize and carry away any uncustomed and prohibited goods or any books or documents relating thereto. It is thus restrictive of the aforesaid constitutional rights and must therefore be strictly construed.

To obtain the warrants Detective McLeish in an affidavit sworn before a Justice of the Peace deponed that he had good reasons to believe that "uncustomed goods or books or documents relating thereto" were kept or concealed in premises occupied by the applicants.

The warrants issued by the Justice of the Peace recited that the Justice of the Peace was "satisfied upon written information on oath that there is good reason to believe" that uncustomed goods

or books, documents or instruments relating thereto are kept or concealed in the applicant's premises.

Mr. Ramsay submitted that the warrants are invalid because no reasonable cause was disclosed by the Police Officer to the Justice of the Peace. It is not the subjective view of the officer which must ground the issuing of the warrant, he emphasised.

Accordingly he said the warrants were not issued in terms of section 203 and thus invalid and the actions taken thereunder are in breach of the Constitution.

Dr. Barnett submitted that the criterion for the issue of the warrant is reasonable ground for suspicion on the part of the officer and it is that officer's suspicion and not that of the issuing authority that is material.

"It shall be made to appear" this he argues comes after there is reasonable ground for suspicion and places a duty on the issuing authority to be satisfied that reasonable suspicion exists.

We have to consider what is the true construction of section 203. It is a section under Part VIII of the Customs Act and is intended to provide a machinery for enabling custom and police officers to effectively carry out their duties in so far as the prevention and investigation of 'smuggling' are concerned.

It enables them to enter upon premises for such specific purposes. However it provides a safeguard - they cannot do so without the approval of the Resident Magistrate or Justice of the Peace.

The reasonable cause to suspect which the officer has must be made to appear by information on oath before a Resident Magistrate or Justice of the Peace. In other words the officer by information on oath before the Resident Magistrate or Justice of the Peace must make it appear that he has reasonable cause to suspect etc. It is only then that it would be lawful for the Justice to issue his warrant.

The burden of Mr. Ramsay's submission is that all that was before the Justice was that the officer "had good reasons to believe"

that uncustomed goods were on the premises of the applicant. This he said, is not good enough to authorise the Justice of the Peace to issue his special warrant. No reasonable cause to suspect or believe was described by the police officer to the Justice of the Peace, he contended.

It follows, he argued, that the Justice did not form his own opinion as to whether there was reasonable cause to suspect but rather accepted the subjective view of the officer. He relied on R.v. IRC and others ex parte Rossminster Limited & Ors. 1979 3 ALL E.R. 385 which in my view is not helpful to Mr. Ramsay's cause. Let us examine this contention. If before issuing his warrant the Justice of the Peace is required to be satisfied that there is reasonable cause to suspect then it would not be necessary to state "if any officer shall have reasonable cause to suspect."

Indeed these words would be to no avail. The section would be worded similarly to S.20c of the Taxes Management Act. 1970 (U.K.) which was the statute in question in the Rossminster case. That section in part reads:-

"If the appropriate judicial authority is satisfied on information on oath given by an officer that there is reasonable ground for suspecting that an offence involving any form of fraud in relation to tax has been committed the authority may issue a warrant"

In the Rossminster case the issuing authority is required to be satisfied that there is reasonable cause to suspect etc. In the instant case S.203 imposes no such duty on the issuing officer. The issuing officer may issue his special warrant if it is made to appear to him by information on oath that the officer has reasonable cause to suspect.

It may be asked what does the phrase "made to appear" entail? A look at S.47 of the Justice of the Peace Act might, in my view, assist us in attempting to answer this. This section gives the Justice power to summon witnesses and also power to issue a warrant in the first instance for a witness.

It is, I think instructive to note the words employed in this section to confer power on the Justice of the Peace to issue a summons and a warrant respectively. The words of that section conferring power to issue a summons are;_

"If it shall be made to appear to any Justice by the oath or affirmation of any credible person that any person is likely to give material evidence in proceedings under part I or part II such Justice may and is hereby required to issue his summons"

(emphasis supplied)

Whereas the words investing the Justice with jurisdiction to issue warrant are:

"if such justice shall be satisfied by evidence upon oath or affirmation that it is probable that such person will not attend to give evidence without being compelled to do so, then instead of issuing such summons, it shall be lawful for him to issue his warrant"

The conditions precedent to the Justice assuming jurisdiction to act are quite distinct in these two instances. In the first a certain condition must "be made to appear" to the Justice by oath or affirmation. There is no requirement that evidence should be given. The oath or affirmation alone is sufficient. It should be remembered that it is an offence under The Perjury Act to make such a statement on oath knowing it to be false.

In the second circumstance the Justice must "be satisfied by evidence on oath". In such a case the Justice cannot act only on the opinion of the person applying for the warrant. He must hear evidence and must satisfy himself as directed by the statute.

Section 203 of the Customs Act stipulates that "it shall be made to appear by information on oath" before the Justice etc. This is almost in pari materia to the first part of section 47 of the Justice of the Peace Act.

Generally such information need not be in writing unless so required by statute. It is a concise statement of fact and it does not state the evidence by which such fact is to be proved. Some information as regards the premises and possibly the type of uncustomed goods would no doubt, be laid before the Justice but there is no requirement for the Justice to be informed of the ground for "reason-

able cause to suspect," he is empowered to act on another person being satisfied provided it so appears to him.

If I am correct, then even if all the Justice had before him was a statement on oath by the officer that he had good reasons to believe that uncustomed goods were being kept or concealed on the premises aforesaid that would be sufficient to found jurisdiction for the issuing of the warrants by the Justice.

Of course the Justice in the exercise of the power conferred may make enquiries of the officer in determining whether it appears that the officer have reasonable cause to suspect etc. There is no basis whatsoever for assuming or inferring that the Justice acted ultra vires the Section.

In the instant case the warrant states that the Justice was satisfied by information on oath that there is good reason to believe etc. Such a warrant is clearly valid and the action taken under it is legal.

In Elsee v. Smith (1822) 1 Dowling and Ryland the plaintiff made complaint on oath that he had reason to suspect that several trees, or parts of trees had been stolen from King's Forest and that they were carried to the premises of John Smith (the defendant) and were there concealed.

It was contended that this did not justify the magistrate issuing the warrant which was afterwards issued, because there was no perfect allegation that the offence had been committed but is only put as a matter of suspicion.

In delivering his judgment the learned judge at page 103 said "I am of opinion that upon a representation to a magistrate that a person has reason to suspect that his property has been stolen or is concealed in a certain place, the magistrate may lawfully issue his warrant to search the place and to bring the occupier or owner before him." This was no doubt based on the common law. This common law principle it seems was restated in section 103 of the Larceny Act 1861 (24 and 25 Vict, C.96) which reads in part:

"..... if any credible witness shall prove upon oath before a Justice of the Peace a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever on or with respect to which any offence punishable either upon Indictment or upon summary conviction by virtue of the Act shall have been committed, the Justice may grant a warrant to search for such property

....."

In Jones v. German (1879) 1 QB 374 where the jurisdiction of the Justice to issue a search warrant under section 103 of the Larceny Act 1861 (supra) and at common law was challenged on the ground that there was no allegation that larceny had been committed, Lopes L.J. said at page 377:

"I think it is clear on the authorities that it is not necessary to allege an actual felony but that it is enough to allege that there are reasonable grounds for suspecting that a felony has been committed."

Finally, on this point, I agree with the Dr. Barnett's submission that where a statute imposes a duty on the issuing authority to be satisfied that reasonable grounds exist and it is so stated to him on oath by the informant and he states that he is so satisfied then *omnia praesumuntur rite esse acta* and he who challenges the truth of that statement has the onus of proving that there is no reasonable ground.

Mr. Ramsay also submitted that even if the warrant was valid it would have given power only to seize goods, not books and papers. The warrant empowered the officer to seize all uncustomed goods and "other article reasonably supposed to have been used in connection with (such) goods."

Section 203 authorises the seizure of "uncustomed or prohibited goods or any books or documents relating to uncustomed or prohibited goods"

I do not think it can be seriously argued that by the terms of the warrant the officer was not authorised to seize books and documents relating to uncustomed goods.

I should also state that the concealment or harbouring of uncustomed goods is an offence under section 210 of the Customs Act and it is settled law that where public officers enter a man's house by virtue of a warrant that the officers are entitled to take any goods which they find in his possession or in his house which they reasonably believe to be material evidence in relation to the offence. Also if in the course of the search they come upon any other goods which show him to be implicated in some other crime, they may take them provided they act reasonably. See Ghani v. Jones 1969 3 ALL E.R. 1700 at 1703.

In the end I agree that the warrants are valid and that the action taken by virtue of them is quite legal. Consequently the constitutional rights of the applicants have not been contravened.

ELLIS, J.

I agree.