Privy Council Appeal No. 70 of 1995

The Attorney General *Appellant*

v.

(1) Danhai Williams and
(2) Danwills Construction Limited *Respondents*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, Delivered the 12th May 1997

Present at the hearing:-

Lord Lloyd of Berwick
Lord Hoffmann
Lord Hope of Craighead
Lord Clyde
Lord Hutton

*[Delivered by **Lord Hoffmann**]*

The fundamental human right to protection against unlawful searches and seizures is part of the English common law. In *Entick v. Carrington* (1765) 2 Wils. 275 the King's Messengers entered the plaintiff's house and seized his papers under a warrant issued by the Secretary of State, a government minister. Lord Camden C.J. said at page 291:-

> " Our law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave; if he does, he is a trespasser, though he does no damage at all; if he will tread upon his neighbour's ground, he must justify it by law ... we can safely say there is no law in this country to justify the defendants in what they have done; if there was, it would destroy all the comforts of society; for papers are often the dearest property a man can have."

From the common law this right has passed into the Fourth Amendment to the Constitution of the United States and into the constitutions of countries throughout the world. In Jamaica it appears in section 19 (1) of the Constitution:-

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

But the right is not absolute. As Lord Camden said, the search must be "justified by law". There are cases in which the power to enter and search without the consent of the owner is necessary for the proper functioning of a democratic society. Such powers have long existed at common law and under various statutes. In Jamaica, section 19 of the Constitution restricts the power of the legislature to create new powers of search. They must come within one or other of the categories contained in subsection (2), such as "in the interests of ... public revenue" or "for the purpose of preventing or detecting crime". But the constitutionality of the old, pre-Independence powers is preserved by section 26(8).

This case concerns the power of search contained in section 203 of the Customs Act:-

> "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 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 is a pre-Independence power and therefore constitutional by virtue of section 26(8). Even if it were new, it is plainly in the interests of the public revenue and for the purpose of preventing or detecting crime and so would have little difficulty in qualifying under section 19(2).

The circumstances in which this provision came to be invoked were as follows. In May 1992 the Revenue Protection Division were investigating allegations of a conspiracy to evade customs

duties by the fraudulent importation of large numbers of motor vehicles. Mr. Danhai Williams and Danwills Construction Limited, a company which he controls, were suspected of being implicated in the fraud. On 12th May 1992 Mr. Arthur McNeish, a Detective Assistant Superintendent of Police attached to the Revenue Protection Division, and Mr. Michael Surridge, an officer of the Division, visited the business premises of Mr. Williams's company in Windward Road, Kingston. According to their evidence, they were confronted by a hostile and abusive crowd. They invited Mr. Williams to come with them to the offices of the Revenue Protection Division but he refused. The investigation continued and some six months later, on 5th November 1992, Mr. McNeish applied to a Justice of the Peace pursuant to section 203 for a warrant to search Mr. Williams's home and two other premises occupied by him or his company, including the premises in Windward Road.

The power conferred by section 203 is ancillary to section 210 of the Act, which makes it an offence (among other things) knowingly to keep or conceal uncustomed goods or to be knowingly concerned in dealing with any goods with intent to defraud Her Majesty of any duties due thereon or to be knowingly concerned in any fraudulent evasion of import duties.

In support of his application for a warrant, Mr. McNeish swore an affidavit as follows:-

> "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 reason 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."

The affidavits in respect of the other two premises were in similar terms.

The warrants were issued the same day and the one in respect of the Windward Road premises read as follows:-

> "To Arthur McNeish or any Customs Officer
>
> WHEREAS the undersigned, one of Her Majesty's Justices 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 leviable 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, 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 etc.

R. Stewart
Justice of the Peace."

Armed with these warrants, Mr. McNeish made arrangements for a search. He enlisted the help of members of the Jamaica Defence Force to secure the area against any crowd intervention. He then carried out the search with the support of a number of members of the Revenue Protection Division and the Police. There was no resistance. The items removed consisted of a large number of miscellaneous documents together with a brief case and a plastic bag containing, in addition to documents, items such as a cellular phone case, some keys and a pocket calculator.

The investigation then proceeded and on or about 9th December 1992 Mr. Williams and others were charged with conspiracy to defraud. In the following July charges under the Customs Act were added. On 14th September 1993, nearly nine months after the events which their Lordships have described, the respondents issued a motion returnable in the Constitutional Court, claiming redress on the ground that the search and the removal of documents and other property had been a violation of their fundamental rights. In addition to section 19(1), the applicants relied in respect of the seizure upon section 18(1), of which the material words are as follows:-

"18.(1) No property of any description shall be compulsorily taken possession of ..."

But this right is also subject to exceptions, in section 18(2):-

"(2) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession ... of property ...

(k) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry ..."

The motion was brought pursuant to section 25 of the Constitution. The following parts are material:-

"(1) ... if any person alleges that any of the provisions of sections 14 to 24 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1) of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said sections 14 to 24 (inclusive) to the protection of which the person concerned is entitled:

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."

The redress sought by the motion was a declaration that the warrants were invalid and the searches unlawful and unconstitutional and that the seizure of the documents, files and other property was illegal or made without due process or an abuse of process. The applicants sought orders for return of the documents and other property and for compensation. Wider claims for a stay of the criminal proceedings and the exclusion of the documents from evidence were abandoned at the hearing in the Supreme Court.

The court (Patterson, Ellis and Smith JJ.) dismissed the motion. They held that (a) the Justice of the Peace had material on which he could properly exercise his discretion to issue warrants under section 203; (b) the warrants were formally valid and (c) the searches and seizures were within the terms of the warrants and therefore lawful. Further, they considered that even if the search and seizure had been unlawful, the proviso to

section 25(2) precluded constitutional redress. It appeared to them that adequate means of redress were available under the ordinary law. The applicants could sue for trespass, detinue or conversion or invite the Resident Magistrate hearing the trial to exercise his discretion to exclude the seized materials from evidence.

The applicants appealed to the Court of Appeal (Wright, Forte and Downer JJ.A.). The judges of the Court of Appeal agreed with the Supreme Court that the Justice of the Peace had material on which he could properly have exercised his discretion. But they considered that the terms of the warrants showed that the discretion had not been properly exercised. The searches and seizures were accordingly unlawful. They agreed that constitutional redress was precluded by the proviso to section 25(2) but reconstituted the proceedings as if they had been an action in tort begun by writ. They held that the Attorney-General (representing the Crown) was liable in tort for trespass to the applicants' land and goods and remitted the matter to a judge of the Supreme Court for damages to be assessed and for trial of the question whether the execution of the warrant had been an abuse of power by the authorities. Against that decision, the Attorney-General appeals to their Lordships' Board.

Their Lordships think that it will be convenient to consider the matter in four stages. First, the duties of a Justice who is asked to issue a warrant under section 203. Secondly, the way in which the discretion was exercised in this case. Thirdly, the legal effect of the warrant. Fourthly, the remedies (if any) available to the applicants.

1. The Duties of the Justice.

The purpose of the requirement that a warrant be issued by a Justice is to interpose the protection of a judicial decision between the citizen and the power of the State. If the legislature has decided in the public interest that in particular circumstances it is right to authorise a policeman or other executive officer of the State to enter upon a person's premises, search his belongings and seize his goods, the function of the Justice is to satisfy himself that the prescribed circumstances exist. This is a duty of high constitutional importance. The law relies upon the independent scrutiny of the judiciary to protect the citizen against the excesses which would inevitably flow from allowing an executive officer to decide for himself whether the conditions under which he is permitted to enter upon private property have been met.

Section 203 is clear as to the matters upon which the Justice must be satisfied. It must appear to him from information on oath that the officer has reasonable cause to suspect one or more of the matters there specified. It is not sufficient that the Justice

is satisfied by the officer's oath that he suspects; it must appear to the Justice that his cause for suspicion is reasonable. The test is an objective one. The matter was considered by the House of Lords in *Reg. v. Inland Revenue Commissioners, Ex parte Rossminster Ltd.* [1980] A.C. 952, which also concerned a search by officers of the revenue on a warrant issued by a judge. Although the statutory provision in that case, section 20C of the Taxes Management Act 1970, as amended, provided that it was for the appropriate judicial officer to be satisfied on information on oath given by an officer of the Board that there was reasonable ground for suspicion that an offence had been committed, the practical effect of the requirement was the same as that laid down by section 203 of the Customs Act. Lord Wilberforce said (at page 998):-

> "If the judge does his duty...he must carefully consider for himself the grounds put forward by the revenue officer and judicially satisfy himself, in relation to each of the premises concerned, that these amount to reasonable grounds for suspecting etc. It would be quite wrong to suppose that he acts simply as a rubber stamp on the revenue's application."

Viscount Dilhorne said (at page 1004):-

> "It cannot in my view be emphasised too strongly that the section requires that the appropriate judicial authority should himself be satisfied of these matters and that it does not suffice for the person laying the information to say that he is."

Lord Salmon said (at page 1018):-

> "... if officers of the board require search warrants, they must give evidence on oath laying before a circuit judge the grounds for their suspicion and ... the duty of the judge must then be to consider the evidence and decide whether he (the judge) is satisfied that it establishes reasonable ground for the board's suspicion."

Lord Scarman said (at page 1022):-

> "The judge must himself be satisfied. It is not enough that the officer should state on oath that he is satisfied...The issue of the warrant is a judicial act, and must be preceded by a judicial inquiry which satisfies the judge that the requirements for its issue have been met."

In the present case, the matter was correctly stated by Forte J.A. in the following passage:-

> "Although it is clear in the Statute that it is the Customs Officer who has to have 'reasonable cause to suspect' it is equally clear in my view that he (the Customs Officer) has to make it appear to the Justice that he (the Customs Officer) has 'reasonable cause' to suspect. If it does not appear to the Justice of the Peace that the officer has 'reasonable cause' then he ought not to issue the warrant. In coming to that conclusion, it is inescapable that the Justice would also have to apply his mind to the matters upon which the officer's cause for suspicion is based and/or the credibility of the officer."

Their Lordships would not have thought it necessary to burden this opinion with such extensive citation if it were not for certain passages in the judgments in both the Supreme Court and the Court of Appeal which might be read as justifying a less anxious degree of scrutiny by the Justice to whom application is made for the warrant. So, for example, Patterson J. said:-

> "... 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."

Smith J. said:-

> "... 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."

Wright J.A. said:-

> "... there is no requirement for the Justice to make an assessment of the officer's reasonable cause to suspect and to satisfy himself before issuing the warrant."

It may be that some of these remarks are directed to the contents of the formal affidavit, sometimes described as the "information", which is prepared in a form which can be disclosed to the occupier of the premises to be searched. It would plainly not be in the public interest for the grounds of the officer's suspicions to be disclosed while the investigation is in progress and one would not expect them to be stated upon a publicly available document. The need for confidentiality in these matters was rightly stressed by Patterson J. in the Supreme Court. But there is no need for the same confidentiality in the privacy of the Justice's room. The application is made *ex parte* and the officer must disclose to the Justice all that the latter needs to know in order to discharge his duty. There may be some knowledge, for example the identity of informers, with which the Justice will find it unnecessary to be

burdened. But sufficient information to establish the grounds for suspicion to his satisfaction must be stated on oath. The statute does not require the information to be provided in writing. An oral statement on oath is sufficient.

Their Lordships do not underestimate the difficulty and delicacy of the task which is put upon Justices and other judicial officers to whom application is made for search warrants. The applicant is generally a police or other law enforcement officer who knows far more than the Justice about the investigation. The application is made *ex parte*; there is naturally a predisposition upon the part of the Justice to be helpful to the officer who is present and assures him that a search is necessary. The officer may be known to the Justice, who may have learnt to trust his judgment and veracity. Their Lordships do not suggest that this is something which should be ignored. On the other hand, the citizen whose rights the Justice is constitutionally required to protect is absent and seldom depicted in the most favourable light. Nevertheless, if the constitutional safeguards are to have any meaning, it is essential for the Justice conscientiously to ask himself whether on the information given to him upon oath (in the case of section 203, either orally or in writing) he is satisfied that the officer's suspicion is based upon reasonable cause.

2. <u>The Issue of the Warrants.</u>

The next question is whether the Justice had before him information upon which he could be satisfied that Mr. McNeish had reasonable cause to suspect. Here one comes to the chief difficulty in the case, which is that their Lordships (like the courts in Jamaica) have no information about what passed between Mr. McNeish and the Justice. This is entirely understandable because, at the stage when the constitutional motion was launched, the criminal prosecution was still pending. It would have been contrary to the public interest for any information about the grounds for suspicion to be disclosed at that time to the respondents. The position may have been different if the civil proceedings had been commenced after the criminal prosecution was concluded: see *Reg. v. Inland Revenue Commissioners, Ex parte Rossminster Ltd.* [1980] A.C. 952 at pages 1000-1001. But in proceedings commenced, as these were, during the course of the investigation, the courts are handicapped in their ability to protect the high constitutional right conferred on the citizen by section 19(1) because, as Lord Diplock said in *Rossminster* (at page 1011) they have to try to reconcile two competing and conflicting public interests:-

> "... that offences involving tax frauds should be detected and punished, and that the right of the individual to the

> protection of the law from unjustified interference with his private property should be upheld."

But these limitations on the exercise of judicial control over the decision of the Justice to issue the warrant make it all the more important that he should make that decision with the greatest care. He has the responsibility of fulfilling the requirements of the statute, the effect of which is that for practical purposes the issue of the warrant is often likely to be incapable of effective review.

In the absence of any direct evidence of the information actually provided to the Justice, the courts have to do the best they can with such inferences as can be drawn from the terms of the warrant itself and such other evidence as is available. In this case, each warrant recited upon its face that the Justice was satisfied that "there is good reason to believe that in a certain place to wit [the premises to be searched] is kept or concealed uncustomed goods ... or books, documents or instruments relating thereto". *Prima facie*, this statement must be accepted and their Lordships agree with both lower courts that if the Justice was satisfied that there was "good reason to believe" that uncustomed goods etc. were on the premises, it must follow that he was satisfied that the officer had reasonable cause to suspect this to be the case. Is there anything to rebut this statement - to show that the Justice did not really have any information on which he could have concluded that the officer had reasonable cause to suspect? Mr. Dingemans, who appeared for the respondents, said that one could draw this inference from the fact that the warrant recited that the Justice was satisfied "upon written information on oath". The only written information disclosed was the formal affidavit which their Lordships have already quoted in full. This plainly contains no material upon which the Justice could have been satisfied that the officer had reasonable cause to suspect. And Mr. Dingemans says that the reference to written information excludes the possibility, to which some of the judges referred, that the Justice may have been given oral information on oath.

Their Lordships consider that the reference to written information is too slender a ground upon which to infer that the statement that the Justice was satisfied of the existence of reasonable grounds was not true. It is, they think, consistent with his having treated the formal written statement as confirmed by oral information on oath or with the existence of other written information on oath which, for the reasons already discussed, has not been disclosed. As Forte J.A. said:-

> "The Justice of the Peace, having issued the warrants on the basis of the 'information on oath' must have been so satisfied, and it is not open to the Court, in the absence of

> the details of what transpired before the Justice of the Peace to assume he acted contrary to what is required of him in the Act. For those reasons I would hold that the search warrants were lawfully issued."

The other matters relied upon are certain features in the language of the warrant. They are, first, that the warrant includes no express reference to the statutory power under which it was issued; secondly, that it purports to authorise search of persons upon the premises when the section confers no such power; thirdly, that it contains a reference to "instruments" suspected to be upon the premises when the section does not use that word; and fourthly, that it purports to authorise the seizure of goods "and other articles" when the section refers to "books or documents". Their Lordships will presently have to consider whether these matters affect the formal validity of the warrant. At this stage, the question is whether they provide grounds for holding that, contrary to the recital, the Justice was not satisfied as to the matters which would have given him jurisdiction to issue the warrant.

As to the last two discrepancies, their Lordships think that "instruments" which appears in the preamble but not in the main body of the warrant might have been intended to refer to such things as negotiable instruments, which would fall within the category of documents, and that the authority to recover "articles" appears to go beyond the terms of the power, but could be intended to serve as a compendious description of the "books, documents or instruments relating thereto" in the recital. But even assuming that these discrepancies are treated as indicating that the Justice (a) did not know under which power he was acting; (b) wrongly thought that it included a power to authorise the search of persons; (c) thought that suspicion of the presence of "instruments" other than documents would justify the issue of a warrant; and (d) thought that he had power to authorise the seizure of articles relating to uncustomed goods which were not books or documents, their Lordships still do not think that individually or cumulatively these discrepancies show that the Justice was not entitled to issue the warrant. The section said that if he was satisfied that there was reasonable cause to suspect that any of the things there mentioned was kept on the premises, he could authorise a search and the seizure of those things. The recital declares him to be so satisfied. If the other matters were inconsistent with his being satisfied on this central question, they might throw doubt upon the accuracy of the recital. But they are not. The fact that the Justice may have held erroneous beliefs about the source or extent of the power, or may have been satisfied on other matters irrelevant to the exercise of the power, is not inconsistent with the recital.

3. Effect of the Warrants.

In *Reg. v. Inland Revenue Commissioners, Ex parte Rossminster Ltd.* [1980] A.C. 952, 1000, Lord Wilberforce said:-

> "There is no mystery about the word 'warrant': it simply means a document issued by a person in authority ... authorising the doing of an act which would otherwise be illegal."

In these proceedings, the applicants complain that "the seizure of the documents, files and other property pursuant to the aforesaid search was illegal and unconstitutional". There is no doubt that a search took place and that documents, files and other property were taken. The question is therefore whether the warrant made this lawful. This must depend upon two questions of construction: first, did the matters of which complaint is made fall within the acts authorised by the warrant, and secondly, did the statute give the person who issued the warrant power to authorise those acts?

In construing both the warrant and the empowering statute, the court, in Lord Diplock's words at page 1008:-

> "... ought, no doubt, to remind itself, if reminder should be necessary, that entering a man's house or office, searching it and seizing his goods against his will are tortious acts against which he is entitled to the protection of the court unless the acts can be justified either at common law or under some statutory authority. So if the statutory words relied upon as authorising the acts are ambiguous or obscure, a construction should be placed upon them that is least restrictive of individual rights which would otherwise enjoy the protection of the common law."

Their Lordships consider that even on the strictest construction, the warrant undoubtedly authorised, and the statute enabled it to authorise, the search of the premises and the taking of files and documents reasonably suspected to be connected with uncustomed goods. Whether the documents actually taken fell within this description is a question of fact. There was in evidence a list of the documents which were taken, from which their Lordships think it is impossible to form a view as to whether they related to uncustomed goods or not. But there is nothing to show that the officers conducting the search did not reasonably suspect this to be the case. So much was recognised by the Court of Appeal: for example, in dealing with the claim for return of the documents, Forte J.A. said:-

> "As there is no evidence as to the relevance of the seized articles to [the charges against Mr. Williams] I would be

> reluctant to make an order at this stage for the return of the articles, as they may be needed as evidence in the criminal cases, in which case the Crown would be entitled to retain them."

At that stage of the proceedings it was, for the reasons already discussed, impossible for the Crown to disclose the grounds upon which it considered that the seized property was relevant to the charges. In those circumstances their Lordships think it cannot be assumed against the Crown that they did not have reasonable grounds for taking the documents which they did. As Eveleigh L.J. said of the search by revenue officers in *Reg. v. Inland Revenue Commissioners, Ex parte Rossminster Ltd.* [1980] A.C. 952, 966:-

> "What the applicants' evidence amounts to, as I say, is that not every document was read, and not every document, as an individual document, was examined. Files were taken as files...It seems to me that there can well be occasions when a glance at a document will tell an investigating officer whether it is the kind of document that he is entitled to take. No one can expect that they should stay on the premises to read the words and details of every document."

On the other hand, the taking of things other than documents (such as the pocket calculator) was probably not authorised by the warrant (unless "articles" is given a wider construction than the context would seem to justify) and certainly not authorised by the statute. Unless, therefore, the taking of these articles could be justified at common law, their removal was unlawful. But their Lordships do not consider that this trivial excess of power can vitiate the legality of the search and the taking of the documents properly authorised by the statute and the warrant.

The Court of Appeal considered that the warrant was vitiated by the absence of any mention of the statutory power under which the warrant was issued and the references in the document to the presence of "instruments", the search of persons and the seizure of "articles". Their Lordships have already dealt with the question of whether these matters threw any light on the propriety of the decision to issue the warrant. But the Court of Appeal also seems to have regarded them as affecting the formal validity of the warrant.

Any inquiry into the formal validity of the warrant must start from the undoubted fact that the section does not prescribe any form at all. The language of the warrant must be such as plainly to authorise the acts of which complaint is made, but any further requirements as to form can only arise by implication. Professor

Feldman, in his book, *The Law Relating to Entry, Search and Seizure* at paragraph 5.02, says that a warrant fulfils three main functions:-

> "First, the requirement for the officer to apply for a warrant in theory gives another person, usually an independent judicial officer, a chance to check on the need for a search...Second, the warrant allows the occupier of the premises to be searched to satisfy himself that the officers who arrive and demand to be admitted are acting lawfully. This cuts down the risk of misunderstandings, violence and the criminal charges which often follow and makes the job of the police easier. Third, it should indicate the limits to the powers of the officers, circumscribing their discretion and clarifying their rights."

Their Lordships have considered the first of these purposes under the heading "The Issue of the Warrants" and the third as a question of construction. This leaves the second. Does the need for the occupier to be able to satisfy himself that the search is lawful give rise to any implied requirements about what the warrant should say? In *Reg. v. Inland Revenue Commissioners, Ex parte Rossminster Ltd.* [1980] A.C. 952, 1000 Lord Wilberforce said:-

> "The person affected, of course, has the right to be satisfied that the power to issue it exists: therefore the warrant should (and did) contain a reference to that power."

Lord Diplock at page 1009 said:-

> "Even though the statute may not strictly so require (a matter on which I express no concluded opinion) the warrant ... ought to state upon its face the statutory authority under which it has been issued."

Their Lordships agree that it is highly desirable for the warrant to contain an express statement of the statutory authority under which it was issued. If it does not, the householder might reasonably think that it was not based upon any authority and resist entry. But this does not mean that in a case in which the warrant was in fact issued under proper authority and there was no resistance to entry, the warrant should be treated as invalid, particularly when, as Forte J.A. said, it is clear from the terms of the warrant that it was issued under section 203. The Court of Appeal placed some reliance upon section 64(2) of the Justices of the Peace Jurisdiction Act which requires that a warrant issued for the purpose of "proceedings before examining Justices ... for an offence" must "contain a reference to the section of the statute creating the offence". Their Lordships do not understand the relevance of this provision. The warrant was not issued in

connection with proceedings for an offence since no offence had yet been charged. Furthermore, no one is suggesting that the warrant should have contained a reference to a section of the statute (if there was one - the only offence originally charged was conspiracy to defraud at common law) creating the offence which might at some future date be charged. The question is whether it should have referred to the section creating the power of search. On this question, the Justices of the Peace Jurisdiction Act has nothing to say.

As for the references to a personal search, instruments and articles, their Lordships do not see how it is possible to imply some formal requirement in the language of the warrant which the inclusion of these infelicities would infringe. Of course, if there had actually been a personal search, their Lordships have no doubt that it would not have been authorised by the section: see *King v. The Queen* [1969] 1 A.C. 304. But as no such search took place, the fact that the warrant wrongly purported to authorise one is in their Lordships' view irrelevant. Likewise, as their Lordships have already said, the taking of property other than books and documents could not be justified by the word "articles" in the warrant, because this went beyond the statutory power. But this does not mean that the warrant was formally invalid.

Although the courts may sometimes feel frustrated by their inability to go behind the curtain of the recital that the Justice was duly satisfied and to examine the substance of whether reasonable grounds for suspicion existed (a frustration articulated by Lord Scarman in *Reg. v. Inland Revenue Commissioners, Ex parte Rossminster Ltd.* [1980] A.C. 952 at page 1022) their Lordships think that it would be wrong to try to compensate by creating formal requirements for the validity of a warrant which the statute itself does not impose. In so doing, there is a risk of having the worst of both worlds: the intention of the legislature to promote the investigation of crime may be frustrated on technical and arbitrary grounds, while the courts, in cases in which the outward formalities have been observed, remain incapable of protecting the substance of the individual right conferred by the Constitution. The alleged defects in the warrants are all errors of drafting, no doubt on the part of the officers of the Revenue Protection Division by whom it was prepared for submission to the Justice. So far as they may have led to substantive abuses, it is of course right that the applicants should have a remedy. But in a case like this in which they have caused little or no prejudice to the applicants, their Lordships think it would be wrong to treat them as punishable by invalidity of the entire search. Section 19(1) of the Constitution was intended to serve a higher purpose than to promote accuracy in drafting in the Revenue Protection Division.

4. Remedies.

The Court of Appeal, having held that the entire search and seizure was an unlawful trespass, reconstituted the proceedings as an ordinary action in tort and remitted it to a judge of the Supreme Court. They gave no redress under section 25(2) of the Constitution on the ground that an action in tort provided adequate means of redress and that constitutional relief was therefore barred by the proviso to that subsection.

On behalf of the applicants it was submitted to their Lordships that under the ordinary law of Jamaica, the relief available against the officers of the Revenue in an ordinary action in tort was so limited as not to be "adequate means of redress". The limitation period is very short and section 33 of the Constabulary Force Act is said to require proof of malice or absence of reasonable and probable cause. Their Lordships do not find it necessary to enter into this difficult question because they consider that the Court of Appeal was wrong to reverse the decision of the Supreme Court that the search as a whole was lawful. The decision to reconstitute the proceedings was a procedural matter in which their Lordships would not ordinarily wish to interfere with the discretion of the Court of Appeal. But since it was based upon a wrong finding that the whole search was unlawful, their Lordships think it would be proper for them to consider the matter again. On the evidence before the Supreme Court in these proceedings, the only arguable wrongdoing relates to the few non-documentary items which were taken. The proceedings have therefore been almost entirely unsuccessful and their Lordships think that it would be wrong to keep them on foot merely for the purpose of pursuing a claim over matters such as a pocket calculator and a mobile telephone case. They will therefore humbly advise Her Majesty that the appeal should be allowed and the order of the Supreme Court dismissing the constitutional motion restored. There will be no order as to costs.