In the Supreme Court

Before : Mr. Justice Parnell

Suit No. M. 47A of 1975

The Queen v. Commissioner of Police and
Commissioner of Corrections

Ex parte Orville Cephas

(Application for writ of Habeas Corpus)

Grant, Q.C. and Kirlew, Q.C.	for Applicant
Patrick Robinson of Attorney General's Department	for Respondents
Henderson Downer and Derrick Hew	for D. P. P.

1975 - December 30 and 31

Jany. 22, 1976 - Parnell, J. :

On the 31st December, 1975, the application for a writ of Habeas Corpus in this matter was dismissed with costs. The order nisi granted on December 19, was discharged. I promised to put my reasons in writing and this I now do.

The applicant, Orville Cephas is a Jamaican of 31, Young Street, Spanish Town. He is a tailor by occupation. In an affidavit executed on December 3, 1975, he states that he has been to the United States; that on Sunday the 30th November last, he was arrested at Vernamfield in Clarendon and taken to Central Police Station, Kingston. In paragraphs 3, 4, 8 and 9 of his affidavit he states, respectively, as follows:

3. " That I was shown no warrant for my arrest and no warrant was read to me. "

4. " That I was informed that I was wanted in the United States of America on a charge of murder. "

8. " That I am not involved in any murder in the United States of America. "

9. " That I was not aware of any charge being laid against me in the United States of America for murder. "

The applicant summarises his complaint in paragraph 10 of his affidavit as follows:

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> " That I accordingly submit that my detention is unlawful and I request leave to issue a writ of Habeas Corpus directing the Director of Prisons to show cause why I should not be released immediately. "

On the 9th December, Henry, J. directed that the Notice of the writ should be served on the Director of Prisons, the Attorney General and the Commissioner of Police. And on December 19, leave to issue the writ was granted with December 30, being fixed, during the vacation, for a hearing on the merits.

On the 19th December, a Justice of the Peace for Kingston, on the information and complaint of Assistant Commissioner of Police (Mr. Roy Aston Smith) issued a warrant for the arrest of the applicant. The relevant particulars of the complaint state as follows:

> " Orville Cephas on the 1st of June, 1975, being a Jamaican citizen murdered Douglas Slack another Jamaican citizen at the county of Richmond City in New York, U. S. A.
>
> Contrary to 33 Henry VIII Chapter 23. "

On the 23ed day of December, the applicant was formally arrested on the warrant by Corporal Roy Malcolm of the Police Mounted Troop, Up Park Camp. Corporal Malcolm in an affidavit dated December 23, has given further facts as follows:

1. " That on the 30th November, 1975, he arrested the applicant without a warrant on the basis of information concerning the said applicant, appearing in the Jamaica Police Gazette Vol. 94 dated October 3, 1975. "

2. " That the information which grounded the warrant of December 19, has been numbered 8460/75 and duly entered in the Records of the Resident Magistrates' Court (Criminal Division), Kingston. "

The Police Gazette is a confidential document published by the Government Printer. At pages 1 and 2 of volume 94 in the issue of October 3, 1975, and under the heading "Special Notices - wanted by F.B.I." A sketch of the applicant, his description, last known address and occupation are given. The offence of which he is wanted is given as follows:

> " Murder of Douglas Slack, committed at Staten Island, U.S.A. 1.6.75. Warrant issued. "

There is no evidence before me of the date the applicant is alleged to have returned to Jamaica. The "warrant issued" in the

notice must be taken to mean that a competent authority in the United States has issued a warrant for the arrest of the applicant.

The above is a brief outline of the facts and circumstances surrounding the arrest and detention of the applicant. Mr. Grant for the applicant contended with warmth, wit and learning that the applicant is being illegally detained. To a great extent, counsel for the Attorney General and the Commissioner of Police supports the stand of Mr. Grant that, at least up to the 31st December, there was no legal basis for detaining the applicant. On the other hand, Mr. Henderson Downer for the Director of Public Prosecutions urged with equal warmth and a show of industry that the arrest and detention of the applicant is justified in his being charged with murder committed abroad and that being a Jamaican citizen, the applicant is liable to be dealt with in Jamaica as if he had committed the offence here.

Before I examine the rival contentions I shall outline some propositions which are beyond the pale of debate.

1. If a person is being illegally imprisoned, he is entitled ex debito justitiae to sue out his writ of Habeas Corpus.

2. That the primary purpose of the writ is to allow the Court to inquire into the legality of a complainant's detention and thus to ascertain whether the cause for the detention is sufficient in law.

3. That the extradition treaty between England and the United States and which was ratified in 1932, was made applicable to Jamaica in 1935 and was gazetted on August 15, 1935.

4. That murder is an extraditable offence under the treaty and that for the purposes of this application, the applicant is to be regarded as a :

> " fugitive criminal who is accused of a crime enumerated in article 3 of the treaty. "

5. That the interest of justice and good relationship require and the obligations under an international agreement demand that, consistent with the rule of law and the rights of citizens, a treaty between Jamaica and a foreign country should be scrupulously observed and that nothing should

be done or attempted by a contracting party to impede a reasonable and satisfactory implementation of its terms.

6. In examining any given situation one must look at it with a clear vision. And he should not forget reality. In these days a stickler for formalism may find that his insistence can defeat the very purpose he is trying to serve.

Legal arguments advanced during the hearing

I shall attempt to outline the substance of the arguments addressed to me during the two-day hearing. Mr. Robinson submitted that the legality of the applicant's detention could be tested on two main grounds, namely:

(1) An arrest pursuant to or in anticipation of extradition proceedings.

(2) An arrest in the light of the contention that the Courts of Jamaica have jurisdiction to try a Jamaican citizen who commits murder abroad,

He argued that there are two arrests raised in the proceedings. One relates to November 30, 1975, without a warrant and the other, an arrest on a warrant December 23, charging the applicant with committing murder in the United States. Mr. Robinson contended that the legality of the applicant's detention should be examined at the date of the hearing. I understand this to mean that if the first arrest is found to be illegal and the second arrest lawful, the application for the writ should be refused.

He further argued that extradition proceedings had not been instituted at the time of arrest, and even if a formal request had been made by the United States Government for the extradition of the applicant, justification for the arrest was only in the making and that full jurisdiction would only be achieved when the procedure set out in the United Kingdom Extradition Act (1870-1932) had been followed.

With regard to the second point, Mr. Robinson, after an examination of section 41 of the Interpretation Act: the case of

Magnus v. Sullivan (1866), Stephens Reports, Vol. 1, 862 and the Ancient Statute of 33 Henry VIII Cap. 23 (repealed by 9 Geo. IV Cap. 31), came to the conclusion that the Jamaican Courts have no jurisdiction to try a Jamaican for murder committed abroad.

Mr. Grant adopted the argument of Mr. Robinson with alacrity and a show of gratitude. During his submissions, he referred at times to his thesis on Land Law submitted in 1948 for the award of Master of Laws at the University of London. Apparently, the well known saying that a law book or thesis is not cited to a Court as an authority during the life-time of the author was temporarily forgotten during the heat of the submissions. Mr. Grant poured ridicule on the contention that in an Independent Jamaica "all the ancient statutes of England prior to I Geo. II Cap. 1 are in force." Mr. Downer made his submissions before Mr. Grant. The latter was prepared to award a lot of marks if the former were writing an essay but not much would be given for merits as a legal exposition.

Both Mr. Robinson and Mr. Grant have taken the stand that before an English statute of the pre-1728 vintage is to be relied upon as having force in Jamaica, there must be evidence that the statute was acted upon in Jamaica. The learned gentlemen have accepted as the gospel and as irrefutable, the nisi prius decision of Chief Justice Bryan Edwards in the case of Magnus v. Sullivan already cited. I shall examine that case in due course.

Mr. Downer in a logical and persuasive examination of certain authorities, some of which I shall deal with hereafter, submitted that 33 Henry VIII Cap. 23 is applicable to Jamaica. Under that Act, the English Courts were given jurisdiction to try an Englishman in England who committed murder on land outside of the territorial jurisdiction. The Henry VIII statute was repealed during the reign of Geo. IV (1820 - 1830). The relevant provision, however, was re-enacted and it is now found under section 9 of the U.K. (Offences Against the Person) Act of 1861. Mr. Downer did not seek to justify the detention of the applicant on any other ground save that he is being held on a warrant which charges the commission of an offence triable before the Jamaican Courts.

Examination of the legal arguments including relevant authorities

The Extradition Act of 1870 (U.K.) under which the extradition treaty with the United States was executed, defines a "fugitive criminal of a foreign state" as a "fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that state." The applicant, therefore, is to be regarded as a fugitive criminal

> " accused of an extradition crime committed within the United States. "

A careful review of the Act shows the following permissible procedural steps:

(a) Where a requisition for the surrender of a fugitive criminal is made, an order or directive is given or sent by the relevant Ministry to a Resident Magistrate for him to issue his warrant for the arrest of the fugitive criminal:

Sec. 7 of the Act.

(b) If the offence charged is of a political character, the request for the surrender may be refused and if the fugitive is already in custody, his release may be ordered:

Sec. 7 of the Act.

(c) A warrant may be issued by any Resident Magistrate or Justice of the Peace for the arrest of the fugitive on the information and complaint of any person as if the offence had been committed in Jamaica and without the order or directive of the relevant Ministry in Jamaica:

Sec. 8 of the Act.

(d) A fugitive criminal arrested on a warrant without the directive of the relevant Ministry should be brought as early as possible before a Resident Magistrate and such Resident Magistrate is empowered to discharge the fugitive criminal unless:

> " within such reasonable time as, with reference to the circumstances of the case..... he is advised that a requisition has been made for the surrender of the criminal. "

Sec. 8 of the Act.

The provisions of the Act envisage the realities of the situation. The procedure has provided against the wiles of the devil and the craftiness of the ingenious. A fugitive criminal is a man on the move, he is always looking over his shoulder and he is inclined to escape into dark recesses and difficult terrain in a flash. If say a fugitive criminal is able to escape the police dragnet in

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Miami and reaches Jamaica, he will not be presenting himself every Saturday at Caymanas Park nor would he seek to partake of the Holy Eucharist every Sunday at Kingston Parish Church. Until a formal request is received, he is liable to be arrested on a warrant and kept in custody for a reasonable time pending the presentation of a formal extradition request. If this is not done, he may not be seen again. It is to be noted that the very status of a fugitive criminal invites immediate capture and surveillance for a reasonable time pending further inquiries.

The Extradition Act of 1870 has incorporated the wisdom and practical good sense of a famous American Judge. The story is told in "Clarke upon Extradition" 3rd Edition (1888) at pages 39-40. At a time when there was no extradition treaty between England and the United States, a certain gentleman named Daniel Washburn was arrested in 1819 in the United States on a charge of theft in Canada and was brought before Chancellor Kent upon habeas corpus. The learned judge held that:

> " irrespective of all treaties, it was the duty of a state to surrender fugitive criminals. It was the duty of a magistrate, irrespective of legislative provisions upon the subject, to commit the fugitive upon due proof of the commission of crime, so as to afford time to the government to deliver him up or to the foreign government to claim him. If this claim were not made within a reasonable time, the prisoner would be entitled to his discharge on habeas corpus; the judicial power would have fulfilled his duty by affording the opportunity. It did not matter whether the prisoner was a subject of the pursuing government or of that under which he had taken refuge. "

And what is a "reasonable time" must depend on the circumstances of a particular case. The nature of the charge; the country from which the fugitive criminal escaped, the time span between the commission of the extraditable offence and arrival of the fugitive in Jamaica are matters which should be considered. The recent case of Bennett [1975] C.R.L.R. 654 shows that a Canadian who exported cannabis from England to Canada and was later extradited from Canada spent six months in custody pending extradition. The Court took into account, in assessing sentence, the time spent in custody in Canada.

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Unless Jamaica can be regarded and accepted as a haven for the outlaw, it is difficult to understand the prayer of a Jamaican who is alleged to have committed a serious crime in the United States and who is wanted there by the police, that he is being illegally detained here when he clandestinely returns to his country of birth after the commission of the crime and is held pending further investigation. And this difficulty would present itself even without the provisions of the Extradition Act which contemplate that there may be cases where a fugitive may have to be held even before a formal request for extradition is received.

It seems to me that on principle and in accordance with the necessity of a case, a fleeing criminal from the United States may be greeted and welcomed at the Manley International Airport by any police officer who has reasonable grounds to believe that he is wanted for an extraditable offence and that a request for his extradition would be forthcoming. To say that the fugitive criminal, be he a Jamaican or a foreigner should be regarded as "untouchable" until in fact a Resident Magistrate, in pursuance of a directive from the Ministry of External Affairs, issues his warrant for the fugitive's arrest would defeat the justice of the case which the occasion demands.

In this case, the whole Police Force was alerted to the fact that the applicant was wanted in the United States for murder. The notice also hinted that a warrant for the arrest of the applicant was issued in the United States. This, in my view, indicates that within a reasonable time, a formal request for extradition would be made.

In these circumstances, the applicant was liable to be apprehended by any police officer in any parish where he was found, and he was liable to be apprehended without a warrant pending further investigation which should not take up an unreasonable time without his being formally charged with a view to his extradition. However, a warrant was subsequently issued as if the applicant had committed murder in Jamaica. Such a course is permissible

under section 8(2) of the Extradition Act of 1870 which is relevant here by virtue of the Extradition Act of Jamaica, and the several treaties under the Act between Jamaica and certain foreign countries. On this ground alone, I hold that the detention of the applicant is proper and lawful.

I shall, however, examine the other point raised by Mr. Downer and which was strongly resisted by both Mr. Robinson and Mr. Grant. Out of respect for the industry and persistency displayed by the learned gentlemen in this part of the argument, it would not be fair to refuse from considering the arguments addressed to me.

The Interpretation Act of 1968 (Act 8/1968) provides under section 41 as follows:

> " All such Laws and Statutes of England as were prior to the commencement of I Geo. II Cap. 1, esteemed, introduced, used, accepted or received as laws in the Island shall continue to be laws in the Island save in so far as any such laws or statutes have been, or may be, repealed or amended by any Act of the Island. "

I have traced this provision in this manner. Chapter 4 of the 1938 Revised Laws of Jamaica provided as follows:

Section 2:

> " Notwithstanding the repeal of the Act I Geo. II Cap. 1, all such Laws and Statutes of England as were at any time before the passing of that Act, esteemed, introduced, used, accepted or received as Laws in this Island shall and are hereby declared to be and continue Laws of this Island, except so far as the same have been or may be repealed or altered by any Law of this Island. "

Chapter 4 of the 1938 Revised Laws was repealed by Law 17/1943 and section 2 was replaced by section 37 of the 1943 Law. Section 37 of the 1943 legislation is in the same language as in section 41 of the present Interpretation Act.

It is to be noted, however, that Chapter 4 of the 1938 Law came into operation on January 1, 1845. The position now appears to be this, if a statute of England which was in force before 1728 was:

> " esteemed, introduced, used, accepted or received as law in Jamaica before 1728, then it is still in force in Jamaica as a statute unless it can be shown that it has been repealed or amended by a legislative enactment of the Island. "

The statute in question may have been repealed in England since

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1728 but it is to be regarded as having force in Jamaica unless a repeal or amendment of the Jamaican Legislature has been made at any time after that date. King Henry the VIII, reigned between April 1509 and January 28, 1547. The relevant Henry the VIII Act (33 Cap. 23) would fall within the purview of section 41 of the Interpretation Act if before 1728 it was:

" esteemed, introduced, used, accepted or received. "

The question is, how does one go about to ascertain whether a pre-1728 English Act was "esteemed" or "used"? Mr. Robinson submitted on the last day of the hearing that "esteeming" should not be examined separately and that the five verbs - which for convenience, I shall forma mnemonic and call "Uriae" - are of a cognate expression of the laws and statutes of England in the colony. It is extremely difficult to follow this argument even if one were to adopt the opinion of Humpty Dumpty when he said:

" When I use a word, it means just what I choose
it to mean - neither more nor less. "

When the Psalmist in his mood of ecstasy said:

" I esteem all thy precepts concerning all things
to be right, and I hate every false way"

(Psalm 119 verse 128),

he was not thinking of something "introduced, used, accepted or received" as if there had been an experiment with God's command before David formulated his eulogy.

The poet Dryden was thinking of high estimation of something when he in his solemn moment wrote these words:

" Take my esteem, if you on that can live;
But frankly, sir, 'tis all I have to give. "

To praise highly, to entertain a good opinion of, to regard with respect or affection, are some notions of esteem. An Act of Parliament may be esteemed by a Judge or Advocate in an after dinner speech or by a Judge alone in an oral judgment in a civil action. In the 16th and 17th century, the proper keeping of records of the Courts, noting and preserving words of wisdom from the Bench and maintaining a selection of law reports were virtually unknown

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in Jamaica. Even in England, there were many cases which were not reported. John Campbell who later became Lord Chancellor, was a Court Reporter in his younger days. He used to dump in a receptacle from time to time "Ellenborough's bad law". All these "bad law" decisions were not published. See 70 S.J. 1077; 71 S.J. 687.

Chief Justice Bryan Edwards in Magnus v. Sullivan (1866), S. C. J. B. Vol. 1, page 63, had before him a civil case which was framed upon an ancient English statute. The judgment does not say clearly what the facts were. It seems that the Chief Justice declined to hear the action without some evidence that the statute in question had been acted on. In Regina vs. Stephens decided twenty-two years after (Stephens' Reports Vol. 1 p. 862), the question arose whether certain English ancient statutes including a statute of Henry VI, had force in Jamaica. The Court recognised the mischief that would arise if strict proof of the fact of a statute having been received and used in Jamaica prior to 1728 was insisted on.

> " The records of the Court prior to that date are practically non-existent, and any other form of direct evidence of the fact which would satisfy the requirements of section 22 of I George II Cap. 1. The result would be that hardly in any case would an English statute be invoked as part of our law. "

(See p. 864)

The Court came to the conclusion that the English statutes relative to forcible entry and detainer were in force in Jamaica. The conclusion was arrived at because:

1. The Jamaican Legislature in 1773 recognised the statutory offence of forcible entry and detainer as an offence against the laws of the Island.
2. The Court Records showed that in 1785, the Supreme Court entertained an action brought on one of the statutes (8 Hen. 6 C. 9).

In fact, the Court was accepting as evidence of user before 1728 a "reference" i.e. (enactment and a court decision) after that date. But what the court was construing was I Geo. II C. 1. Sec. 22 which was in these terms:

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> " All such laws and statutes of England as have been at any time esteemed, introduced, used, accepted or received as laws in this Island shall and are hereby declared to be laws of this Island forever. "

The words "at any time" could mean "at any time after 1728". This may be the explanation why the court in 1888 (Regina v. Stephens) accepted as evidence of "user", a decision of 1785 and an enactment of 1773.

There is a big difference between a public and a private right. The Prescription Act lays down how a private right like an easement may be established. A public statute does not require proof of user first to be enforced. The law would become useless, uncertain and branded as a "brutum fulmen" if evidence of the acceptance, reception and use of a statute had to be proved before any reliance on it could be entertained.

In my view, I am free to refuse from following the judgment of Chief Justice Bryan Edwards. Mr. Henderson Downer's industry has produced authorities which indicate that the ratio decidendi in Magnus v. Sullivan is unsound. It seems that in 1866, the Chief Justice did not have before him the First Report of the Commissioner of Enquiry into the Administration of Civil and Criminal Justice in the West Indies. The report is dated June 29, 1827 and it was printed by the order of the House of Commons. Several questions touching the operation of the several laws in Jamaica were put forward and answers given by certain officials including the then Attorney General and the Chief Justice. At p. 182 (Appendix C), the Attorney General informed the English Government in substance that all British statutes in force before 1728 and which were not local in their enactment and which were not at variance with the Colonial Acts of Jamaica were in force in Jamaica but statutes passed after that date were not in force unless they were expressly extended to the Island.

The case of Greensped v. Livingston (1833) is referred to by Dr. E. H. Watkins in his unpublished thesis for the award of a doctorate in law of London University (see pages 168 - 169 of the thesis).

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The case was found among the Colonial office papers relating to Jamaica. In this case, the point at issue was whether the English Toleration Act of 1689 had been esteemed, introduced, used or received in Jamaica. The majority of the Court rejected the contention that before the court could recognise the English statute, evidence had to be produced that it had been acted upon in the Island before 1728. Perhaps, this case was not brought to the attention of Chief Justice Bryan Edwards when he decided Magnus and Sullivan 33 years after Greensped Vs. Livingston was decided.

The Calendar of State Papers (Colonial Series No. 1132 - West Indian Reference Library at the Institute of Jamaica) shows that prior to the establishment of a civil government in Jamaica under Colonel Doyley in 1661, criminal trials were prosecuted in Jamaica under 27 and 28 Henry VIII. These Acts pertain to crimes including murder committed on the high seas. It seems to me that the actual use of any particular statute depended on the occasion which presented itself. If a Jamaican committed murder abroad and returned to the Colony or if he plotted abroad to overthrow the government of Jamaica and returned home, an occasion would have arisen ~~from~~ for the use of those English statutes which would have been resorted to in England in the case of an Englishman who did the same acts in France and returned to England.

The "esteeming" of these statutes would have been an ongoing mental process in the hearts and minds of the English officials and settlers. And even if the "highly thought of" Acts were not present in all the minds of those in authority all the times, they would certainly have been remembered, praised and used in the absence of any local statute to fit any given case.

All modern countries enact laws on the basis that sovereignty has its territorial limits. But many civilized countries have enacted laws to give their courts power to deal with their own nationals who commit certain specified offences abroad. Murder, treason and bigamy are offences which some countries have taken steps to punish their nationals at home who commit them abroad.

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A Jamaican who marries here and commits bigamy in New York and then returns to Jamaica without being dealt with in the United States, is liable to be arrested, tried and punished here for his crime. A Jamaican who adheres to the enemies of his country in the United States or who gives aid and comfort to the enemies of his country outside of Jamaica, is guilty of High Treason and is liable to be arrested, tried and punished in Jamaica by virtue of the English Treason Act of 1351. If murder is committed abroad by a Jamaican who returns home without undergoing the due process of law in the foreign country, he is liable to be tried here for murder. And the liability arises although an extradition treaty exists between Jamaica and the country where he committed the murder. In such a case, for the purpose of arrest, remand and all preliminary matters incidental thereto, the Police here would be empowered to deal with the suspect as if the offence had been committed on Jamaican soil.

Whereas the Legislators of the period of Henry the VIII made provision to deal with murder committed abroad, it was not until during the Victorian period that action was taken to stop an Englishman committing bigamy abroad. The beautiful females of the Indies, the belles of the developing nations in Europe and America were many. If licence was given to admire and cajole, none was given to add another wife by means of a wedding ceremony. The age of Henry the VIII did not admit to this kind of reasoning. That King himself did not set a very high standard in his dealings with the ladies who became his wives. In 1864, the Jamaican Legislature made bigamy committed abroad by a Jamaican citizen triable in Jamaica. The Offences against the Person Act of that year made no mention of the case of a Jamaican committing murder abroad. And the reason is simple. Power to try a Jamaican for murder committed abroad was already in the hands of the Court. The Legislators would have been aware of the state of the law and in particular, the Law which later became Chapter 4 of the 1938 Revised Laws was in full force and effect.

The Constitution was established when section 37 of

Cap. 165 (Interpretation Law) of the 1953 Revised Laws was in full force and effect. And section 37 of Cap. 165, now repealed, is in these terms:

> " All such laws and Statutes of England as were, prior to the commencement of I George II Cap. 1, esteemed, introduced, used, accepted, or received, as laws in the Island shall continue to be Laws in the Island save in so far as any such laws or Statutes have been, or may be, repealed or amended by any law of the Island. "

The Constitution has recognised this state of affairs by providing under section 4(1) of the Second Schedule as follows:

> " All laws which are in force in Jamaica immediately before the appointed day shall (subject to amendment or repeal by the authority having power to amend or repeal any such law) continue in force on and after that day etc. "

Jamaica is not the only former Caribbean Colonial Territory which has made provision for relying on an ancient English Statute if the occasion arises. I shall give some examples.

1. In Guyana, a legislative resolution may declare that an English Statute passed before March 4, 1831, or part of that statute shall be part of the law of that country. See section 23 of Cap. 2 of the 1953 Revised Laws of Guyana.

2. In Trinidad, statutes of the Imperial Parliament in force on March 1, 1848, are made applicable to that country subject to the terms of any ordinance in operation on that date and of any other ordinance passed after March 1, 1848. See Laws of Trinidad and Tobago - 1940 Vol. 1 Cap. 3 No . 1 Sec. 19.

3. In Grenada, where the criminal law has been codified, all enactments of the English Parliament dealing with treason, treason felony and misprison of treason are made applicable to the Island. See Laws of Grenada 1934 Vol. 1, Cap. 55, Sec. 341.

Summary of reasons for dismissing the application

1. A Jamaican citizen who is a fugitive criminal of a country which has an extradition treaty with Jamaica, is liable to be taken into custody by any police officer in any parish where he is found if that officer has reasonable grounds to believe

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that the fugitive is wanted for questioning in connection with an extraditable offence.

2. Reasonable belief may be supplied where information has been received that a warrant for the arrest of the fugitive has been issued by the foreign country.

3. Where a police officer gets information from the Police Gazette that a fugitive criminal is wanted by a country which has an extradition treaty with Jamaica, that officer may take such person into custody for a reasonable time. A Resident Magistrate or Justice of the Peace may issue a warrant for the formal arrest of the fugitive pending the presentation of a formal request for extradition. Once the fugitive has been arrested he is liable to be detained for a reasonable time pending the request of the foreign country. And what is a reasonable time depends on the special circumstances of the case.

4. A Jamaican citizen who is alleged to have committed murder in a foreign country is liable to be arrested, tried and punished in Jamaica as if the offence had been committed in Jamaica. The ancient statute of Henry VIII (33 Henry VIII, Cap. 23) is in force in Jamaica. Parliament enacted Act 8/1968 (Interpretation Act) on the footing that section 4(1) of the Second Schedule of the Constitution had already confirmed the existence and operation in Jamaica of certain ancient statutes of England.

5. If the custody of an applicant is legal, the motive of the police in taking him into custody is irrelevant. In this case, if the detention of the applicant is for a reasonable time pending the commencement of extradition proceedings reasonably contemplated or for the purpose of re-asserting the right of the Jamaican Court to deal with a Jamaican citizen who is charged with committing murder abroad, on either view, the detention would be proper and legal.