IN THE COURT OF APPEAL OF BELIZE AD 2020

CIVIL APPEAL NO 20 OF 2014

GARY GORDON SEAWELL Appellant

v

(1) **SUPERINTENDENT OF PRISONS**

(2) **ATTORNEY GENERAL** Respondents

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BEFORE

The Hon Mr Justice Sir Manuel Sosa	President
The Hon Mr Justice Samuel Awich	Justice of Appeal
The Hon Mr Justice Murrio Ducille	Justice of Appeal

B Cooper (now QC), of the Bar of England and Wales, for the appellant.
T Young, Senior Crown Counsel (on date of hearing) and A Finnegan, Crown Counsel, for the respondents.

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4 November 2016 and 14 July 2020

SIR MANUEL SOSA P

I - *Introduction*

[1] At the close of the abbreviated hearing on 4 November 2016, the Court, having been informed by Ms Young, for the respondents, that the appeal would not further be resisted, intimated that, for reasons to be given in writing at a later date, it was allowing the appeal, setting aside the orders of the judge below, Arana J ('the Judge'), and ordering the issue of a writ of *habeas corpus* and the discharge of the appellant from prison. As

regards costs of the appeal, it was provisionally ordered that they follow the event, be fit for two counsel and be agreed or taxed. I set out below my own reasons for judgment, with sincere apologies for the delay in so doing.

II – *Background*

1. Alleged facts

(a) Indictment in the United States of America

[2] The alleged facts constituting the extensive background to this appeal are found in large part in an affidavit of Robyn Jones Hahnert, Assistant United States Attorney for the Southern District of Ohio, sworn on 30 August, 2006 before a United States District Judge for the Southern District of Ohio ('the Hahnert affidavit'). The Hahnert affidavit was prepared in support of a request by the United States of America ('the USA' or 'the United States') for the extradition from Belize of Gary Gordon Seawell ('the appellant'), who was born in Belize on 4 March 1976. For present purposes, it suffices to extract from that background the following salient alleged facts. Upwards of 22 years ago, on 10 October 1997, a federal grand jury sitting in Columbus, Ohio ('Columbus'), returned what is known there as a superseding indictment ('the original indictment') against two brothers and a number of alleged co-conspirators of theirs. The brothers in question were one Mark A Seawell, also born in Belize, and the appellant; and the original indictment, which was filed in the United States District Court for the Southern District of Ohio, charged them and their alleged co-conspirators with criminal offences in violation of the laws of the USA. There followed the issue of warrants for the arrest of Mark A Seawell and the appellant.

[3] Four months after the return of the original indictment, on 10 February 1998, a federal grand jury sitting in Columbus returned another indictment ('the second indictment') against Mark A Seawell, the appellant and a third brother, Duane J Seawell, also born in Belize, together with a number of alleged co-conspirators. The second indictment, like the original indictment, charged the appellant, his two brothers in question and their alleged co-conspirators with criminal offences in violation of the laws of the USA.

The original indictment, having been superseded by the second indictment, was thereafter dismissed insofar as it related to Mark Seawell and the appellant. Warrants were thereupon issued for the arrest of the appellant and his two brothers in question.

[4] The second indictment contained a total of 59 counts. Of these, 39 related to the appellant and charged him with the following criminal offences:

(i) conspiracy to import into the United States over 500 grams of cocaine (1 count);

(ii) conspiracy to distribute and possess marijuana and over 500 grams of cocaine (1 count);

(iii) conspiracy to commit money laundering (1 count);

(iv) laundering of monetary instruments to promote the unlawful activity of cocaine and marijuana distribution (8 counts);

(v) laundering of monetary instruments to conceal or disguise the nature, location, source and ownership of the proceeds derived from the sale of cocaine and marijuana (6 counts);

(vi) unlawful importation into the United States of over 500 grams of cocaine (16 counts);

(vii) unlawful attempt to import into the United States over five kilograms of cocaine (1 count);

(viii) unlawful attempt to import into the United States over 500 grams of cocaine (3 counts);

(ix) unlawful attempt to possess with intent to distribute over 500 grams of cocaine (1 count); and

(x) operating a continuing criminal enterprise (1 count).

Although both Mark A Seawell and the appellant were living in the USA at the time of their indictment, the arrest of either of them in the USA proved impossible; and both managed to reach Belize in due course, the allegation in the Hahnert affidavit being that they both fled from the USA in 1997.

(b) Request for extradition

[5] Having failed to arrest the appellant on USA soil, the government of the United States requested his extradition of the government of Belize. This request was made in September 2006 under the extradition treaty entered into between these two governments on 30 March 2000.

[6] In response to such request, the minister of government with responsibility for foreign affairs in Belize ('the Minister'), on 10 November 2006, directed the then Chief Magistrate to issue a warrant for the arrest of the appellant. Pursuant to the issue of such a warrant, the appellant was arrested in the jungle near to Esperanza, Cayo District more than three years later, in February 2010. (Who, in fact, held the office of Chief Magistrate at the time of the issue of the arrest warrant is unclear; for, while the ruling of the Inferior Court referred to below unequivocally states that it was Her Worship Margaret McKenzie – later to be known as Gabb McKenzie CM – a copy of the warrant itself, dated 29 December 2006 and exhibited to an affidavit of Mr Arthur R Saldivar – counsel appearing for the appellant in the Inferior Court – sworn to on 22 August 2016 ('the Saldivar affidavit'), bears the purported signature of 'Herbert Lord, Chief Magistrate'.)

2. Court Proceedings

(a) Extradition application to the Inferior Court

[7] Most unsatisfactorily, little has been made known to this Court of the proceedings for the extradition of the appellant which are said to have taken place before the Chief Magistrate, her Worship Ann-Marie Smith ('Smith CM'), presumably the immediate successor of Gabb McKenzie CM. Nowhere in the record is there a clear statement as to the date of commencement and the duration of such proceedings. All that has been stated as a fact in this regard is that they ended on 22 October 2013, when Smith CM, delivered

a ruling in the case. It is also to be gathered from what appear to be magistrate's notes exhibited to an affidavit of Mr Saldivar that (a) there was a resumption of some sort of hearing (of a mere *in limine* objection, according to Mr Saldivar) before that court on 11 September 2013 and (b) there was on the adjournment later that day a promise by Smith CM of a decision on 21 October 2013.

[8] The two-page ruling dated 22 October 2013 of Smith CM is divided into four parts respectively sub-headed Background, Submissions, Reasoning and Conclusion. Under the first sub-heading, Smith CM refers briefly to (a) the request for extradition, (b) the Minister's direction to the then Chief Magistrate and the arrest of the appellant and (c) the bundle of documents delivered to the Minister by the government of the USA and subsequently placed before her (Smith CM) by the then Solicitor-General of Belize. Under the second sub-heading, note is made of the submissions of the appellant's then counsel, as understood by Smith CM, inviting the court to 'disregard' the affidavits put before it on behalf of the USA. Under the third sub-heading, Smith CM first sets out the essentials of her role, as she sees it, in the extradition hearing. Secondly, she holds that the statements, by which she clearly means the affidavits relied upon by the USA, were, despite some 'minor discrepancies', made in accordance with the laws of Belize. She completes this part of the ruling invoking a case of *R v Evans*, without providing a citation therefor, in support of a further holding to the effect that it is not for the magistrate in extradition proceedings to deal with issues as to alleged hearsay in the depositions of the requesting state, such issues being for determination by the trial court in the requesting state. Under the fourth sub-heading, Smith CM rules that, on a consideration of the evidence presented and the authorities cited to her, a sufficient basis has been made out for the extradition of the appellant. She goes on to '[grant] the application of the government of the [USA] for the extradition of [the appellant] to the [USA] to stand trial on the charges as aforesaid'. (Far from having previously identified any of the offences in question, she had said, under the sub-heading Background, that '[f]or brevity I have not regurgitated all of the offences as they are contained in the written submissions and can easily be referred to.')

[9] The appellant was thereupon returned to the place of his confinement, viz the prison at Hattieville ('the Prison'), also known as the Hattieville Prison, in circumstances which, given the main ground of the present appeal, shall be gone into in detail later in this judgment.

(b) *Habeas corpus* application to the high court

[10] From the Prison, the appellant on 4 November 2013 filed application to the high court for the issue of a writ of *habeas corpus ad subjiciendum*. In the notice of application, the appellant, still represented by Mr Saldivar, described his detention in prison as being 'pursuant to an order made on the 22nd day of October 2013 by [Smith CM] …'

[11] In fairness to the Judge, it must be pointed out at once that, on the hearing of the application, none of the points raised on the present appeal were raised before her by Mr Saldivar. Instead, the latter, appearing to view the application as an appeal of sorts, re-argued that the affidavit evidence was effectively inadmissible, first, because it did not contain on its face any indication that it was being sworn under oath and, secondly, because it was tainted by hearsay. It is hardly surprising, therefore, given the absence of enlightenment then obtaining, that, as just noted above, the detention of the appellant should have been somewhat blithely described in the pertinent notice of application as being pursuant to order of Smith CM.

[12] A further submission made by Mr Saldivar to the Judge was to the effect that the appellant would not, if extradited, receive a fair trial in the courts of the USA and hence his extradition would be unjust and oppressive. This contention was sought to be supported on several grounds, of which the principal was that the USA had been guilty of an unexplained delay of approximately nine years in commencing the extradition proceedings.

[13] The Judge held that the detention of the appellant was lawful and the order for extradition made by Smith CM valid. She accordingly refused the application for *habeas corpus* with costs to the respondents to be agreed or assessed. It is unnecessary for present purposes to set out her reasoning, given that it ended up effectively unchallenged

in this appeal. Suffice it to say, first, that her judgment was concerned with the resolution of three issues relating respectively to (a) the formal authentication of affidavits relied upon by the requesting state; (b) the presence of hearsay material in those affidavits and (c) the impact, if any, of the alleged delay on the right of the applicant to a fair trial in the courts of the USA and, secondly, that she resolved all three issues against the appellant.

III - *The grounds of appeal*

[14] Having changed counsel, the appellant filed a Notice of Appeal ('the Notice of Appeal') on 23 December 2014 and an Amended Notice of Appeal ('the Amended Notice of Appeal') just over a year later on 17 December 2015.

[15] The Notice of Appeal contained only the following six grounds of appeal:

> '(1) The [Judge] in refusing the writ of habeas corpus, erred in law in holding that the documents relied on were authenticated and certified in accordance with Government of Belize and Government of United States of America Extradition Treaty, 2000), section 9 of the Extradition Act, Cap 112 (RE 2000).
>
> (2) The [Judge], in refusing the writ of habeas corpus, erred in law in holding there was such evidence as would be found sufficient to justify committal for trial in Belize.
>
> (3) The [Judge] in refusing the writ of habeas corpus, erred in law in not properly addressing the issue of whether evidence of the co-conspirators was inadmissible evidence.
>
> (4) The [Judge], in refusing the writ of habeas corpus, erred in law in failing to consider: (i) whether the count in relation to continuing criminal enterprise was an offence under the laws of both the United States and Belize, at the time of tis alleged commission, (ii) that the penalty was greater than the other offences and includes the death penalty (*sic*) and (iii) that in the circumstances the extradition of the [appellant] would be an abuse of process.

(5) The [Judge], in refusing the writ of habeas corpus, erred in law in failing to consider the matters [namely the alleged lack of means to retain the services of defence counsel in the USA] set out at paragraph 11 of the [appellant's] affidavit in support of his application for writ of habeas corpus, when considering the issue of abuse of process/delay as a bar to his extradition.

(6) The [Judge] erred in law in finding that there existed sufficient evidence to allow for the committal of the appellant.'

The Amended Notice of Appeal added the following ground of appeal as ground (4) (hereinafter, for the sake of consistency with its designation in the written submissions, 'Ground 4'):

'The [Judge], in holding that the Order of Extradition of the Chief Magistrate is valid, erred in law because: (i) the Chief Magistrate's order/ruling is unlawful in that the Chief Magistrate did not anywhere in her Reasons set out the offence/offences proved by the evidence and (ii) the Chief Magistrate's order/ruling handed down on the 22nd day of October 2013 was not an extradition committal order as is required by the 1870 Extradition Act which is incorporated in Part I of the Extradition Act, 2000 and there was in fact no extradition committal order made.'

In consequence of the insertion of Ground 4, the original fourth ground, became ground (5) (hereinafter, for reasons of continued consistency, 'Ground 5'). The amended notice also added a prayer for the appellant's discharge and costs.

IV – *Developments leading up to the filing of the amended notice*

[16] It is important at this point to set out in outline the developments that led up to the filing of the amended notice of appeal. These are to be found, for the most part, in portions of the affidavits filed on behalf of the parties which were not only undisputed but also indisputable.

[17] By memorandum dated 12 February 2014 from the then Registrar of the Supreme Court, Ms Velda Flowers, to Smith CM (Record, p 73), the latter was asked to provide the high court with the sealed affidavits and exhibits submitted by the requesting state in the extradition proceedings concluded on 22 October 2013. The Registrar pointed out in her memorandum that the hearing of the application before the high court had had to be adjourned to 18 March 2014 in view of the fact that the high court was not in possession of such materials. Although this memorandum specified only affidavits and exhibits, the very context of the request, viz an application for *habeas corpus* concerned with the validity of a detention, ought to have suggested to the Chief Magistrate that a document as crucial as a committal warrant was going to be essential reading for the high court judge hearing such application and ought, accordingly, to be supplied. (The Registrar's memorandum appears independently of any affidavit at Record, p 73.)

[18] What exactly the Chief Magistrate then supplied or omitted to supply to the high court is not known. What is known is that when, following the decision of the Judge on the *habeas corpus* application, the time came to settle documents in connection with the preparation of a record of appeal, no committal warrant could be found. In these circumstances, the attorneys for the appellant wrote Smith CM on 7 July 2015 requesting that she provide them with a copy of such warrant. Noteworthily, those attorneys saw fit to draw Smith CM's attention to the fact that there had been a previous request for documents by the Registrar by her memorandum dated 12 February 2014.

[19] The decidedly odd reply of Smith CM, copied (it must be stressed) to Ms Young, Senior Crown Counsel, was swift. It took the form of a letter dated 8 July 2015 which essentially read: 'Please find enclosed documents as per request.' A total of 10 documents were enclosed therewith, viz five 'Warrants of Apprehension' and five 'Warrants Remanding a Prisoner' (pending his next court date): see Record, pp 769-779. All that had been requested of her was a copy of the committal warrant.

[20] The less-than-pleasant story of the committal warrant does not, however, end there. More than nine long months after the purported compliance with the request of the appellant's attorneys, Ms Young, Senior Crown Counsel, saw fit herself urgently to make

a far-from-self-explanatory request in writing of Smith CM. (By now, the Amended Notice of Appeal, adding Ground 4, had long since been filed.) Dated 27 April 2016, a Wednesday, and copied to the appellant's attorneys, Ms Young's relevant letter sought copies of 'all the warrants issued by Your Worship in relation to the [appellant's appeal]', the clear implication of this being (a) that the 10 warrants previously provided to the appellant's attorneys were not, or could not be, all and (b) that copies of the others should now be produced. There was, it must be emphasised, no specific mention of a committal warrant anywhere in this letter.

[21] The response of Smith CM, by letter dated 6 May 2016, was not that she had already produced all the warrants relating to the appellant in response to the request of the appellant's attorneys made of her in July 2015. Its troublingly surprising core sentence was as follows:

> 'I have conducted a thorough search of the filing cabinets of the Magistracy Department and have located the said committal warrant in addition to the remand warrants. Both warrants will be sent to your Chambers by speed mail and copies emailed for your perusal.' (underline added)

As just emphatically noted above, Ms Young's letter had not specified a committal warrant. Smith CM's reply, however, was speaking of 'the said committal warrant', in other words, the committal warrant previously mentioned or referred to. But who had previously mentioned or referred to such a committal warrant in the course of communications with the Chief Magistrate? And in what circumstances had this occurred? Surely, it was known on all sides that communications between the legal representatives of the respondents and the Chief Magistrate were not supposed to take place behind the backs of the appellant's legal representatives.

[22] Smith CM shortly thereafter provided to Ms Young not only a copy of a self-styled Form of Warrant of Committal ('until he is thence delivered to the provisions of the said Extradition Act') but also copies of 33 documents headed Warrant Remanding a Prisoner (until his next court date). Strangely and confusingly, not only the so-called Warrant of

Committal but also two copies of a Warrant Remanding Prisoner bore the same date, ie 22 October 2013. And on this Warrant Remanding Prisoner the date inserted in the space provided for the next court date was the very date of its issue, ie 22 October 2013. As if that were not puzzling enough, each of these two documents bore a different signature, one such signature purporting to be that of Smith CM.

[23] For maximum clarity, the material part, ie the command amateurishly directed to 'the keeper of the district of Belize City', of each of these two warrants (in the order in which they have just been mentioned) is here reproduced, warts and all:

> 'This is therefore to command … you the said keeper to receive [the appellant] into your custody, and him there safely to keep until he is thence delivered to the provisions of [the Extradition Act, 1870], for which this shall be your warrant.'
>
> 'And I hereby command you the said keeper to received (*sic*) [the appellant] into your custody, the said prison and there safely keep him 22ND day of OCTOBER, 2013 when I hereby command you to have him this day at the Magistrate (*sic*) Court No. 1 at 9 o'clock in the forenoon the same day before me or such other Magistrate as may then be there, to answer further to the said charge and to be further dealt with according to law unless you shall be otherwise ordered to in the meantime.'

[24] Evidence of Ms Young's request for all warrants and the response of Smith CM thereto was boldly provided to this Court by an affidavit, with a total of 40 exhibits (37 marked as such and three not so marked), of the then Deputy Solicitor-General (Litigation and Civil Matters), Mr Nigel Hawke, purportedly sworn to on 17 May 2016 ('the Hawke affidavit'). The Hawke affidavit drew a bombshell of a response on behalf of the appellant, in the form of the Saldivar affidavit on 22 August 2016.

[25] It is best at this stage to quote the following paragraphs of the Saldivar affidavit which relate to a visit allegedly paid by Mr Saldivar to the Prison in April or May 2016:

'7. … in the month of April, 2016, counsel now representing the appellant requested if I could cause a search to be conducted of the records at the [Prison] to ascertain whether there existed a copy of the extradition committal warrant dated the 22nd day of October 2013 issued by [Smith CM].

8. … I visited the prison thereafter and requested a review of the appellant's file. The file was brought to the room where attorneys meet with clients at the prison. There I reviewed the file in the presence of the appellant and Prison Officer [Gareth] Twist.

9. … I reviewed the appellant's file at the [Prison] with a specific focus to ascertain whether the extradition committal warrant dated the 22nd day of October 2013 was on file, for, as I understand it, this warrant would be directed to the Superintendent of Prisons to keep the appellant at the prisons pending his surrender to the [Minister] for extradition.

10. … what I saw on the appellant's file were two "Warrant Remanding Prisoners" dated the said 22nd day of October 2013, but there were (*sic*) no extradition committal warrant dated the 22nd day of October 2013. The two remand warrants dated the 22nd day of October 2013 on the appellant's file appear to have two different signatures. I caused these documents to be photocopied and they are now produced, shown to me and marked "ARS 4 and 5", copies of the respective remand warrants.'

[26] What is being deposed to in these paragraphs of the Saldivar affidavit is that no committal warrant was on the file of the appellant at the Prison when the deponent examined such file in April or May 2016.

[27] In para 15 of the Saldivar affidavit, the deponent refers to a further visit, obviously motivated by naked distrust, allegedly paid by him to the Prison in May 2016 but without actually saying that this was after 17 May, the purported date of the swearing of the Hawke affidavit. Para 15 is best quoted at this point:

‘15. … I visited [the Prison] sometime in the month of May 2016 and spoke to the Chief Executive Officer of [the Prison], Mr [Virgilio] Murillo and informed him that I had reviewed the appellant’s file and noted that there was no committal warrant on the appellant’s file. I further informed him that in the event any committal warrant should now be caused to be sent to [the Prison] to be recorded on the appellant’s file, that he should, in the interest of justice, insert the date of receipt before placing on the appellant’s file.’

[28] There is, in short, nothing before this Court to suggest that a committal warrant as such did find its way to the Prison, whether before, during or after the pertinent alleged visits of Mr Saldivar.

V - *The material submissions on appeal*

1. Introductory

[29] Given the course adopted by the respondents upon the appeal coming on for hearing, the material submissions placed before the Court in writing are, for present purposes, those respectively deployed in support of and in opposition to Ground 4, which, as already noted at para **[15]**, above, was added by the Amended Notice of Appeal..

2. Sequence of filings and interrelated events

[30] Written submissions signed by Mr Ben Cooper of the English Bar and Mr Anthony G Sylvestre were filed on behalf of the appellant on or about 21 March 2016. These submissions sensibly focused on Ground 4 and Ground 5.

[31] Written submissions signed by Ms Trienia Young and Ms Agassi Finnegan were filed on behalf of the respondents on 13 May 2016. These submissions rightly treated all but the two grounds focused upon in the appellant’s written submissions as to all intents and purposes abandoned.

[32] Four days after the filing of the respondents’ submissions, ie on 17 May 2016, a notice of motion headed Notice of Motion to Tender Supplemental Evidence (‘the Notice

of Motion') was also filed on their behalf. The Notice of Motion goes on to seek by its opening sentence 'an Order striking out this Appeal' rather than leave to tender supplemental evidence; but this is obviously the result of a careless error. As a consequence of this error, the Notice of Motion materially omits to identify the material, loosely referred to as 'these documents', whose admission into evidence is sought.

[33] As already noted above, the Hawke affidavit was purportedly sworn on 17 May 2016.

[34] Mr Saldivar allegedly first visited the Prison sometime in April or May 2016 and then again sometime in May 2016. There is no indication whether either or both of these visits were paid before or after (a) the filing of the respondent's submissions on 13 May and/or (b) the filing of the Notice of Motion and the Hawke affidavit on 17 May.

[35] On 13 July 2016, the respondents further filed an Amended Notice of Motion to Tender Supplemental Evidence ('the Amended Notice'). (Like the original notice, the Amended Notice also failed to identify the documents which the respondents were desirous of tendering in evidence, referring to them merely as 'these documents'.)

[36] The respondents took the liberty of purporting to file a skeleton argument in support of their motion as an attachment to the Amended Notice. In that skeleton argument (p 6) they, misleadingly, made the partial revelation that '[t]he document in question is in fact the same Committal Warrant which stands to be in issue before this Honorable (*sic*) Court'. The word 'misleadingly' is here used advisedly: the skeleton argument goes on to speak (p 6) of 'the documents in question which comprise the supplemental evidence'. Thus there is, at first, mention only of a single document: but later it is learned that documents, and not a single document, are involved.

[37] The Saldivar affidavit, responding to the Hawke affidavit, was, as also noted above, purportedly sworn on 22 August 2016, ie between five and six weeks after the filing of the Amended Notice.

3. Summary and consideration of submissions

[38] All points raised in the very brief oral argument being covered by the written submissions filed in connection with the appeal, one will here concentrate on such submissions.

[39] The submissions filed on behalf of the appellant ('**the appellant's submissions**') directed attention to section 3 of the Extradition Act, by which, *inter alia*, all acts required to be done by the Chief Metropolitan Magistrate at Bow Street, London, in relation to the surrender of fugitive criminals in the United Kingdom under the Extradition Acts may, in Belize, be done by the Chief Magistrate. The title 'Extradition Acts' used in section 3 is declared by section 2 to mean (a) the Extradition Act 1870 ('the 1870 Act'); (b) the Extradition Act 1873; (c) the Extradition Act 1895; (d) the Extradition Act 1906; (e) the Extradition Act 1932; and (f) the Counterfeit Currency (Convention) Act 1935.

[40] Smith CM, continued **the appellant's submissions**, was required by order both (a) to commit the appellant and (b) expressly to single out the offences in respect of which he was to be extradited. (As shall be appreciated when I come to the case law relied upon by the appellant, the discrete point that certain documents were also to be provided by Smith CM to the Minister was to be raised and argued at a later stage in **the appellant's submissions**.) The requirement, so ran those submissions, was for Smith CM to perform these acts once she had determined that there was sufficient evidence to support the extradition request. But, wrote counsel, Smith CM had performed neither of these acts upon making this determination. **The appellant's submissions** referred in this regard to provisions of the 1870 Act governing the conduct of relevant proceedings by a 'police magistrate' in England ('the governing provisions'). By section 26 of the 1870 Act, the term 'police magistrate' means 'a chief magistrate of the metropolitan police courts, or one of the other magistrates of the metropolitan police court in Bow Street'. Implicit in **the appellant's submissions**, then, was the position that the term 'police magistrate', as used in the 1870 Act refers to the Chief Metropolitan Magistrate spoken of in section 3 of the Extradition Act, already cited at para **[39]**, above. The governing provisions were, in

the appellant's submissions, those appearing in section 10 of the 1870 Act and reading as follows:

> 'In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorising the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, justify the committal for trial of the prisoner if the crime of which he is accused had been committed in England, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.'

The duty of Smith CM, once she had found, as she clearly had, that (a) the foreign warrant in the present case was duly authenticated and (b) that, on the evidence produced, committal of the appellant for trial would, according to the law of Belize, be justified if the crimes of which he was accused had been committed in Belize, was to commit him to prison, doing so in strict conformity with the law.

[41] Smith CM, on the central submission of the appellant, had not discharged that duty.

[42] She had, on the only correct view of the evidence, if I understood **the appellant's submissions** aright, effectively remanded the appellant in custody rather than committing him to prison in strict conformity with the law. Adopting the latter of these two courses entailed, so continued the argument, making an order in the form provided in the Second Schedule to the 1870 Act under the heading Form of Warrant of Committal ('the English 1870 Form'), adapted as necessary to suit local circumstances. The English 1870 Form, in material part, reads as follows:

> 'To one of the constables of the metropolitan police force [or of the police force of the county of], and to the keeper of the

Be it remembered that on this day of , in the year of our Lord late of is brought before me the chief magistrate of the metropolitan police courts [or one the police magistrates of the metropolis] sitting at the police court in Bow Street, within the metropolitan police district [or stipendiary magistrate for] to show cause why he should not be surrendered in pursuance of the Extradition Act, 1870, on the ground of his being accused [or convicted] of the commission of the crime of

within the jurisdiction of and forasmuch as no sufficient cause has been shown to me why he should not be surrendered in pursuance of the said Act:

This is therefore to command you the said constable in Her Majesty's name forthwith to convey and deliver the body of the said into the custody of the said keeper of the at , and you the said keeper to receive the said into your custody, and him there safely to keep until he is thence delivered pursuant to the provisions of the said Extradition Act, for which this shall be your warrant.'

[43] Instead of making an order in the English 1870 Form, **the appellant's submissions** underlined, Smith CM, from all indications, had, on the greater of two likelihoods ('**the greater likelihood**'), erroneously ordered the appellant remanded in custody, making no provision whatever for his subsequent delivery to the Minister. On the lesser of these two likelihoods ('**the lesser likelihood**'), there had somehow been two separate purported orders signed by two different persons (one Smith CM and the other a person unknown), neither of which amounted to a warrant of committal such as is exemplified in the English 1870 Form.

[44] **The greater likelihood**, in a little more detail, was, on my understanding of **the appellant's submissions**, as follows. The reaction of Smith CM to the request made of her by the attorneys for the appellant by letter dated 7 July 2015 is the one by which the Court should, so to speak, go. That request was for a specific document, viz a warrant of

committal. It is simply unthinkable that Smith CM would not have known, by the time she responded to this request (at the latest), the nature of a warrant of committal and, hence, the difference between such a document and a warrant of apprehension or a warrant remanding a prisoner (until next court date). Yet, as already noted at para **[19]**, above, her reaction was to provide the appellant's attorneys with copies of a warrant of apprehension and of five warrants remanding a prisoner (until next court date) and nothing more, not even an explanation for her not providing the copy committal warrant requested by the attorneys. The irresistible inference from such a reaction is that no committal warrant was ever issued by Smith CM. Fortifying that inference is the fact that there is no indication before this Court that Smith CM revisited the subject of the missing warrant of committal of her own motion – no letter, for example, from her to appellant's attorneys, indicating that she was continuing to search for a committal warrant. It was as if she had done all she could do and the matter was, as far as she was concerned, closed, for better or worse. But, as if that were not enough, there is also the affidavit of Mr Saldivar, whom no one seemed interested in cross-examining, with its necessarily implied, if not express, assertion that no committal warrant was found in the file of the appellant kept at the Prison: paras **[25]** and **[26]**, above.

[45] The lesser likelihood, and lesser by far as I have understood **the appellant's submissions**, is, if one may go into a little more detail than has already been gone into above, the following. The reaction of Smith CM to the less than self-explanatory, out of the blue request of Ms Young, Senior Crown Counsel, by letter dated 27 April 2016, after a very substantial lapse of more than nine long months, is the one by which this Court should go. Implicit in the response of Smith CM to that request is a remarkably bold representation that, contrary to what she had previously effectively led the appellant's attorneys to believe, some form of warrant of committal had, in fact, been issued by her at the proper time. Apart from the enormous strain placed on credulity by Smith CM's response to Ms Young's letter of 27 April 2016 is the unhelpful, nay troubling, confusion created by the belated surfacing from nowhere, as it were, of not one, but two, purported warrants bearing different signatures. But even if one could somehow bring oneself to accept that these documents were signed and issued on the dates which they bear, the

fact remains that they obviously are not warrants of committal in the English 1870 Form, or otherwise for that matter. (I shall at a later point in this judgment express a less-than-concluded view on the question whether the English 1870 Form is mandatory in Belize.)

[46] On either likelihood, therefore, no warrant of committal, in the English 1870 Form or otherwise, was ever, so concluded **the appellant's submissions**, issued in the present case.

[47] In **the appellant's submissions**, counsel, having put forward what they saw as pertinent statute law, further directed this Court's attention to decided cases which they regarded as relevant. Twin submissions were deployed, viz (i) that once the Chief Magistrate concludes that there is sufficient evidence to justify extradition, he/she comes under a duty to issue a warrant of committal and send the Minister a certificate of committal and a report on the case and (ii) that an essential of such committal warrant is a statement of the offence or offences for which the person concerned is to be surrendered. (This latter submission involved a variation from Ground 4, which, as worded, suggests that such a statement of an offence or offences ought to have been provided in the Reasons of Smith CM; but the respondents did not make such variation the subject of any complaint.)

[48] In support of the first part of the first submission, appellant's counsel cited the decision of the Judicial Committee in *Kossekechatko and ors v Attorney-General for Trinidad* [1932] AC 78. The headnote to the report of this case, which appears at pages 78-79, reads as follows:

> 'The appellants were brought before a magistrate in Trinidad under s 5 of the French Guiana Extradition Ordinance of Trinidad charged with being fugitive criminals from French Guiana, where there is a penal settlement. At the hearing it was proved that they had each been convicted in France of a specified crime, and had each received a sentence of imprisonment which was unexpired. The magistrate made an entry in his magistrate's book against their names "extradition ordered". He did not however make, as he should have done, an order under s. 10

of the Extradition Act, 1870 (made applicable by s. 5 of the Ordinance), for committal to await the Governor's warrant for surrender. Instead another magistrate, who had not heard the case, made a detention order under s 3 of the Ordinance, which section applies to suspected fugitives. Upon habeas corpus proceedings:-

Held, that the appellants should be released: (1.) because under the terms of the extradition treaty with France they could be extradited only if the crime of which they had been convicted were committed in French territory, and there was no evidence that that was so, nor was it necessarily involved in the convictions; (2.) because ss. 11 and 12 of the local Summary Convictions Offences (Procedure) Ordinance did not make the entry in the magistrate's book equivalent to an order under s. 10 of the Extradition Act, 1870, and the irregularities with regard to the order signed prevented the detention of the appellants from being warranted.'

From the summary of the legal argument provided in the report, it appears that one of the main submissions made for the appellants was that-

'no order was made under section 10 of the Extradition Act, 1870, which is made applicable to proceedings under s 5 of the Ordinance. The order actually signed was an order under s 3, sub-s 3, of the Ordinance and was inappropriate.'

It further appears that the Honourable Sir Stafford Cripps, S-G, leading for the respondent, contended in reply that use of the form of order provided in the relevant Ordinance was not made obligatory; and, further, that the order actually signed, although not the appropriate order, was one which could have been made and one which, moreover, authorised the detention of the appellants until the Governor's pleasure was known: see page 81.

[49] Scrutiny of the judgment of the Board, delivered by Lord Russell of Killowen (not to be confused with his father, Lord Russell of Killowen CJ), reveals that provisions relating to the duty to commit (or discharge) of the magistrate conducting extradition

proceedings in the British colony of Trinidad and Tobago in 1930 were to be found in statute law as well as in the relevant treaty. Lord Russell usefully paused to advert to these provisions in the course of his narration of the facts of the case before the Board. The first group of such provisions to which he drew attention is that contained in section 10 of the 1870 Act, the Act of the Imperial Parliament already referred to above. Those provisions, which relate to the case of a fugitive alleged to have been convicted of an offence rather than, as here, one alleged merely to have been charged, are as follows:

> 'In the case of a fugitive criminal alleged to have been convicted of an extradition offence, if such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, prove that the prisoner was convicted of such a crime, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged.' (underline added)

The language in which the duty to commit or discharge is here couched, underlined in this quotation, is identical to that in which the duty to commit or discharge is imposed in the immediately preceding paragraph of section 10 (in the case of a fugitive merely accused of an extradition crime). The language of such immediately preceding paragraph has been reproduced at para **[40]**, above. Addressing that statutory language, Lord Russell, speaking for the Privy Council, said, at p 83:

> 'The criminal, if committed, is committed to prison, there to await the warrant of a Secretary of State for his surrender.'

That, as one understands **the appellant's submissions**, is a simple and clear statement of the duty imposed on a magistrate by both paragraphs of section 10 set out above. In the instant case, of course, it is the first of these two paragraphs of section 10 which alone matters.

[50] The second group of such provisions to which Lord Russell referred in the judgment of the Board is that which was then to be found at Article VII (A) of the pertinent treaty entered into between Her Britannic Majesty and the French Republic on 14 August 1876. In material part, such provisions read:

> 'In the case of a person accused: … If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner, if the crime of which he is accused had been committed in England, the police magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender; sending immediately to the Secretary of State a certificate of the committal and a report upon the case.'

Given that *Kossekechatko* concerned fugitives alleged to have been convicted, Lord Russell further directed attention to the following provisions of Article VII (B) of the treaty:

> 'In the case of a person convicted: the course of proceeding shall be the same as in the case of a person accused …'

[51] The third group of such provisions to which Lord Russell invited attention is that originally occurring in section 5(1) of the French Guiana Extradition Ordinance, an Ordinance enacted in 1894 by the Legislature of Trinidad and Tobago ('the 1894 Ordinance') but which, by the time *Kossekechatko* reached the Judicial Committee, had become part of c 250 of the Laws of Trinidad and Tobago (Revised Edition) 1925. These provisions, as material for present purposes, were in the terms following:

> '… [S]uch magistrate, if the fugitive criminal is brought before him, shall hear the case and shall have the like jurisdiction and powers as are given to police magistrates and justices of the peace under the Extradition Acts.'

By section 2 of the 1894 Ordinance, the term 'Extradition Acts' meant the Extradition Acts, 1870 and 1873'. Accordingly, the powers being referred to in section 5(1) included those to commit or discharge already identified above.

[52] It is to be noted that, in the course of conveniently summarising the effect of these and other provisions set out in the Board's judgment, Lord Russell said, at p 91:

> '…(5) Upon issue of the magistrate's warrant the person (even though already detained in custody under a detention order) is apprehended and brought before the magistrate and thereupon ss 9 and 10 of the Extradition Act, 1870, come into play. (6) The magistrate, having heard the case, must either commit the person to prison or order him to be discharged. If (in the case of a convict) such evidence is produced as would, according to the law of England, prove that the prisoner was convicted of an extradition crime, the magistrate must commit, otherwise he must discharge. (7) If the magistrate commits he must commit the fugitive criminal to prison, there to await the warrant of the Governor for his surrender.'

[53] The appellants' argument before their Lordships' Board was helpfully put in a nutshell by Lord Russell at p 93, where he said:

> 'It was contended on [the appellant's] behalf before this Board that they ought to have been discharged from custody because there was no valid order or warrant authorizing their detention, the order of November 6, 1930, which was the only authority in that behalf, being invalid on four grounds, namely: (a) that it had not been proved as to any of the appellants that he was convicted of an extradition crime, i.e., that there was no evidence, or no sufficient evidence, that he had committed a crime which, if committed in England or within English jurisdiction, would be one of the extradition crimes described in the Extradition Acts, 1870 and 1873. (b) That there was no evidence as to any of the appellants that he had been convicted of a crime committed in the territory of the French Republic. (c) That there never existed as to any of the appellants any order under s 10 of the Extradition Act, 1870, the order of November 6, 1930, being an order for detention

under s. 3, sub-s. 3 of the Ordinance of 1894, and not an order for committal to prison under s. 10 of the Extradition Act, 1870, and (d) That even if the said order could be said to be an order for committal to prison under s. 10 of that Act, it was made by a person who had never heard the case, and who, therefore, had no power to make it.'

Grounds (a) and (b) are not relevant to the present appeal. Suffice to say in respect of them that a decision on the merits or otherwise of the former was considered unnecessary in the circumstances and that, as adumbrated in the headnote set out above, the latter was found to be meritorious. Grounds (c) and (d) succeeded as well, as also indicated in that headnote.

[54] In regard to these third and fourth grounds, which, on my understanding of **the appellant's submissions**, are of relevance (albeit in different degrees) in the context of the instant appeal, the Board's reasoning appears chiefly in the following passage, found at p 96:

'The remaining contentions of the appellants reveal, however, other reasons for holding that the said order was invalid. It is open to attack on two further grounds. It was the wrong order to make, and it was made by the wrong person. The only order which could be made at that particular stage was an order (under s. 10 of the Extradition Act, 1870) for committal to await the Governor's warrant; instead of that the order made was an order (under s. 3, sub-s. 3, of the Ordinance of 1894) for detention. Even if it were possible to overlook this irregularity the second ground of attack is fatal. The order was not made by the magistrate who heard the evidence, but by Mr. Harris who for this purpose is no better than a stranger. In short, the order, which is the sole justification for the appellants remaining in custody, was made coram non judice.' (underline added)

The first of these two grounds of attack is clearly put forward in **the appellant's submissions** as the one more directly pertinent to the present appeal. And the underlined words in this passage make it clear beyond a peradventure that the failure of Mr Perez to

make a committal order under s 10 of the 1870 Act was, in the opinion of the Board, so serious that it could not be overlooked. The parallel with the present case is, as I understood counsel for the appellants, this absence of a committal order. The second ground of attack is, however, also important for present purposes, if I have correctly understood **the appellant's submissions**. Just as the so-called order of Mr Harris in *Kossekechatko* could not avail the respondents before the Board, the frankly pathetic invocation of more than one sorry excuse for a committal order cannot, on my interpretation of the respondents' concession in the instant appeal, even advance the respondents' case as far as first base, to adopt imagery from the sport of American baseball. That said, however, there is, if the submissions advanced on behalf of the appellant be right, a striking distinction between *Kossekechatko* and the case at hand. Mr Perez decided to make an order but never made it. As the Board pointed out, at p 96, the only 'order' in evidence was that made *coram non judice* by Mr Harris. In the case before this Court, on the other hand, there is (on what I have termed '**the greater likelihood**' at para **[44]**, above) no evidence that Smith CM decided, at any time between 11 September (the date of the hearing) and 22 October 2013 (the date of the hand-down), to make a committal order pursuant to section 10 of the 1870 Act. Of course, she may have so decided, if **the lesser likelihood** be the correct one. But **the lesser likelihood** is what it is, ie the lesser likelihood, in large part because of what the Saldivar affidavit has to say in relation to the documents not found on file at the Prison. And, as has been pointed out above, there was at no time any indication of a desire on the part of the respondents that Mr Saldivar be subjected to cross-examination with the leave of this Court. Indeed, not unusually for this jurisdiction – see, eg *Richardson v Attorney-General and Others*, Civil Appeal No 29 of 2013 (judgment delivered on 28 February 2018) – no party took any step to seek leave to cross-examine a deponent.

[55] Which brings one back to the submission of Sir Stafford Cripps already noted at para **[48]**, above. The Board did not, rightly in my respectful view, consider it necessary to respond to the contention that the form of order provided in 'the Ordinance', words taken by me from the editorial part of the law report, was not made obligatory. (As stated elsewhere in that editorial part of the report, the pertinent argument for the appellants was

that no order was made under section 10 of the 1870 Act, which was made applicable to proceedings in Trinidad and Tobago under section 5 of the 1894 Ordinance: see p 80.) Their Lordships focused instead on the effect of the provisions of sections 11 and 12 of the Summary Conviction Offences (Procedure) Ordinance under which, as Sir Stafford had emphasised, Mr Perez had acted when he made his notation in his magistrate's book. In the words of the Board's advice to His Majesty, at p 96:

> 'These sections cannot, in their Lordships' opinion, cure the invalidity of the order of November 6, 1930. They operate to establish the fact that the decision of Mr. Perez was to make what is termed in the case book an "extradition order"; but the fact remains that no order was made or is in existence except the one made by Mr. Harris, which, as has been pointed out, is invalid.'

[56] In the present case, an analogically contrary submission was made for the appellant, viz that the English 1870 Form is required to be used by the Chief Magistrate in Belize. It will be astute, in my view, for this Court to refrain from expressing a concluded view on the matter, given that what has led to the resolution of the appeal is a concession made on the part of the respondents. I consider that the point is best left for decision on a future occasion when there has been full argument from all sides concerned. But I would note the following key considerations, all arising from **the appellant's submissions**. First, the English 1870 Form, ie the penultimate form contained in the Second Schedule to the 1870 Act ('the Second Schedule') is, self-evidently, a Form of Warrant of Committal. Secondly, the 1870 Act is made applicable to Belize by section 2 of the Extradition Act. Thirdly, the 1870 Act itself does not, expressly at any rate, provide for the use of the English 1870 Form to be compulsory. It is worthy of note, in this regard, that (a) section 10, reproduced at para **[40]**, above, provides for the making of a committal order but says nothing as to the form thereof and (b) section 20 limits itself to authorising the use, first, of forms set forth in the Second Schedule and, secondly, of 'forms as near thereto as circumstances admit'. Fourthly, the Extradition Act likewise does not contain an express provision for the use of the forms in the Second Schedule to be compulsory. Accordingly, all in all, the contention that the English 1870 Form is required to be used by the Chief Magistrate in Belize is not, to my mind, among the stronger of the contentions to be found

in **the appellant's submissions**. At the same time, however, it does not appear to me to be one whose success is necessary in the circumstances of the present case. What was critical here was the broader question whether a committal order was made by Smith CM.

[57] With respect to the remaining part of the first of the appellant's twin submissions, to the effect, as previously noted, that the Chief Magistrate, quite apart from being required to make a committal order, was also duty bound to send to the Minister a certificate of committal and report, the principal source of its force, as I understand it, lies in the straightforward nature of the provisions of section 10 of the 1870 Act rather than in any decided case. The final paragraph of that section reads as follows:

> 'If [the police magistrate] commits such criminal to prison, he shall commit him to the Middlesex House of Detention, or to some other prison in Middlesex, there to await the warrant of a Secretary of State for his surrender, and he shall forthwith send to a Secretary of State a certificate of the committal, and such report upon the case as he may think fit.'

The question may be asked: does the word 'criminal' here refer only to a person previously convicted of a crime? In other words, does this paragraph apply in the case of the appellant in the instant appeal. There is no denying that, in the second paragraph of this same section, 'criminal' refers to a fugitive allegedly 'convicted of an extradition crime'. But the significance of that is greatly watered down by the fact that the first paragraph of this very section also calls a fugitive merely accused, like the appellant, of an extradition crime a 'criminal'. [It is noteworthy that no less a legal mind than Lord Diplock was content with the nomenclature of the 1870 Act in this respect, as appears from his speech in *In re Nielsen* [1984] AC 606, to be considered below.]

[58] A further question as to the extent of the applicability of this third paragraph may be sought to be raised given the specific and general reference therein to prisons in Middlesex, England. This question seems, however, to be addressed by section 4 of the Extradition Act, according to which –

'The committal and detention of any fugitive criminal in Belize under the Extradition Acts shall be in and to the prison at Hattieville.'

It seems difficult to argue against the view that the local legislature was here studiedly modifying section 10 of the 1870 Act to render it applicable to conditions in Belize. With those two questions out of the way, the remaining part of the submission of the appellant now under consideration is, especially when viewed against the background of the respondents' ample and decisive concession before this Court, not easily dismissed as lacking the requisite degree of force.

[59] I respectfully fail to see, in these circumstances, any need to enter into a discussion of decided cases lending further support to the submission that Smith CM was under a statutory obligation to send to the Minister a certificate of committal and a report on the case of the appellant. No such support seems to be necessary given the abundant clarity of the statutory language. And, of course, no evidence of compliance by Smith CM with such obligation was ever adduced.

[60] To the second of the twin submissions set out at para **[47]**, then, I come. This contention is that an essential feature of a committal warrant such as Smith CM was under a statutory duty to issue is a statement of the extradition offence or offences for which the person concerned is to be surrendered. As has already been noted at para **[8]**, above, Smith CM, beginning with the very decision which she delivered on 22 October 2013, comes across as somewhat too loose and unspecific in her approach to this most serious matter. I have in that paragraph pointed out her reference to 'charges as aforesaid', in the part of her decision headed Conclusion in circumstances where, alas, she had not previously specified any of the charges brought against the appellant, having blithely and glibly effectively stated, instead, that she would not descend to the level of engagement in regurgitation of the content of counsel's submissions. The appellant in this regard first directs attention to the fact that Smith CM, from her decision, obviously never troubled herself to consider the evidence against the specific offences for which the appellant's extradition was sought. Then the appellant points to the additional fact, that there having been no warrant of committal to begin with, compliance with the requirement that such a

warrant must set out the offences proved to the satisfaction of the magistrate cannot even begin to be argued. And the existence of such legal requirement is supported by the following note to section 10 of the 1870 Act found in Tab 2 to the Appellant's Submissions:

> 'The magistrate's warrant of committal must set out in terms the offence which is proved by the evidence before him. If it sets out an offence not so proved the court will, on application for a writ of *habeas corpus*, order the prisoner to be discharged (*R v Portugal* (1885), 16 Q.B.D 487).'

The appellant's submissions further refer for support of the existence of this requirement to cases, including *Re Arton (No 2)* (1896) 1 QB 509, cited in Ivor Stanbrook and Clive Stanbrook, Extradition. In *Arton*, the chief metropolitan magistrate did not omit to state the particular offence, the equivalent of falsification of accounts under the law of England, which became the subject of contention on the matter coming up before the Queen's Bench Division on an application for habeas corpus. But he left out certain particulars as to the character viz that of a member or director of a public company, in which the crime had to be committed in order to be covered by the relevant treaty. Those were particulars which could properly, in the view of the court, be inserted by the magistrate on a remittal of the committal order to him. Lord Russell of Killowen CJ (the father, as noted above, of Lord Russell of Killowen), delivering the judgment of the Queen's Bench Division, said, at p 518:

> '… I think it well that … the order of committal should be remitted to [the chief magistrate] in order that it may be made clear in what crime of "faux" Arton is committed. The first offence should, I think, be described as "the crime of fraudulent falsification of accounts as a director, officer or member of a public company according to the law of England, and constituting the crime of "faux en écritures de commerce" within art. 147 of the French Code Pénal.'

The decision, then, was that the offence under discussion required to be stated with a little more particularity in the committal order. The case thus confirms, albeit somewhat

tangentially, the requirement that the committal order should contain a statement of the offence or offences in respect of which the fugitive concerned is being committed to prison.

[61] The attention of this Court was further directed by **the appellant's submissions** to the decision of the House of Lords almost a century later in *In re Nielsen* [1984] 1 AC 606, which is much more to the point for present purposes. In his speech in that case, Lord Diplock, having first noted the specification of the relevant crime in other forms (viz the form of order to proceed and the form of warrant of apprehension) provided in the Second Schedule, said of what, for convenience, one has in this judgment been calling the English 1870 Form, at page 619A:

> '… so too does the form of warrant of committal of the fugitive criminal to prison to await surrender that is issued by the magistrate under section 10, if at the hearing under section 9 such evidence is produced as would according to the law of England justify his committal for trial if the crime of which he is accused had been committed in England [require specification of' the crime].'

As was so often the case when Lord Diplock rendered an opinion in the House of Lords, all the other members of the Appellate Committee respectfully concurred in it.

[62] Further support for the contention that the detention of the appellant was unlawful as from 22 October 2013 was sought in section 5(1) of the Belize Constitution, read in the light of the decision of the United Kingdom Supreme Court in *Norris v United States of America* [2010] UKSC 9. **The appellant's submissions** referred, first, to the provisions of section 5(1), which sets out the fundamental right to personal liberty, as material for present purposes, in the terms following:

> '(1) A person shall not be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say-

…

for the purpose of effecting his expulsion, extradition or other lawful removal from Belize …'

Counsel underscored that deprivation of personal liberty under these constitutional provisions can only be authorised 'by law'. The argument proceeded as follows. The law governing extradition in Belize is to be found in the 'Extradition Acts' as defined in section 2 of the Extradition Act. Section 10 of the 1870 Act, which is one of the Extradition Acts, required Smith CM to issue a committal warrant whereby the appellant could be committed to the Prison pending his application for habeas corpus or a decision by the Minister regarding his extradition. The law was not complied with. In the result, the detention of the appellant as from 22 October 2013 was in violation of his constitutional right to personal liberty.

[63] Inasmuch as the sole attack under Ground 4, viewed by me as determinative of the instant appeal and hence isolated for treatment in this judgment, is on the detention of the appellant rather than on the entire proceedings for his extradition, I hesitate to think that there is necessity here to seek assistance from *Norris*. (The important distinction between an attack against detention and one against extradition itself is helpfully drawn by Lord Phillips, delivering the judgment of their Lordships' Board in *Fuller v Attorney-General of Belize* [2011] UKPC 23, at para [50].) In *Norris*, as in *Fuller*, the complaint, based on abuse of process, was against extradition as such. In the present appeal, the appellant's case under Ground 4 is that his detention was rendered unlawful by the failure of the Chief Magistrate to issue a warrant for his committal to prison on 22 October 2013. The invalidity of his detention is, he further complains, compounded by the circumstance that it is a detention in breach of section 5(1) of the Belize Constitution which provides for his fundamental right to personal liberty. It is plain, in my view, that the submissions deployed in furtherance of this narrow further complaint are invested with overwhelming force. (It is not lost on me that, in the context of Ground 5, the appellant launches an all-out assault upon the entire extradition as such; but, as already pointed out above, the

present judgment focuses upon Ground 4 as entirely determinative, in the light of the respondents' capacious concession, of the subject appeal.)

[64] As I see it, the sweeping concession made by counsel for the respondents before this Court signifies a complete abandonment of all submissions previously deployed in opposition to the instant appeal. The Court in its collective wisdom saw fit immediately to accept such concession, allow the appeal, set aside the orders of the judge below and make the orders already enumerated at para **[1]** above. For my part, I regarded the respondents' concession as sound and thus properly made. I was, moreover, entirely mindful, in so viewing the concession, of the fact that a court is not bound to accept a concession which it considers unsound and improperly made, a fact to which this Court gave full recognition in *Speednet Communications Limited v Public Utilities Commission*, Civil Appeal No 29 of 2012 (judgment delivered on 19 June 2015) . While there was a successful appeal to the Caribbean Court of Justice ('the CCJ') in *Speednet*, no issue arose on such appeal as to the propriety of this Court's treatment of the relevant concession and the CCJ did not comment on it in its judgment.

[65] In the circumstances, it would amount, in my view, to an act of supererogation effectively to disinter and examine the erstwhile submissions of the respondents, thus adding to the length of a judgment perhaps already too long.

[66] In fine, the ample concession of the respondents in the present appeal was one to which I for my part was prepared readily to give my blessing because it seemed only right and realistic in the face of the obvious force of all of the contentions of the appellant hereinbefore considered, with the sole exception of that which I have identified at para **[56]**, above.

[67] In announcing that the appeal was allowed and specifying the other matters already referred to at para **[1]**, above, on November 2016, the Court intimated that further details of its costs order would be provided at such time as it handed down its reasons for judgment. In my opinion, those further details ought to be, and hence I propose, that

the provisional costs order become final in ten days from the date of delivery of this judgment unless any party should, before the expiration of such period, apply for a different order, in which event determination of the matter of costs be on the basis of written submissions to be filed and delivered in 14 days from the date of such expiration. I further propose that, in keeping with existing practice, the necessary application should be made by letter to the Registrar copied to the other parties concerned.

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SIR MANUEL SOSA P

AWICH JA

[68] On 4 November 2016, upon learned Senior Crown Counsel T. Young, for the respondents, informing this Court that, the respondents would no longer oppose the appeal, this Court allowed the appeal of Mr. Gary Gordon Seawell against an order made by Arana J. (now Chief Justice) in 2014, dismissing an application by Mr. G. Seawell for the Supreme Court to issue **habeas corpus order**. Mr. G. Seawell had been detained on an order made on 22 October 2013, by the learned Chief Magistrate, Ms. M. Smith. It was made in an extradition proceeding in the Chief Magistrate's Court. This Court stated on 4 November 2016 that, reasons for allowing the appeal would be given at a later date.

[69] I have read the draft full reasons prepared by the learned Sir Manuel Sosa P. They include what I would give as my own reasons which are limited and shorter, so I concur.

[70] While Mr. Gary G. Seawell was detained on the warrant issued by the Chief Magistrate, he applied to the Supreme Court for a **writ of habeas corpus** to issue for producing him and discharging him from the detention. He claimed that, he was detained unlawfully because the Chief Magistrate erred in the proceeding and the warrant that she issued. Arana J. in the Supreme Court must have disregarded the irregularities in the proceeding and in the warrant of detention. She held that Mr. G. Seawell was

lawfully detained, and dismissed the application for **habeas corpus order**. Mr. Gary Seawell then appealed to this Court. We allowed the appeal, set aside the order made by Arana J. in 2014, quashed the warrant of detention issued by the Chief Magistrate on 22 October 2013, and discharged Mr. Gary Gordon Seawell from detention.

[71] I concurred in the decision to allow the appeal and to discharge Mr. Gary G. Seawell for the reason that, the Chief Magistrate erred in the warrant that she issued for the detention of Mr. Gary G. Seawell; the warrant was irregular, and so there was no warrant on which Mr. Gary G. Seawell was detained. He was being detained unlawfully. A further reason was that, the correspondence that the Chief Magistrate engaged in after the conclusion of the proceeding in her court showed that, she did not understand her part and **authority under the Extradition Act Cap. 112, Laws of Belize**. The learned Arana J. erred in that she disregarded the irregularity in the warrant of detention and the errors in the proceeding in the Chief Magistrate's Court. So, the appeal would be allowed.

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AWICH JA

DUCILLE JA

[72] I have had the benefit of reading the draft judgment prepared by the Learned President. I am in total agreement with his reasoning, conclusions and disposition. In the circumstances there is nothing that I can add with respect to it.

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DUCILLE JA