[1999–00 Gib LR 551]

THAUERER and MATICHEK v. ATTORNEY-GENERAL

COURT OF APPEAL (Neill, P., Glidewell and Staughton, JJ.A.):
September 25th, 2000

Criminal Procedure—bail—renewed application—magistrate to accept Supreme Court's earlier refusal of bail as correct at that time—new application successful only if change of circumstances justifies grant of bail

Criminal Procedure—bail—bail pending extradition—no presumption of bail under Constitution, s.3(3)—deprivation of liberty under Extradition legislation specifically authorized by s.3(1)(i)—in exercise of discretion, court may consider European Convention on Human Rights, art. 5(3) and E.C.H.R. case law, but bound by neither

Criminal Procedure—bail—factors to be considered—may infer likelihood of absconding from severity of potential sentence for offence, ease of departure, and lack of ties with Gibraltar—necessary degree of likelihood proportionate to potential harm to applicant if innocent and to public if guilty—proof required depends on stage of proceedings and extent challenged by applicant

The appellants applied for bail pending proceedings to extradite them to France to face drugs charges.

The appellants were arrested at the request of the French government that they be extradited on serious charges of importing cannabis. Bail was refused by the Supreme Court (Schofield, C.J.) pending the hearing of an application for judicial review challenging the validity of the Governor's authority to proceed. The application was dismissed (see 1999–00 Gib LR 268), and at the committal proceedings the appellants again applied for bail.

The Stipendiary Magistrate refused the application, holding that there was a presumption of bail and that the principle of judicial comity could not detract from the appellants' rights, but that since the Supreme Court had earlier refused bail and circumstances had not changed, bail would again be refused. He referred to a decision of the European Court of Human Rights, cited by the appellants' counsel, but declined to follow it, as it was not binding on the courts of Gibraltar.

The appellants obtained leave to apply for judicial review of the Magistrate's refusal of bail. The Supreme Court (Schofield, C.J.) held that

the Magistrate had erred in holding that he was bound by the higher court's decision on bail, and ought to have heard the application afresh. It reheard the application and refused bail on the ground that the appellants were likely to abscond, since (i) they faced severe sentences if convicted, (ii) they had no well-established ties with Gibraltar, (iii) the border with Spain was relatively easy to cross, and (iv) they had come to Gibraltar as the crew of a ship. The Chief Justice considered decisions of the European Court of Human Rights on the effect of art. 5(3) of the European Convention—which provided that a detainee was entitled to a trial within a reasonable time or release pending trial—and said that when the court could derive assistance from such decisions it should do so.

On appeal, the appellants submitted that (a) although the European Convention had not been incorporated into local law, the United Kingdom would be in breach of its international obligations if the Convention were not observed here, and accordingly the court should have regard to art. 5(3) and the case law of the European Court of Human Rights when exercising its discretion to grant bail; (b) they had a corresponding right to liberty under s.3(3) of the Constitution; and (c) the Crown had not proved that they were likely to abscond if granted bail, and the court had failed to consider alternative options to detention such as the confiscation of passports and reporting to the police.

The Crown submitted in reply that (a) the European Convention was not part of the law of Gibraltar and consequently conferred on the appellants no enforceable right to release pending trial; (b) s.3(3) of the Constitution, conferring similar rights on detainees, did not apply to the appellants, as s.3(1) provided an exception to the right to liberty, specifically covering extradition proceedings; and (c) the court had properly erred on the side of caution in refusing bail, since direct evidence that the appellants were likely to abscond was unlikely to be available, but the likelihood could be inferred from the factors listed in its decision.

Held, dismissing the appeal:

(1) Contrary to the Supreme Court's holding, the Magistrate had not been obliged to consider the bail application afresh. He had properly accepted the earlier decision of the Supreme Court as correct at the time it had been made, and concentrated on identifying the effect of any change in circumstances that had occurred since that decision (para. 12).

(2) Section 3(3) of the Constitution did not give rise to a presumption that bail would be granted, since s.3(1)(*i*) specifically provided for an exception to the protection from deprivation of liberty in extradition cases. Section 3(3) therefore did not apply (para. 16; paras. 29–31).

(3) Although the European Convention was not incorporated into Gibraltar law, and it was not suggested that local legislation enacted since the Convention should be presumed to accord with it, the court could refer to certain provisions of the Convention and the relevant case law of

the European Court for assistance in some cases (such as the present) in which it had to exercise a discretion. The court was not, however, bound by them (paras. 17–19).

(4) The following guidelines applied to the exercise of the Supreme Court's discretion: (i) the court should take account of all the relevant circumstances; (ii) it should not refuse bail without giving reasons; (iii) bail should be granted if no information about the applicant or his circumstances were available; and (iv) the evidence required successfully to oppose an application depended on the stage which the proceedings had reached and the extent to which it was challenged. Although there would rarely be direct evidence that an applicant might abscond, the likelihood could be inferred from factors such as the severity of the potential sentence upon conviction, the ease with which he might abscond, and the absence of circumstances tying him to Gibraltar. The degree of likelihood that the Crown had to show was proportionate to the potential harm to the applicant if detained when innocent and the potential harm to the public if he were released and absconded when guilty. The court was well placed to judge how easy absconding would be and the effectiveness of alternatives to detention such as bail conditions. It could also take into account the fact that conviction and imprisonment would become a lesser penalty to evade after the applicant had already served substantial time in custody pending trial (including time spent attempting to secure release) (paras. 20–24).

(5) Having regard to these principles and the relevant case law of the European Court, the Supreme Court had properly refused bail on the evidence before it. The appeal would therefore be dismissed (para. 25; paras. 27–28; paras. 31–32).

Cases cited:

(1) *Bezicheri* v. *Italy* (1989), Series A, No. 164; 12 E.H.R.R. 210.
(2) *Clooth* v. *Belgium* (1991), Series A, No. 225; 14 E.H.R.R. 717.
(3) *Letellier* v. *France* (1991), Series A, No. 207; 14 E.H.R.R. 83.
(4) *Mansur* v. *Turkey* (1995), Series A, No. 321; 20 E.H.R.R. 535.
(5) *Neumeister* v. *Austria (No. 1)* (1968), Series A, No. 8; 1 E.H.R.R. 91.
(6) *R.* v. *Home Secy., ex p. Brind*, [1991] 1 A.C. 697; *sub nom. Brind* v. *Home Secy.*, [1991] 1 All E.R. 720.
(7) *R.* v. *Nottingham JJ., ex p. Davies*, [1981] Q.B. 38; [1980] 2 All E.R. 775, applied.
(8) *Rantzen* v. *Mirror Group Newsps. (1986) Ltd.*, [1994] Q.B. 670; [1993] 4 All E.R. 975.
(9) *Stögmüller* v. *Austria* (1969), Series A, No. 9; 1 E.H.R.R. 155.
(10) *Wemhoff* v. *Germany* (1968), Series A, No. 7; 1 E.H.R.R. 55.
(11) *Winterwerp* v. *Netherlands* (1979), Series A, No. 33; 2 E.H.R.R. 387.

Legislation construed:
Gibraltar Constitution Order 1969 (Unnumbered S.I. 1969, p.3602), Annex 1, s.3(1): The relevant terms of this sub-section are set out at para. 29.
s.3(3): The relevant terms of this sub-section are set out at para. 29.

European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, November 4th, 1950; UK Treaty Series 71 (1953), Cmd. 8969), art. 5(3): The relevant terms of this paragraph are set out at para. 14.

F.H. Panford, Q.C. for the appellants;
R.R. Rhoda, Q.C., Attorney-General and *K. Warwick* for the Crown.

1 **STAUGHTON, J.A.:** Herbert Thauerer and Frank Matichek appeal against the decision of Schofield, C.J. on June 23rd, 2000, dismissing their applications for judicial review of a decision of the Stipendiary Magistrate, Mr. Anthony Dudley. He had refused to release them on bail pending extradition proceedings.

2 The two appellants were arrested in Gibraltar on February 19th, 1999, which is now one year and seven months ago, on board a vessel called the *Chally Mary*. Moored nearby was another vessel called the *Capricio of Sark*. They were arrested by reason of a request of the Government of France for their extradition on a charge of importing cannabis resin in an organized gang. It is said that they were members of the crew of two vessels involved in the importation at Port Camargue in France, in October and November 1996. In the case of Thauerer, the vessel was the *Capricio of Sark*, and in the case of Matichek, the *Chally Mary*.

3 On March 4th, 1999, the Governor of Gibraltar issued an authority to proceed, which is a necessary step in extradition proceedings. The appellants then applied to the Supreme Court (Criminal Division) for an order of certiorari to quash the authority. We are told by the Attorney-General that this was the first occasion when such a step had been taken in Gibraltar, but it was an application which the appellants were entitled to make. It was argued that the authority was flawed because it directed the Magistrate to proceed under the Extradition Act 1870 and that Act had been repealed by Schedule 2 of the Extradition Act 1989. Pending the determination of that application, the Stipendiary Magistrate adjourned the committal proceedings. Presumably he was asked to do so.

4 Schofield, C.J. granted the appellants leave to apply for certiorari, and on May 20th, 1999 he heard applications for bail by the two men. We have no record of what took place on that occasion, and it need not be analysed too closely in view of subsequent events. The probability is that, in accordance with the existing practice in Gibraltar (and England), no

evidence was adduced on that occasion except perhaps the request of the Government of France and any papers with it. It is probable that objections to bail were put forward by the Attorney-General such as the likelihood of the appellants absconding, their lack of community ties with Gibraltar, the severity of the sentence they might expect if convicted and the ease with which they could leave Gibraltar if bail were granted. The appellants were, no doubt, represented and answered, or could have answered, the Attorney-General's objections. The Chief Justice refused bail. After a substantive hearing of the judicial review application he dismissed it, on August 3rd, 1999 (see 1999–00 Gib LR 268).

5 Committal proceedings took place, in part, before the Stipendiary Magistrate on November 16th and 17th, 1999 and January 17th and 18th, 2000. For the most part, the time was taken up with a dispute as to whether the documents submitted by the Government of France had the required attestation and whether translations of the documents had the appropriate seals and certificates by way of verification. The Magistrate mainly rejected the appellants' objections, but to a certain limited extent he allowed them.

6 On the same occasion and at the end of the four-day hearing, the Magistrate heard renewed applications for bail. In this instance we have some record of his decision. He said that Mr. Panford, Q.C., for the appellants, referred in particular to *Letellier* v. *France* (3), which held (14 E.H.R.R. at 83) that where the only reason for continuing detention was the fear of absconding, bail had to be granted if the accused was in a position to provide adequate guarantees to ensure her appearance at the trial. The Attorney-General is recorded as submitting that (a) there was no presumption of bail in an extradition case; (b) there was a risk of the appellants' absconding by reason of their lack of community ties and also the seriousness of the offences; and (c) the comity of nations required that bail be restricted in extradition cases. The Attorney-General also told us that at that time he also relied on the ease of escape from Gibraltar. Once again, it seems that neither the appellants nor the Attorney-General produced any evidence relevant to bail other than the committal papers.

7 The Stipendiary Magistrate held that there was a presumption of bail, and that comity of nations could not erode the rights of an individual. He referred to the *Letellier* case, but then continued:

> "However, as Mr. Panford accepts, European Court of Human Rights decisions are not binding precedents, only persuasive. A bail application was made on behalf of the defendants in the Supreme Court. Such a bail application was refused. Supreme Court decisions are binding upon this court, and given that circumstances do not appear to have changed since then, the present application is refused."

8 Mr. Panford told us that the bail application was dealt with very briefly before the Magistrate. However that may be, I find no reason to believe that he was prevented from advancing any argument that he wished to advance, or adducing any evidence that he had available. The appellants were dissatisfied with the Magistrate's decision, first, as to the admission in evidence of some of the documents and, secondly, the refusal of bail. So they made, on February 25th, 2000, a second application for judicial review. Their notices of application on Form 86A also asked for a stay of the extradition proceedings pending the determination of the other relief sought.

9 Three days later, on February 28th, 2000, the Chief Justice ordered that leave to apply be granted in both cases, and that they be consolidated. Apparently, it was also ordered that the proceedings before the Stipendiary Magistrate be stayed for the time being, as the defendants had requested.

10 On March 31st, 2000 the Attorney-General, on behalf of the Government of France, in turn asked for judicial review of parts of the Magistrate's decision where his argument had been rejected. That did not, of course, include the refusal of bail. Leave to apply was granted on April 10th, 2000.

11 There followed at a later date a hearing, before the Chief Justice, of one aspect only of the judicial review proceedings, *i.e.* the complaint as to the Magistrate's decision to refuse bail on January 26th, 2000. Other aspects of the Magistrate's decision remain to be considered by the Supreme Court. Subject to the other business of the court, we hope that this will take place at an early date. Once again, no evidence on the topic of bail was adduced by either party apart from the committal papers, although it must have been known what grounds were relied on for the refusal of bail. Once again, the appellants were represented by counsel. We have no reason to suppose that they were prevented from saying anything that they wished to say.

12 Schofield, C.J. gave judgment on June 23rd, 2000. He held that the Magistrate had been in error in holding that he was bound by the previous decision of the Chief Justice on May 20th, 1999 relating to bail, as the Magistrate ought to have considered the bail application as a fresh application. I am not convinced that the Chief Justice was right on that point. The judgment of Donaldson, L.J. in the case of *R.* v. *Nottingham JJ., ex p. Davies* (7) ([1981] Q.B. at 43–44) shows, to my mind, that magistrates hearing a second or subsequent bail application should accept the decision of their colleagues on an earlier application as correct at the time when it was made. It is any change of circumstances and its effect on the earlier decision which the later court has to consider. That is the case, *a fortiori*, if the earlier decision was made by a higher court. However,

perhaps the Magistrate was putting it a bit high in using the word "binding." At all events, we now consider whether the fresh decision of Schofield, C.J. was correct on the material before him.

13 We have a fairly full transcript of the argument before Schofield, C.J. The question of community ties was mentioned twice in the argument, once by Mr. Panford and once by the Attorney-General. The question whether it was easy to leave Gibraltar without being noticed was twice mentioned by Mr. Panford. So was the fact that the two boats had been sold, it would seem, by the Admiralty Marshal in a suit for mooring charges. It was said by the Attorney-General that the role of the appellants, according to the committal papers, was as skippers of the two boats. Again, there was no evidence formally adduced by either side on those points, other than the committal papers. Nor, as far as we can see, was it said that evidence needed to be called on those matters.

14 Having ruled that the Magistrate was wrong to say that he was bound by the earlier decision of the Supreme Court, Schofield, C.J. went on to consider the application afresh (*de novo*). His reasons for refusing bail were, in essence (a) that the applicants faced potentially severe sentences if convicted; (b) that they had no well-established ties with Gibraltar; (c) the ease of crossing the frontier; and (d) the fact that each had come to Gibraltar as crew of a sea-going vessel. But on the way to those conclusions the Chief Justice had to face a substantial argument based on art. 5(3) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. That provides:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

15 The Chief Justice held that he ought to consider European decisions on the meaning and effect of that article if they provided assistance in the exercise of his discretion to grant or refuse bail. For that purpose, he referred to *Letellier* v. *France* (3); *Neumeister* v. *Austria (No. 1)* (5); *Mansur* v. *Turkey* (4); *Clooth* v. *Belgium* (2); *Stögmüller* v. *Austria* (9); and *Wemhoff* v. *Germany* (10). The same argument was advanced by Mr. Panford before this court, with the addition of *Winterwerp* v. *Netherlands* (11) and *Bezicheri* v. *Italy* (1).

16 What we have first to consider is the extent to which European human rights law is applicable in the City of Gibraltar. In the first place, the European Convention is not incorporated into the law of Gibraltar, nor is it expected to be, at any rate in the immediate future. The

Constitution of Gibraltar has its own provisions as to human rights. For present purposes the relevant provision is s.3(3):

> "Any person who is arrested or detained—
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> (*a*) for the purpose of bringing him before a court in execution of the order of a court; or
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> (*b*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,
>
> and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (*b*) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial."

Glidewell, J.A., with whose judgment I agree, explains the effect of this sub-section.

17 However, although the Human Rights Convention is not part of the law of Gibraltar, it may have some influence. When the United Kingdom subscribed to the Convention in the early 1950s, it did so on its own behalf and also on behalf of dependencies, including Gibraltar. We were told that if Gibraltar does not observe the Convention, the United Kingdom is in breach of its international obligations, and liable to be brought before the European Court of Human Rights. It may perhaps follow that legislation since enacted for Gibraltar, whether by Order in Council or Ordinance, is presumed to accord with the Convention if that is a possible interpretation: compare *R.* v. *Home Secy., ex p. Brind* (6) ([1991] 1 A.C. at 748, *per* Lord Bridge of Harwich), and *Rantzen* v. *Mirror Group Newsps. (1986) Ltd.* (8). That argument was, I think, advanced at one time in this litigation on behalf of the appellants, but it has fallen by the wayside. Mr. Panford does not say that we need to look at European cases for the purpose of construing Gibraltar legislation on this occasion.

18 The alternative argument is that when a court in Gibraltar is exercising a discretion, it must do so in accordance with the law pronounced by the European Court of Human Rights. In support of that, the judgment of the English Court of Appeal, given by Neill, L.J. (as he then was) in *Rantzen's case* is cited ([1994] Q.B. at 691): "It is also clear that article 10 may be used when the court is contemplating how a discretion is to be exercised." That was in terms relating to art. 10 on freedom of expression.

19 I would hesitate to say that it applies, or was intended to apply, to all of the hundreds of occasions when a judge has to exercise a discretion, or to all the provisions of the Human Rights Convention. However, Schofield, C.J. said in the present case: "I consider that where I can derive assistance from the Convention and the body of cases applying to it, in the exercise of my judicial discretion, as in this case, I should do so." The Attorney-General has not challenged that part of the Chief Justice's decision before us, so I accept it for the purposes of this case. But one must note that the Convention and cases decided upon it by the European Court of Human Rights were not said by the Chief Justice to be binding—merely that where a judge can derive assistance from them, he should do so.

20 I now pause for a moment to look at the principles which should apply to an application for bail in a country where the Human Rights Convention is not compulsorily applicable. The first principle must be that, as with all discretions, there are no rigid rules. The court must be guided by common sense and be flexible enough to look at all the circumstances in every case. Secondly, nobody should be refused bail without a reason. If the court's knowledge of the defendant and all other circumstances is a blank sheet, bail should be granted. Thirdly, the extent of the evidence required to oppose a bail application must depend on the stage in the case which has been reached and the extent to which the prosecution's evidence is challenged. In some cases, it would be absurd to expect the prosecution to produce clear evidence a day or two after arrest. Particularly in extradition cases, the prosecution may be obliged to arrest before it has made its own enquiries, and may have no more than the foreign government's request for extradition. And in many cases, both domestic and extradition, the grounds for refusing bail may not be challenged. If bail is granted at an early stage because only flimsy evidence is then available for the prosecution, it may be too late to revoke it when further enquiries are made.

21 One of the commoner grounds for refusing bail is that it is thought that the defendant will or may abscond. I would not be inclined to define the precise degree of likelihood that is required: it must depend on the circumstances. The degree of likelihood must be proportionate to the harm to the defendant if he is detained when he is innocent, and the harm to the public if he is guilty but has absconded and never been tried. It seems to me to be very doubtful, in the great majority of cases, that the prosecution will be able to call direct evidence that a defendant is likely to abscond. There may be exceptions, for example, if he has absconded before or has told the police officer arresting him that he intends to abscond.

22 Otherwise, the prospect of absconding must be inferred, if at all, from other circumstances. Factors which support this inference may be

that the defendant will face a severe sentence if convicted, or that it will not be difficult for him to get beyond the reach of the law, if he is granted bail, or if he has no ties with the community where he is arrested (by which I mean circumstances which would make him particularly keen to remain in that community). None of those factors will always be sufficient, alone or in combination with others, and none will necessarily be inadequate on its own.

23 Surely, a judge resident in this jurisdiction would be as good a person as any to know how easy it would be to abscond from Gibraltar with its unique topography, despite whatever efforts may be made under the Schengen Convention? I can see that confiscating a person's passport can effectively make flight difficult, for example, from an island, but the difficulty may be less if the defendant is shown to have some connection with a source of false passports, as is said to be the case with one of the appellants in this instance. On the other hand, I do not see that much is done to prevent a defendant absconding by requiring him to report to the police, whether monthly, daily or weekly. All it will do is tell the police when he *has* absconded. Of course, it is relevant to enquire whether security can be given, but almost invariably an offer of security must come from the defendant in the first instance. None has been made in this case, although the point was raised by the court.

24 It is also possible, as the European Court has said, that the longer a defendant has spent in detention, the less he is likely to be concerned about serving the rest of his sentence if convicted. That must be taken into account. And when it comes to counting the time which a defendant has already spent in detention, it must not be held against him that time has been spent by him in attempting to secure his release: that was his right. However, I do think that when it comes to assessing what is a reasonable time for him to be brought to trial, it is right to put into the equation the fact that there may have been court proceedings at his request, which have taken up some of the time that has elapsed.

25 On considering the case in accordance with these principles, and having regard to decisions of the European Court of Human Rights that have been cited, I hold that Schofield, C.J. was right to refuse bail for the reasons that he gave when he entertained these applications anew.

26 At the hearing before us there was introduced for the first time a letter from Stephen Bullock & Co. to Mr. Panford, the appellants' leading counsel, dated August 16th, 2000. It was shown to the Attorney-General last Friday. It sets out connections which each appellant "has or has had with Gibraltar." I do not know why it was not produced on any of the three previous applications for bail. For the most part, the letter relates to events occurring some time before the appellants were arrested in 1999. There is apparently a mention of the case fixed before the Magistrate for

October 24th. He can consider the letter then, if he thinks it right to do so, and what weight (if any) to give to it as evidence of community ties.

27 I would dismiss this appeal.

28 **GLIDEWELL, J.A.:** I agree with Staughton, J.A., for the reasons which he has given, that this appeal should be dismissed. I wish only to add a few words of my own on one issue, which was originally raised in the skeleton argument of Mr. Panford, Q.C., though not pursued in oral argument. This concerns what Mr. Panford called "the presumption of bail" under the Gibraltar Constitution Order.

29 Section 3 of the Annex to the Gibraltar Constitution Order 1969, provides, so far as is material:

> "(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say—
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> . . .
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> (*d*) for the purpose of bringing him before a court in execution of the order of a court;
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> (*e*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;
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> . . .
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> (*i*) for the purpose of . . . effecting the expulsion, extradition or other lawful removal of that person from Gibraltar, or the taking of proceedings relating thereto.
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> . . .
>
> (3) Any person who is arrested or detained—
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> (*a*) for the purpose of bringing him before a court in execution of the order of a court; or
>
> (*b*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,
>
> and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (*b*) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial."

30 Mr. Panford's original argument was that s.3(3) applies to extradition proceedings, as well as to persons arrested on suspicion of having committed offences in Gibraltar or in the execution of an order of a court in Gibraltar. The Attorney-General argues to the contrary. He submits that paras. (*a*) and (*b*) of s.3(3) are in precisely the same wording as s.3(1)(*d*) and (*e*), which do not relate to extradition. Extradition is specifically covered by s.3(1)(*i*). Thus, the provisions of s.3(3) do not apply to extradition.

31 I agree with and adopt the argument of the Attorney-General on this issue. For this reason, in addition to those set out by Staughton, J.A., I too would dismiss the appeal.

32 **NEILL, P.:** I also agree that this appeal should be dismissed for the reasons given by my Lords. I have had the opportunity of considering their judgments and I do not think it is necessary for me to add anything.

Appeal dismissed.
