[2001–02 Gib LR 116]

R. v. STIPENDIARY MAGISTRATE, ex p. THAUERER

R. v. STIPENDIARY MAGISTRATE, ex p. MATICHEK

R. v. STIPENDIARY MAGISTRATE, ex p. ATTORNEY-GENERAL

SUPREME COURT (Schofield, C.J.): May 29th, 2001

Extradition and Fugitive Offenders—committal proceedings—documents from requesting country—authentication—no separate authentication needed under Extradition Act 1870, ss. 14 and 15 for statements in bundle—sufficient to apply seal once at head of bundle

Extradition and Fugitive Offenders—committal proceedings—documents from requesting country—certification—in Extradition Act 1870, s.15 "officer" need not be "judicial officer"—statements properly certified by assistant public prosecutor of foreign court and court Greffier (Registrar)—evidence needed that document properly certified by translator

Extradition and Fugitive Offenders—committal proceedings—documents from requesting country—affirmation—means confirmation or declaration of truth of document—statement not made before magistrate "affirmed" if made in circumstances demonstrating solemnity and gravity

The Crown, on behalf of the French Government, sought the committal of the applicants by the Stipendiary Magistrate to await extradition on charges of conspiracy to import a controlled drug and related offences.

Three bundles of statements from France (variously a joint statement of customs officers, witness statements made to the police and witness statements made before the French magistrate) were submitted in support of the application to commit. Most of the statements were individually certified by the clerk of the French court (whose status could be attested to by an expert resident in Gibraltar), one was certified by a translator and an assistant public prosecutor certified the statements in a supplemental bundle. All the statements were held by the Stipendiary Magistrate to satisfy the requirements of ss. 14 and 15 of the Extradition Act 1870, that they were (a) sworn or affirmed; (b) certified by a judge, magistrate or officer of the foreign state; and (c) authenticated by the oath of a witness

or sealed by the official seal of the Minister of Justice or some other minister of state. The applicants applied for judicial review of the Stipendiary Magistrate's decision.

They submitted that the documents were (a) not properly certified by a judicial officer; and (b) not properly affirmed within the meaning of the Extradition Act 1870, s.15.

Held, ruling as follows and remitting the case to the Stipendiary Magistrate:

(1) Each individual statement in a bundle did not require separate authentication under ss. 14 and 15, and it was sufficient that the seal was applied only once, at the head of each bundle (para. 11).

(2) Most of the statements were properly certified by an "officer of the foreign state" within the meaning of s.15(2), with the exception of that certified by the translator. It was not necessary to interpret "officer" as a "judicial officer" and the statements were therefore properly certified by the assistant public prosecutor of the French court and the Greffier (a position similar to that of a Registrar of the Supreme Court whose role was to authenticate documents). The latter finding could be made on the basis of the expert evidence on French law, available within Gibraltar, which it was open to the court to call. It would also be open to the French Government to adduce by evidence that the document certified by the translator was properly certified (paras. 16–18; para. 20).

(3) Not all of the statements were properly affirmed, which had to be interpreted as meaning a confirmation or declaration that something was true and not given the English meaning under the Oaths Act 1978. For a statement not made before a magistrate to have been properly affirmed, it had to have been made in circumstances demonstrating solemnity and gravity. The joint statement by the customs officers was not an affirmation, as it contained no declaration that its contents were true or any indication that it had been made before another official. Witness statements made to the police at the request of the investigating magistrate were more formal than normal witness statements but they were not affirmations, as they had not been vested with the necessary solemnity and gravity. The record made at the recitation of other witness statements, that each witness "previously at the trial has taken oath to say the truth, and nothing but the truth" and "has made the following deposition" and that it had been "read out by translator, persisting and signing with us," vested the statements with the solemnity to be affirmations. The criterion of solemnity and gravity was clearly applicable, however, to statements taken in proceedings before a magistrate and those witness statements taken in the presence of an investigating magistrate in France were therefore properly affirmed (para. 24; para. 26; paras. 32–33; paras. 35–37).

Cases cited:

(1) *Dowse* v. *Governor of Pentonville Prison*, [1983] 2 A.C. 464; *sub nom*. *Dowse* v. *Govt. of Sweden*, [1983] 2 All E.R. 123, followed.

(2) *Oskar* v. *Govt. of Australia*, [1988] 1 A.C. 366; [1988] 1 All E.R. 183, applied.

(3) *R*. v. *Bow St. Magistrates' Ct., ex p. Van der Holst* (1985), 83 Cr. App. R. 114, followed.

(4) *R.* v. *Governor of Pentonville Prison, ex p. Singh*, [1981] 1 W.L.R. 1031; [1981] 3 All E.R. 23; (1981), 73 Cr. App. R. 216, followed.

(5) *Twena, Ex p.*, English Q.B.D., November 27th, 1980, unreported, considered.

Legislation construed:

Extradition Act 1870 (33 & 34 Vict., c.52), s.14: The relevant terms of this section are set out at para. 5.

s.15: The relevant terms of this section are set out at para. 6.

Order in Council, May 16th, 1878 (France), art. VIII: The relevant terms of this article are set out at para. 8.

C. Salter and *S. Bullock* for Thauerer;

S.L. ffrench Davis for Matichek;

R.R. Rhoda, Q.C., Attorney-General, and *K. Warwick, Crown Counsel*, for the Crown (on behalf of the Government of France).

1 **SCHOFIELD, C.J.:** The Government of France seeks the extradition of Frank Stephen Matichek and Herbert Thauerer on charges which amount to conspiracy to import a controlled drug and related offences. It is alleged that the applicants were captains of vessels used to transport cannabis resin into France. Several of their alleged co-conspirators have already been tried in the French court at Nimes and some are serving lengthy custodial sentences.

2 The applicants were arrested in Gibraltar on February 19th, 1999. Committal proceedings were adjourned by the learned Stipendiary Magistrate, pending the applicants' application for certiorari to quash the authority to proceed issued by His Excellency the Governor on May 5th, 1999. That application and the ensuing appeal were dismissed.

3 When the committal proceedings recommenced before the Stipendiary Magistrate, the applicants argued that the material upon which the Attorney-General sought their extradition on behalf of the French Government did not comply with ss. 14 and 15 of the Extradition Act 1870. The applicants seek judicial review of his decision on those arguments. The Stipendiary Magistrate had refused bail to the applicants and an application to review his decision in that regard was consolidated with this application. That part of the judicial review proceedings has been dealt with both by me and on appeal to the Court of Appeal. In the

event the Stipendiary Magistrate reviewed his order refusing bail, and granted bail on stringent terms. Those terms were met by Thauerer, but were not met by Matichek, who is still in custody.

4 I am here dealing with that part of the judicial review proceedings which concerns the question of whether the material before the Stipendiary Magistrate and upon which the Government of France seeks the applicants' extradition, complies with the requirements of ss. 14 and 15 of the Extradition Act 1870.

5 Section 14 reads:

> "Depositions or statements on oath, taken in a foreign state, and copies of such original depositions or statements, and foreign certificates of or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence in proceedings under this Act."

6 Section 15 reads:

> "Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of or judicial documents stating the fact of a conviction, shall be deemed duly authenticated for the purposes of this Act if authenticated in manner provided for the time being by law or authenticated as follows:
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> (1) If the warrant purports to be signed by a judge, magistrate, or officer of the foreign state where the same was issued;
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> (2) If the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate, or officer of the foreign state where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require; and
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> (3) If the certificate of or judicial document stating the fact of conviction purports to be certified by a judge, magistrate, or officer of the foreign state where the conviction took place; and
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> if in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the minister of justice, or some other minister of state: And all courts of justice, justices, and magistrates shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof."

7 Section 4 of the Extradition Act 1873 extends the provisions of ss. 14 and 15 to "affirmations taken in a foreign state, and copies of such affirmations."

8 The Extradition Acts are applied to Gibraltar by Order in Council and s.5 of the Act of 1870 provides that by such Order in Council, "limitations, restrictions, conditions, exceptions and qualifications" of the provisions of the Act may be imposed in the application of the Act to and from a particular state. In relation to the material under review in these applications, art. VIII of the Order in Council of May 16th, 1878, directing that the Extradition Acts shall apply in the case of France, is relevant. It reads:

> "Warrants, depositions, or statements on oath, issued or taken in the dominions of either of the two High Contracting Parties, and copies thereof, and certificates of or judicial documents stating the facts of conviction, shall be received in evidence in proceedings in the dominions of the other if purporting to be signed or certified by a Judge, Magistrate, or officer of the country where they were issued or taken provided such warrants, depositions, statements, copies, certificates, and judicial documents are authenticated by the oath of some witness, or by being sealed with the official seal of the Minister of Justice or some other Minister of State."

9 We are here dealing with three bundles of statements, which the Attorney-General tenders as admissible under the Act of 1870, a bundle relating to each applicant and a supplemental bundle which deals with the identification of each applicant. In order to be so admissible the statements must comply with the provisions set out above in that—

(i) they must be sworn or affirmed;

(ii) they must be certified under the hand of a judge, magistrate or officer of the foreign state;

(iii) they must be authenticated by the oath of some witness or sealed by the official seal of the Minister of Justice or some other minister of state.

10 Before the learned Stipendiary Magistrate, objection was taken to the admission of the statements on all three heads. I shall deal with the objections in reverse order.

Authentication

11 Before me, Mr. Salter for the applicants did not press the objections relating to the authentication of the statements by the French Minster of Justice under head (iii) above. Each of the three bundles of statements is bound together and sealed with the official seal of the French Minister of Justice. As I understand it, the objection taken in the lower court was that each individual statement required authentication or sealing and it was argued that it was insufficient that the seal was applied only once, at the head of each bundle. The Stipendiary Magistrate was referred to the

House of Lords decision of *Oskar* v. *Govt. of Australia* (2), where documents tendered in similar form in proceedings under the similar provisions of the Fugitive Offenders Act 1967, were accepted by their Lordships' House as being properly authenticated. Applying this authority, the Stipendiary Magistrate had no difficulty in finding that the three bundles were properly authenticated by the seal of the French Minister of Justice. Mr. Salter quite rightly did not seek to persuade me that his decision was erroneous. I fully agree with the learned Stipendiary Magistrate's decision in that regard and Mr. Salter's concession upon it.

Certification

12 The next point taken is that each statement was not properly certified by a judge, magistrate or officer of the French state pursuant to s.15(2).

13 So far as the main bundles are concerned, the Stipendiary Magistrate found that the letter attached to each bundle signed by the head prosecutor, Olivier Bontain, did not amount to certification of the statements in the bundle because the letter did not identify each statement. He held:

> "Whilst the integrity of the evidence is maintained by virtue of the documents being tied together, such integrity must be in the context of certification relative to the originality of, or certification of copies of the documents so bound together. There is no direct statement certifying the 'reports taken from the criminal file' as either true copies or originals. Certification is the purpose of s.15(2). *Espinosa*, [1986] Crim. L.R. 684, D.C. is authority for the proposition that:
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> > 'No formal incantation is necessary. It is enough if the words actually used . . . can be said to amount to a declaration or attestation by legal certificate.'
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> I cannot, however, assume such a certification from the face of the letters before me when there is no form of words whatsoever from which I can properly infer whether the documents are originals or true copies."

14 As I understand it, no criticism is made of that finding, either by the applicants or the Government of France. However, most of the statements are individually certified as true copies by the clerk of the French court and they were held by the Stipendiary Magistrate to be properly certified for the purpose of s.15(2). He held that the clerk of the court was an officer of the French state. In *R.* v. *Bow St. Magistrates' Ct., ex p. Van der Holst* (3), the Queen's Bench Divisional Court held that a public prosecutor of The Netherlands was an officer of state for the purposes of certification. The Stipendiary Magistrate held that if a public prosecutor is an officer of state, so too is a clerk of the court.

15 Mr. Salter argued that *Van der Holst* ought not to be followed in this jurisdiction. His argument went that the Act of 1870 requires the judicial scrutiny of documents and the safeguard enshrined in the Act is that a person should not be sent to another country on the say-so of the executive. He argues that the expression "judge, magistrate, or officer of the foreign state" should be construed narrowly so that only an officer of state *ejusdem generis* as a judge or magistrate qualifies. However, Mr. Salter did not go so far as to say that a person holding a position which is the French equivalent of our clerk to the justices would not qualify. Rather, he argued that this court does not know the status of a French clerk of the court and that on the face of the documents before us, we do not know exactly the nature of the position that the certifying officer holds.

16 In the event, Mr. Salter's objections fell away following the admission of the evidence of Ms. Briquet, who formerly practised at the Paris Bar and who is now the assistant manager of the Indo Suez Trust Co. in Gibraltar. Her testimony was that the statements in question were certified by an officer who goes by the title of "Greffier" and who holds a position more like a Registrar of the Supreme Court. His role is to authenticate documents and he affixes stamps to them and signs them. Without such authentication, such documents would be void. It is my view that he is just such an "officer of the foreign state" as is envisaged by s.15(2).

17 I should say that I admitted the evidence in the face of an objection by Mr. Salter. It seemed to me that we were considering the status of a French official and that we had the means available to determine a matter of fact, which impacted seriously upon the extradition application. It would not have been in the interests of justice to keep the evidence out. I considered what injustice would be felt in Gibraltar if an application for extradition reached the Nimes court from our jurisdiction, which contained documents certified by our clerk to the justices or Registrar and if such application were rejected by the French court because the judge there did not know the status of the clerk to the justices or the Registrar.

18 There is one document in the bundles (Document 21 of the Matichek bundle, the bundle we used for the purposes of these proceedings) which is certified by a translator. The Stipendiary Magistrate said that on the material before him he was not satisfied that the translator is an officer of state. However, in his ruling the Stipendiary Magistrate indicated that the Government of France may wish to adduce evidence as to the status of the translator. I must say that, probably through oversight, Ms. Briquet's attention was not drawn to this statement and she was not asked to assist the court in regard to the translator's status. In the event I agree with the Stipendiary Magistrate's finding and it would still be open to the Government of France to seek to satisfy the Stipendiary Magistrate by

evidence that Document 21 is properly certified, subject to what I have to say hereafter on the objection to the statement not being an affirmation.

19 The statements in the supplemental bundle were bound together and were certified together by letter of Pierre Cazenave, assistant public prosecutor in the Court d'Appel de Nimes. In *Oskar* (2), Lord Ackner had this to say about s.15(2) ([1988] 1 A.C. at 377):

> "I agree with the Divisional Court that the section does not require each statement to carry on its face a certificate from the magistrate. Such a requirement would be highly artificial. The section is complied with if there is a separate certificate, which sufficiently identifies all the statements which it certifies, as in the instant case, where they are all tied together."

20 Mr. Salter maintains his argument that a public prosecutor, or his assistant, is not a proper officer to certify a document under s.15(2). In *Van der Holst* (3) it was held that for the purposes of s.15(1) there was no need to read "officer" as meaning "other judicial officer" and that a public prosecutor was plainly an officer for the purposes of certification of a warrant. The Stipendiary Magistrate held that this finding applied as much to depositions, statements under oath or affirmations under s.15(2), as to warrants under s.15(1). I agree. The statements in the supplemental bundle were properly certified.

Affirmation

21 None of the statements upon which the Stipendiary Magistrate is asked to extradite the applicants is a deposition or statement under oath. However, the Government of France submits that they are affirmations so as to bring them within the terms of s.14, as extended by the Act of 1873.

22 The Stipendiary Magistrate was referred to two authorities to assist him in his decision on whether the statements tendered amounted to affirmations. The first is the decision of the Queen's Bench Divisional Court in *R.* v. *Governor of Pentonville Prison, ex p. Singh* (4), in which the Government of Norway sought the extradition of the applicant on alleged drugs-related offences. The evidence before the magistrate included unsworn statements given before the Norwegian court by the applicant's alleged accomplices. The Norwegian Penal Code precluded the giving of evidence on oath by accomplices and the statements were read in court in Norway to their makers and, having been accepted as true, were incorporated into the court record. A few days later that acceptance was repeated in court after the witnesses had been reminded of the provisions of the Penal Code relating to false evidence. In accepting that the statements of the accomplices amounted to affirmations for the purposes of s.14, Ackner, L.J. had this to say ([1981] 1 W.L.R. at 1036):

"Mr. Du Cann submits that there are three requirements for a valid affirmation. These are: (1) a solemn undertaking has to be given to the judicial authority; (2) it must be given prior to the giving of evidence to the court; (3) the undertaking ought to include some reference to a promise to tell the truth—however expressed.

The right to affirm was introduced in 1838 for the benefit of Quakers and Moravians and the essential part of the declaration is still retained today, namely, 'I . . . do solemnly, sincerely, and truly declare and affirm.' Although neither party suggests that this or any closely comparable formula has to be used, it is agreed that the mere signature to a document or the verbal acknowledgment that its contents are correct cannot amount to an affirmation. Where then is the line to be drawn?

The answer cannot be precise; it must be a matter of fact and degree dependent upon the particular circumstances of the case. I do not consider that the affirmation need take place prior to the making of the statement. What is required, where the statement has been made, is its adoption in circumstances which recognise the gravity and importance of the truth being told on the particular occasion. I would not necessarily accept that the mere acknowledgment, albeit before a judicial authority, that what has been previously said is the truth would amount to an affirmation. But in this case, the acknowledgment before the judicial authority was made after the terms or the substance of section 168 of the Norwegian Penal Code was drawn to the attention of each of the alleged accomplices. The fact that the provisions of this section were not drawn to their attention initially when they appeared before the judge does not seem to me, in the circumstances of this case, to make any material difference. They were brought back before the court within a very short time of their initial appearance and their subsequent acknowledgment in the circumstances which I have described of the truth of what they had previously said amounted, in my judgment, to a sufficient acknowledgment."

23 *Singh* (4) was considered by the House of Lords in *Dowse* v. *Governor of Pentonville Prison* (1). That case involved an application to extradite the applicant to Sweden for various drugs-related offences. He applied to the Divisional Court for a writ of habeas corpus on the ground that the magistrate had wrongly admitted in evidence against him statements made by an alleged accomplice in Sweden, which were not taken on oath or by way of affirmation. These statements were made by the alleged accomplice in the course of his interrogation by the police in a pre-trial investigation and in them he accused the applicant of involvement in certain illegal activities. It is an offence in Sweden to

make a false allegation against a person in the course of such a pre-trial investigation. The accomplice was then taken before the District Court in Sweden, where he was reminded that he stood to be sentenced if his statement was false, the record of his statement was read to him and he confirmed it as true. It was held that the accomplice's statement amounted to an affirmation for the purposes of s.14.

24 In delivering the opinion of the House, Lord Diplock had this to say ([1983] 2 A.C. at 470–471):

> "It is rightly conceded that the expression 'affirmation' appearing in an Act of Parliament which provides for the entry by the United Kingdom into extradition treaties which make reciprocal arrangements for the surrender of fugitive criminals to and by foreign countries whose legal procedures in criminal cases may differ widely from one another and in particular from those of England, cannot be confined to the narrow technical meaning of a statement made after reciting the form of words that was permitted as a substitute for an oath in 1873 and is now set out in section 6 of the Oaths Act 1978. Since it is to be applied to procedures which take place in a country other than England, in casu Sweden, where certain categories of witnesses of fact are not permitted to give evidence before a court on oath, it must be understood in some wider sense. The primary and natural meaning of an 'affirmation' in ordinary speech is a confirmation or declaration that something is true; and I see no reason for not giving to the word, where it appears in section 14 of the Act and article 13 of the Treaty, its primary and natural meaning.
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> The reference in sections 14 and 15 of the Act and article 13 of the Treaty to affirmations and statements 'taken' in the state that is requesting extradition, and the requirement in section 15(2) that they should be authenticated by being 'certified under the hand of a judge, magistrate, or officer of the foreign state where the same were taken,' indicate that an affirmation to be admissible in evidence must be one the making of which involved some formality of an official character; and in my view, make it clear that where the formality consists of the affirmation being made in proceedings before a judge or magistrate who gives a certificate to that effect this is sufficient to make the statement certified by the judge or magistrate as having been made in those proceedings admissible in evidence in extradition proceedings brought under the Extradition Act.
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> It was contended on behalf of Dowse that upon the true construction of section 14 no statement that had not been made on oath in the country by which extradition was requested was

admissible in evidence as an affirmation unless not only was it declared to be true by the maker on an appearance before a judicial authority, but also the maker of the statement would incur penal sanctions if the statement were not true. For my part I can see no grounds on which, as a matter of construction, the absence of a penal sanction for making an affirmation before a judicial authority that is false prevents it from being an affirmation within the meaning of section 14. Absence of penal sanctions may go to weight; it cannot go to admissibility where the affirmation is made before a judge or magistrate—and I would remind your Lordships that this appeal is not concerned with affirmations taken by a non-judicial officer of the foreign state, to which different considerations might apply."

25 Lord Diplock went on to consider the decision of the Divisional Court and its adoption of the test stated by Ackner, L.J. in *Singh* (4), in the following terms (*ibid*., at 471–472):

"In their judgment in the instant case the Divisional Court [1983] Q.B. 254 treated as the criterion of the admissibility of an affirmation that it was made in circumstances of solemnity and gravity—a requirement that they held to have been fulfilled. In adopting this criterion they were following what had been said by Ackner L.J. in *Reg.* v. *Governor of Pentonville Prison, Ex parte Singh (Harmohan)* [1981] 1 W.L.R. 1031, 1036:

> 'What is required, where the statement has been made, is its adoption in circumstances which recognise the gravity and importance of the truth being told on the particular occasion.'

I would agree, my Lords, that this may be the appropriate criterion to apply to an affirmation taken otherwise than upon oath by a non-judicial officer of a foreign state; but for the reasons given earlier, based upon the language of sections 14 and 15 of the Extradition Act, I am of opinion that where the affirmation of a statement is made and recorded in legal proceedings before a foreign judge or magistrate who certifies the correctness of the record, duly certified copies and translations of the record are admissible as evidence of the facts contained in the statement so affirmed."

26 It would seem, therefore, that an affirmation must be made in circumstances of solemnity and gravity if the affirmation is taken other than in proceedings before a magistrate, but that this criterion need not be applied when it is taken in such proceedings.

27 The last case from which I have derived assistance is the Queen's Bench Divisional Court decision in *Ex p. Twena* (5). The Stipendiary Magistrate was referred to its citation in *Jones on Extradition* (1995) and

I have been able to obtain a copy of the transcript. Following a request for his extradition by the Government of the Netherlands, the magistrate remanded Twena in custody. The case against him rested mainly on the evidence of one Tsim, who was an alleged accomplice. Tsim made a statement to the police upon interrogation. Immediately after he had made the statement, it was read over to him and he said that he adhered to it, but refused to sign it. Tsim was subsequently produced before an examining magistrate in the context of the proceedings against Twena. He declared that he would tell the truth and nothing but the truth and then his earlier statement given to the police was read out to him. Tsim was asked whether this was his statement, whether its contents were correct and whether he adhered to it. He accepted the statement was his and that it was correct, but he declined to sign the statement.

28 The Divisional Court (Donaldson, L.J. and Hodgson, J.) held that they had to find a document which could be said to be the affirmation of the witness Tsim, which was duly authenticated (certified) by a judicial authority in Holland. The court held that the record of proceedings before the examining magistrate did not amount to an affirmation. Donaldson, L.J. said, in relation to that record:

> "It seems to me that that is a document which is evidence of Tsim having affirmed in open court that the contents of the police record of his statement to them were correct, but that it is not an affirmation because an affirmation in this context must be a document which is in some way acknowledged by the witness as being his solemn declaration. He can acknowledge it in a number of ways. The most obvious way to acknowledge it is to sign it. Next, although it may be less usual, he could have written it in his own handwriting without signing it, but that is not, in my judgment, the limit of the number of ways in which someone may acknowledge a document as his affirmation."

29 He went on to say:

> "I have come to the conclusion, in the light of the further argument since the adjournment, that the affirmation here is the statement, or the record of the statement, made by the police officers appearing within inverted commas at pages 67 and 71, which was not originally an affirmation at all but became an affirmation when adopted by Tsim before the examining magistrate. That document having become his affirmation, the magistrate by the document at pages 62 and 63, and also by his signature at page 69, has duly authenticated that document, which has become Tsim's affirmation at the proceedings before the magistrates."

30 I should add that the decision in *Twena* (5) preceded *Singh* (4) and *Dowse* (1) and was referred to by Skinner, J. in *Singh* only to support the

proposition that an affirmation must be a document like a deposition or statement on oath.

31 I do not think that *Twena* is authority for the proposition that a signature at the foot of a statement made to the police makes that statement an affirmation. According to Donaldson, L.J., to create an affirmation, a statement must be acknowledged as being the maker's solemn declaration. There must be something other than a mere signature for it to amount to a solemn declaration: a form of words which demonstrates in the *Singh* sense that it is adopted by its maker. In any event, Ackner, L.J. in the passage quoted from *Singh* ([1981] 1 W.L.R. at 1036) clearly states that a mere signature cannot amount to an affirmation.

32 Let me now look at the relevant documents in the light of those three authorities. I have little difficulty in finding that those statements of witnesses taken in the presence of an investigating magistrate in France amount to affirmations. In relation to Documents 6, and 12 to 15, the witness making the statement was examined by the magistrate, was invited to read the record of the examination and maintained it as his statement. The record was then certified by the clerk of the court. In my view, the record fell within the principles enunciated in *Dowse* (1).

33 Document 4 is a joint statement of nine customs officers drawn up at the request of the general manager of Customs and Indirect Duties in Paris. It was read to some of the applicants' alleged accomplices and was signed by them and by the nine makers. There is no indication on the translated copy that the statement was made before any other official, but, more importantly, there is nothing on the statement in the form of a declaration that its contents are true. It seems to me to be no more than a joint witness statement. It does not demonstrate the solemnity or formality required of an affirmation and was not made in circumstances which demonstrated that the witnesses understood the gravity of the situation or the importance of telling the truth. I do not regard it as an affirmation so as to be admissible as evidence for consideration by the Stipendiary Magistrate.

34 Document 5 is a report of an expert tendered to an investigating magistrate in chambers. It is conceded by Mr. Salter that this amounts to an affirmation.

35 Documents 7 to 11, 16 and 17 are reports of police officers made to the investigating magistrate in response to his request for evidence by way of letters rogatory. Each document is headed "Proces-Verbal." It would appear that each statement is signed by its maker. In the case of Documents 10 and 11, they are the signed statements of witnesses taken by the police officer making the report to the magistrate. Ms. Briquet

assisted the court on the process under which such statements are tendered. The process is conducted under the supervision of the investigating magistrate, who instructs the officers, by means of letters rogatory, to gather evidence. The officers then submit their evidence by means of such statements, and upon the statements so tendered, the magistrate will decide whether to call witnesses to testify and whether anyone should be charged.

36 In my view, the statements may be more formal than witness statements made to the police in the course of investigation in this jurisdiction because they are made at the behest of an investigating magistrate. Nonetheless, they are statements made for the purpose of, and in the process of, the investigation and there is nothing to demonstrate that they have been adopted before the magistrate or have been invested with the necessary solemnity to allow them to be regarded as affirmations. They have not been made or adopted in circumstances which recognize the gravity and importance of the truth being told and I do not consider that they should be admissible before the Stipendiary Magistrate.

37 Documents 22 and 25 are statements (referred to in the translated copies as "depositions") made to a police officer by three of the alleged co-conspirators, identifying the two applicants by photograph. The statements were taken by the Stipendiary Magistrate to be depositions, but they do appear to be more in the nature of witness statements taken at the demand of the state public prosecutor of the Appeal Court of Nimes, for the purposes of these extradition proceedings. Be that as it may, before the recitation of each "deposition" there is recorded that each witness "previously at the trial has taken oath to say the truth, and nothing but the truth" and "has made the following deposition." Following the statement is a record: "Read out by the translator, persisting and signing with us." To my mind this record invests the statements with the requisite formality and solemnity to pass the test in *Singh* (4). The statements were made in circumstances which recognized the gravity and the importance of the truth being told.

38 I should, perhaps, add here that Document 21 does not seem to fall within the category of statements admissible as either being taken before an examining magistrate or in circumstances of formality and solemnity, so as to make it an affirmation.

39 All the above statements were in the Matichek bundle or the supplemental bundle. In his ruling, the Stipendiary Magistrate makes reference to Documents 6 and 9 of the Thauerer bundle and found that they are *prima facie* on oath and therefore comply with the requirements of ss. 14 and 15. No reference was made in the proceedings before me to these two documents and I have taken it that the Stipendiary Magistrate's finding in connection therewith has not been called into question.

40 On the above findings, on the admissibility of the material before the learned Stipendiary Magistrate, I understand that the applicant's counsel will now consider whether to make further representations before me as to the way forward or decide to make his representations directly to the lower court. I know that counsel is conscious of the length of time these proceedings have taken thus far and I trust that the proceedings will now move forward with greater speed.

Order accordingly.