[2013–14 Gib LR 338]

R. v. I. MARRACHE, B. MARRACHE, S. MARRACHE and TURNBULL

SUPREME COURT (Grigson, Ag. J.): May 30th, 2013

Criminal Procedure—prosecution case—disclosure of relevant information—disclosure in criminal proceedings prior to Criminal Procedure and Evidence Act 2011 ("CPEA"), Part 12 governed by common law—Criminal Procedure Act 1961, s.4, which applied to Gibraltar English law on disclosure "for the time being," did not make post-1961 English legislation applicable in Gibraltar

Evidence—improperly obtained evidence—admissibility—evidence apparently revealing substantial fraud admissible even if seized in unlawful search—excluding such evidence would bring administration of justice into disrepute, and English common law clear that evidence obtained improperly/unlawfully generally admissible, subject to clear exceptions

Police—entry, search and seizure—search warrants—warrant issued for one address (5 Cannon Lane) authorizes search of parts of premises later attached and originally accessed from different street (Pitman's Alley)—especially if original name widely used to refer to whole premises

The defendants challenged the validity of a warrant issued to search their premises for evidence relating to allegations of false accounting.

On February 9th, 2010, the Magistrate issued a warrant to search the offices of Marrache & Co. at 5 Cannon Lane for evidence relating to allegations of false accounting. The offices at 5 Cannon Lane had been joined by a corridor to another set of offices, originally accessed from Pitman's Alley. One part of the premises was freehold, the other leasehold, and both were subject to separate mortgages. Both parts of the premises were searched by the police, and evidence from both parts was seized. The defendants questioned (a) which were the applicable rules governing disclosure on the date the investigation was commenced (February 2010) as the Criminal Procedure and Evidence Act 2011 ("CPEA"), Part 12 did not come into force until November 2012; (b) the legality of the search of the Pitman's Alley offices; and (c) the admissibility of any evidence recovered from the Pitman's Alley offices.

The applicable law

The second defendant submitted that the Criminal Procedure Act 1961, s.4, which stated that "criminal jurisdiction shall, as regards practice,

procedure and powers, be exercised . . . by the Supreme Court . . . in conformity with the law and practice for the time being observed in England in the Crown Court," meant that the law on the practice, procedures and powers relevant to the Marrache investigation was the current law of England—in particular, the Criminal Procedure and Investigation Act 1996 ("CPIA"), the Police and Criminal Evidence Act 1984 ("PACE"), and the Codes of Practice enacted under PACE.

The Crown submitted in reply that (a) since the parts of the CPIA relating to disclosure and criminal investigation were concerned with disclosure between the prosecution and defence, and the investigation of crimes by the police, not the practice, procedure and powers of the Crown Court (and therefore the Supreme Court), s.4 did not apply; and (b) in any event, the Criminal Procedure and Evidence Act 2011 ("CPEA"), s.266(2), which referred to the "rules of common law [relating to disclosure] which were effective immediately before the commencement of this part" made it clear that CPIA was never applicable in Gibraltar, and the law governing disclosure prior to the coming into force of the CPEA was the common law.

The legality of the search

The second and third defendants submitted that any evidence recovered from the Pitman's Alley offices was obtained illegally, as (a) the warrant covered the 5 Cannon Lane offices only and a separate warrant would have been required to search the Pitman's Alley offices; (b) although the constitutional right to respect for one's private and family life, home and correspondence was subject to the exception of lawful search and seizure under a validly executed warrant, there was no such warrant for those premises; and (c) had the defendants been shown the warrant, they might have objected to the search of the Pitman's Alley offices.

The Crown submitted in reply that the warrant was valid for the search executed, as (a) "5 Cannon Lane" was understood to refer to the Marrache & Co. offices as a whole; (b) the entrance from Pitman's Alley was closed, suggesting they were not treated as a separate premises; and (c) Marrache & Co. themselves, on letterheads and in emails, referred to a single "Gibraltar office" at 5 Cannon Lane, and themselves made no distinction between the two parts of the premises.

The admissibility of the evidence

The second and third defendants submitted that any evidence recovered from the Pitman's Alley offices, as a result of being obtained illegally, was inadmissible on the basis that admitting evidence obtained from a warrantless search would bring the administration of justice into disrepute.

Held, upholding the warrant:

(1) The law on disclosure in criminal proceedings applicable at the time of the investigation in question was the common law. The CPEA could not apply as it came into force after the investigation, and the Criminal Procedure Act 1961, s.4, did not make either the CPIA or PACE part of

Gibraltar law, as (a) s.4 only transposed into Gibraltar law the law as it stood in England in 1961—it did not include any later English legislation; (b) PACE and CPIA had never been applied in Gibraltar; (c) legislation (the CPEA) had been required to bring into effect the parts of CPIA the legislature chose to adopt, whereas if it had already applied, all that would be required was to exclude the parts the legislature did not wish to adopt; and (d) there was no reference to CPIA in the relevant case law (para. 5; paras. 11–12).

(2) The warrant covered the whole of the offices of Marrache & Co., and was lawful authority for the search that was undertaken. The distinction between the two parts of the premises was apparent only to those concerned with the management of the property, and "5 Cannon Lane" was widely used by both Marrache & Co. and the wider public to refer to the Marrache & Co. offices as a whole, not the half of the offices originally accessed from that address. What the police sought, and by inference what the Magistrate understood the police wanted, was a warrant to search all of the Marrache & Co. offices, called "5 Cannon Lane," but encompassing both parts of the premises (paras. 27–29; para. 31).

(3) In any event, whether or not the search of the Pitman's Alley offices was lawful, any evidence obtained therefrom was nevertheless admissible. The English common law was clear that improperly or even unlawfully obtained evidence was admissible, with the exceptions of (a) inadmissible confessions; (b) evidence obtained by committing an act of contempt of court; and (c) evidence excluded in the discretion of the court for having an adverse effect on the fairness of the proceedings. The evidence revealed, on the face of it, a substantial fraud by professional persons against their clients and to exclude such evidence would bring the administration of justice into disrepute (paras. 22–26; para. 29; para. 31).

Cases cited:

(1) *Cornelio* v. *R*., 2001–02 Gib LR 335, referred to.
(2) *El Hajji* v. *Bencrafts (Constr.) Ltd*., 2003–04 Gib LR 115, distinguished.
(3) *Jones* v. *Simoni*, 1995–96 Gib LR 45, not followed.
(4) *Niemietz* v. *Germany* (1993), 16 E.H.R.R. 97, referred to.
(5) *R*. v. *Chief Const. (Lancs.)*, *ex p. Parker*, [1993] Q.B. 577; [1993] 2 W.L.R. 428; [1993] 2 All E.R. 56; (1993), 97 Cr. App. R. 90, distinguished.
(6) *R*. v. *Keane*, [1994] 1 W.L.R. 746; [1994] 2 All E.R. 478; (1994), 99 Cr. App. R. 1; [1995] Crim. L.R. 225, applied.
(7) *R*. v. *Shimidzu*, 2001–02 Gib LR 106, referred to.
(8) *R*. v. *Silvestrone* (1991), 66 C.C.C. (3d) 125; [1991] B.C.J. No. 2259 (QL); 13 W.C.B. (2d) 451; 1991 CanLII 5759 (BC CA), distinguished.

(9) *R.* v. *Stevenson*, [1971] 1 W.L.R. 1; [1971] 1 All E.R. 678; (1971), 55 Cr. App. R. 171; (1971) 115 S.J. 11, applied.
(10) *R.* v. *Suetta*, 1984 CanLII 187 (SK QB), distinguished.

Legislation construed:
Criminal Procedure Act 1961, s.4: The relevant terms of this section are set out at para. 2.

Gibraltar Constitution Order 2006 (Unnumbered S.I. 2006, p.11503), Annex 1, s.7(2): The relevant terms of this sub-section are set out at para. 19.

J. McGuinness, *Q.C.* and *D. Conroy* for the Crown;
J. Cooper, *Q.C.* for the first defendant;
Sir Ivan Lawrence, *Q.C.* and *P. Wauchupe* for the second defendant;
C. Finch for the third defendant;
K. Jones for the fourth defendant.

1 **GRIGSON, Ag. J.:** I should make it clear that in this judgment I have not addressed every argument that has been canvassed before me, only those which I think are of significance.

2 I deal first with the applicability of the Criminal Procedure and Investigations Act 1996 and the Police and Criminal Evidence Act 1984. It is common ground that—

(i) at today's date, disclosure in criminal proceedings is governed by the Criminal Procedure and Evidence Act 2011, Part 12;

(ii) that Act introduces to Gibraltar mostly, but not completely, the disclosure regime introduced in England by the Criminal Procedure and Investigation Act 1996 ("CPIA");

(iii) Part 12 of the Gibraltar Act came into effect on November 23rd, 2012;

(iv) this investigation, the investigation which led to these alleged offences, began in February of 2010; and

(v) criminal procedure and practice prior to November 23rd, 2012 was governed by the Gibraltar Criminal Procedure Act of 1961. Section 4 of that Act provides:

> "Subject to the provisions of this and any other Act, criminal jurisdiction shall, as regards practice, procedure and powers, be exercised—
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> (a) by the Supreme Court in its original jurisdiction, in conformity with the law and practice for the time being observed in England in the Crown Court . . ."

3 What s.4 governs is the criminal jurisdiction, practice and procedure and powers of the Supreme Court in Gibraltar. Sir Ivan Lawrence, Q.C. on behalf of Benjamin Marrache, submits—and I quote from his skeleton: "It follows that the law on the practice, procedure and powers concerning the Marrache trial remains the law of England at this time."

4 That is the Criminal Procedure and Investigation Act 1966. By similar reasoning, he argues that ss. 15 and 16 of the Police and Criminal Evidence Act 1984, and Code B made under that Act, relating to searches, also applies in Gibraltar, and did at the relevant time.

5 In my judgment, the first question to ask is: What do the words "for the time being" mean? If Sir Ivan is right in his submission, then it would follow that every time the Parliament of the United Kingdom passed legislation altering the practice, procedure and powers exercised by the Crown Court in England, the law in Gibraltar would automatically alter to mimic the law in England. In my judgment, the words "for the time being" mean as of the date that the Gibraltar Criminal Procedure Act 1961 came into force. It does not mean until such time as the Gibraltar legislature passes legislation contrary to that passed in England. I am strengthened in my view by the fact that—

(i) the provisions of the Police and Criminal Evidence Act 1984 have never been applied in Gibraltar;

(ii) after the coming into force in England and Wales of the CPIA in 1997, its provisions were never followed in Gibraltar; and

(iii) it was necessary for legislation to be passed by the Gibraltar legislature to bring into effect those parts of the CPIA which the legislature had chosen to adopt.

Had Sir Ivan's submissions been correct, all that would have been necessary would be legislation to exclude those parts of the Act the legislature did not want to adopt.

6 On behalf of the Crown, Mr. McGuinness submits that the CPIA 1996—or at least the relevant parts of it—namely, those sections dealing with disclosure and criminal investigation, relate to the process of disclosure between and by the prosecution and the defence and the investigation of crime by the police. What it does not deal with is practice, procedure and powers in the Crown Court. That the Crown Court can make orders relating to those provisions does not bring the provisions within the terms of s.4(1).

7 He further submits that the combination of the wording of s.238(2), which provides that Part 12 of the Act only applies to investigations begun after November 23rd, 2012, and s.266(2) supports his submission that the CPIA has no application here. I should make it clear that those sections

refer to the Gibraltar Criminal Procedure and Evidence Act 2011. Section 266(2) reads:

> "If this Part [Part 12] applies as regards things falling to be done after the commencement of this Part in relation to an alleged offence, the rules of common law which—
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> (a) were effective immediately before the commencement of this Part; and
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> (b) relate to the disclosure of material by the prosecutor,
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> do not apply as regards things falling to be done after that time in relation to the alleged offence."

This, he submits, makes it crystal clear that the rules governing disclosure prior to November 23rd, 2012 were the common law rules.

8 If this submission is correct, it answers what I shall refer to as "Sir Ivan's gap submission," namely, that s.4 operates so that any gap in the Gibraltar law is filled by a relevant English statute. Sir Ivan has referred me to the adoption of English rates and remuneration for counsel and solicitors by the Deputy Registrar as an example of filling the gap. I comment that legal aid is entirely the creation of statute. There are not, and have never been, any common law rules relating to it.

9 He has also referred me to two Gibraltar authorities. The first *Jones* v. *Simoni* (3), a decision of Harwood, A.J. It relates to the application of s.15 of the Supreme Court Act 1960, the wording of which differs from s.4(1) of the Criminal Procedure Act 1961. I do not find it of assistance.

10 He also referred me to *El Hajji* v. *Bencrafts (Constr.) Ltd* (2), a decision of Schofield, C.J. It had been argued that in relation to dispensing with service, the Gibraltar court would apply its own rules. Schofield, C.J. declined to do so. That was hardly a surprise given the wording of the Supreme Court Rules, r.3, and I quote:

> "(3) The Court may dispense with service of a document.
>
> (4) On matters of service the provisions of the rules and directions that apply for the time being in England in the High Court will apply, so far as circumstances permit."

Again, I do not find this to the point.

11 The short answer here is that there is no gap to be filled. Disclosure was governed by the rules of common law to be found in the case of *R.* v. *Keane* (6), an authority relied on both by Mr. McGuinness for the prosecution, and Mr. Finch for Solomon Marrache, who supports the Crown argument.

12 There is additional support for this view by the absence of any reference to the 1996 Act in two reported Gibraltar cases, one at first instance, *R*. v. *Shimidzu* (7), and the second in the Court of Appeal, *Cornelio* v. *R*. (1). I am quite satisfied that Sir Ivan's submissions are wrong, and equally satisfied that the disclosure regime adopted by the Crown—namely, that set out in the case of *R*. v. *Keane*—is the appropriate regime. I am equally satisfied that ss. 15 and 16 of the Police and Criminal Evidence Act, and the Codes, have no application here.

13 I turn to deal with the legality of the search. The warrant to search 5 Cannon Lane was issued by the Magistrate on February 9th, 2010, under the provisions of s.25 of the Criminal Procedure Act 1961. Section 25 provides that a Justice of the Peace may, by warrant, authorize a police officer to search premises which shall be named in the warrant, if it is proved on oath that there is reasonable cause to believe that anything which is necessary for an investigation into any offence is in those premises. The warrant is in these terms: There is information of a Detective Sergeant, who upon oath states that he has reasonable cause to believe, and does believe, that certain accounting documents, company files and related documentation and computers upon, by or in respect of which the offence of false accounting has been committed, and that certain accounting documents, company files, related documentation and computers which are necessary to the conduct of an investigation into the said offences are in a certain place, namely 5 Cannon Lane, in the occupation of Marrache & Co.

14 I have been supplied with plans of the premises, and I have visited the premises myself.

15 It is apparent that originally the offices accessed from Cannon Lane were separate from those accessed from Pitman's Alley. The two were joined by a corridor or air bridge, and I have photos of that while it was being constructed. That corridor has now been blocked off so that one cannot access the Pitman's Alley side of the premises from the Cannon Lane side, and vice versa. I am told that at the relevant time each part was the subject of a separate mortgage, and that one was freehold and the other was leasehold.

16 Sir Ivan Lawrence, Q.C. submits that any material recovered from the Pitman's Alley part of the offices was obtained illegally as the warrant did not cover that area. He argues that, as a consequence, the material is inadmissible because at the time of the issue of the search warrant the law of Gibraltar was governed by ss. 15 and 16 of the (English) Police and Criminal Evidence Act 1984, and by Code B. As I have already said, I am satisfied that that Act had no effect in Gibraltar.

17 He has referred me to the decision of *R*. v. *Chief Const. (Lancs.), ex p. Parker* (5). The decision in that case is predicated on the fact that ss. 15

and 16 of the Police and Criminal Evidence Act were in force in England, and were breached by the search in that case. Consequently, it is of little assistance here. The case concerned not the admissibility of evidence obtained illegally, but whether such evidence, obtained from a search which was warrantless and in breach of ss. 15 and 16, was unlawful, and whether the victim of an unlawful search may be entitled to the return of material seized unlawfully. None of those issues arise.

18 Both Sir Ivan and Mr. Finch mount a wider attack, based upon the proposition that as there were two separate premises, there needed to be two separate warrants. They argued that in the absence of a separate warrant for the Pitman's Alley part of the premises, all material retrieved from there was seized illegally. If that material were seized illegally then, they argue, whether it is relevant or not, the court should prohibit its use by the Crown.

19 Mr. Finch and Sir Ivan have referred me to ss. 6 and 7 of the Gibraltar Constitution 2006. Article 6 provides for the protection from deprivation of property, and s.7 provides a right to respect for a person's private and family life, his home and his correspondence. Section 7(2) provides that "except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises." It is argued that s.7 rights cover the offices and contents of Marrache & Co., and reliance is placed on the case of *Niemietz* v. *Germany* (4). Mr. Finch accepts that both ss. 6 and 7 are to be read as subject to exceptions of lawful searches and seizures under validly executed search warrants, but asserts that in respect of the Pitman's Alley part of the offices there was no valid warrant.

20 He has referred me to two Canadian authorities, *R*. v. *Suetta* (10), and *R*. v. *Silvestrone* (8). I note that in the *Suetta* case the warrant related to a completely different address from that searched, and that it was a completely different address was a fact known to the officers before they entered and searched the premises. The search was therefore "warrantless" and found to be "unreasonable." The court held that, consequently, to admit the evidence obtained—a small quantity of cannabis—would "bring the administration of justice into disrepute." I also note this is a decision at first instance. In *Silverstrone*, an appeal court decision, officers searched a flat knowing that the warrant that they held referred to a completely different address. Having begun their search they then obtained a second warrant with the right address. The court found that the first search was "unreasonable," and that the second warrant was obtained by false representation. Bad faith was a relevant consideration and the appeal court ruled that the admission of such evidence was such as to bring the administration of justice into disrepute.

21 Whether these cases are of interest or not, they are not, in my judgment, persuasive. They are, in any event, distinguishable on the facts and relate to powers of search based on statute.

22 In the leading academic text book, *Cross & Tapper on Evidence*, 12th ed. (2012), the authors recognize that different jurisdictions, *e.g*. Canada and Australia, approach the problem of improperly obtained evidence in different ways. But, under the heading *Improper searches*, they said this (*op*. *cit*., at 511):

> "The traditional English view was laconically expressed by Crompton, J. in *R*. v. *Leatham*, when he said: 'It matters not how you get it if you steal it even, it will be admissible in evidence.' Thus in *Jones* v. *Owen* . . . a constable searched the appellant illegally and found a quantity of young salmon in his pocket. This evidence was held to be admissible on a charge of unlawful fishing. Mellor, J. expressing the view that:
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>> It would be a dangerous obstacle to the administration of justice if we were to hold because evidence was obtained by illegal means it could not be used against a party charged with an offence.
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> These views have persisted. Crompton, J.'s dictum was cited in *Kuruma*'s case, and it will be recollected that *Calcraft* v. *Guest* . . . the leading authority on the admissibility of secondary evidence of privileged documents, was decided on a similar principle . . . In *R*. v. *Kahn* . . . the House of Lords took into account, in relation to the placing . . . listening devices on private premises, trespass to and slight damage of, private premises, the possibility that this might have amounted to criminal damage, and breach of privacy, but nonetheless concluded . . . that, as a matter of English law, evidence, which is obtained improperly or even unlawfully remains admissible."

23 The authors then discussed the impact of particular statutory provisions. The text reads as follows (*ibid*., at 512):

> "If evidence is obtained illegally to the knowledge of counsel, it seems that it should be mentioned to the court on an interim application, since that may be relevant to the exercise of the judge's discretion . . . In *ITC Film Distributor* v. *Video Exchange Ltd*. . . ., in which the material in question was found to have been obtained by means of a contempt of court, it was, however, held that it should not be admitted . . . The combination of these approaches leads to the conclusion that, in England, illegally obtained evidence is admissible as a matter of law, provided that it involves neither a reference to an

inadmissible confession of guilt, nor the commission of an act of contempt of court.

It remains to be considered how far this result is mitigated by the exercise of discretion under s 78."

24 I should make it clear that that is s.78 of the Police and Criminal Evidence Act of 1984. The text goes on:

> "In the case of real evidence obtained by an illegal search, the position seems to be that, while the discretion may be taken into account, it is exceedingly difficult to persuade a court to exercise it. In *R*. v. *Fox* . . ., the House of Lords regarded it as justifying the refusal of the magistrate to exercise their discretion to exclude the evidence that the police had acted 'in good faith, and that the specimen itself had been obtained without inducement, threat, . . . trick or other impropriety.' Similarly, it has not been exercised to exclude an intimate sample taken from a prisoner wrongly informed that he was bound to submit . . ."

25 There are various other examples set out. The text reads (*ibid*., at 513–514):

> "As noted above, this part of the law has increasingly been made the subject of statutory provision. It is now the case that the powers of the police to search, to seize, and to store are closely regulated by statute . . . and in many cases, those very statutes . . . include rules affecting the admissibility of such materials in evidence. *R*. v. *Nathaniel* was just such a case. The relevant provisions of the Police and Criminal Evidence Act 1984 were subsequently amended, and the amended version constituted the basis of a decision of the House of Lords in the *A-G's Reference (No 3 of 1999)* . . . There, too, a DNA sample had been retained in accidental breach of the relevant provision . . . and in this case, its use led to the taking of a new sample that it was proposed to put in evidence. The relevant provision . . . prevented the use in evidence of the first improperly retained sample, and also prevented its use for the purposes of any investigation. It was accordingly argued by the accused that the new sample could not be put in evidence, as it had been obtained by the use of the first sample for the purposes of investigation. The House of Lords relied upon the principle of *Kuruma*'s case as ameliorated by the exclusionary discretion under s 78 to reject this view, and to hold that evidence obtained as a result an illegal process should not be excluded as a matter of rule . . . It further relied upon the decision of the European Court of Human Rights in *Khan* . . . to hold that such use, given the availability of the exclusionary discretion . . . did not render the trial unfair so as to amount to a breach of Art 6 of the Convention."

26 I make no apology for reading that lengthy passage. If one needs further authority, and shorter authority, it is to be found in the case of *R.* v. *Stevenson* (9), provided by Sir Ivan, in which Kilner Brown, J. said ([1971] 1 W.L.R. at 2):

> "In considering this matter I have endeavoured to apply certain principles established by authority. The clearest and most authoritative statement of these principles is to be found in the reasons of the Board given by Lord Goddard C.J., in *Kuruma* v. *The Queen* [1955] A.C. 197. As a general rule any material which is relevant and of probative value is admissible. It matters not how it is obtained.
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> To the general rule that all relevant matter is admissible there are two exceptions. The first exception, which historically stems from the former prohibition on an accused person from giving evidence on his own behalf, is that oral or written statements which incriminate the accused and are made by him must be voluntary and are inadmissible if obtained by intimidation or inducement.
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> The second exception, which involves a pragmatic test founded on natural justice, is that a judge has a discretion to exclude matter the prejudicial effect of which exceeds its probative value."

27 In my judgment, in this case the law applicable is not that pertaining in Canada or Australia but the common law of England. The Crown submits that the terms of the warrant permit the search of both parts of the premises. They point out that the headed notepaper of Marrache & Co. gives the address as 5 Cannon Lane. They rely on the evidence at the committal of Det. Sgt. Tunbridge, to the effect that the separate doorways to 6 and 8 Pitman's Alley were apparently closed. I note that in the witness statement of a Miss Carol Haw, a long-term employee of Marrache & Co., she refers to simply "the office" or "the Gibraltar office," clearly meaning the whole of the premises accessed from 5 Cannon Lane. In what I believe to be an e-mail sent by Miss Turnbull to all three of the Marrache brothers, she is referred to as "Leanne Turnbull, Marrache & Co., Barristers & Acting Solicitors, 5 Cannon Lane, Gibraltar."

28 In my judgment, the submission of the Crown is correct. Anyone who was asked where the offices of Marrache & Co. were would have been told: "5 Cannon Lane." That one part of the property was freehold and the other leasehold, and that each was subject to different mortgages is, in my view, irrelevant. It would be apparent only to those concerned with the management of the property. What the police sought, and by inference what the Magistrate understood the police wanted, was a search warrant to allow them to search the offices from which Marrache & Co. conducted their business, namely from 5 Cannon Lane.

29 In my judgment, the warrant was lawful authority for the search that was undertaken. It may be, although I think it unlikely, that another court might take a different view. Consequently, I rule that even if the construction of the premises did require the issue of two separate warrants, the evidence obtained by the police in the absence of a warrant specifically relating to the Pitman's Alley part of the premises is both relevant and admissible. It is plain from the authorities I have cited that evidence obtained improperly is admissible if it is relevant, subject to the overriding discretion of a trial judge to exclude it. Whether this discretion is one based on common law (namely, that the prejudicial effect of the evidence outweighs its probative value), or in statute, as in s.78 of the Police and Criminal Evidence Act 1984, which does not apply in Gibraltar, or s.332 of the Gibraltar Criminal Procedure and Evidence Act 2011 which does, and which adopts s.78 (namely, that the admission of the evidence, having regard to all the circumstances, including the circumstances in which the evidence was obtained, would have such an adverse effect on the fairness of proceedings, that the court ought not to admit it). No one has sought to argue that the evidence is not relevant. I can see no evidence that the police acted in bad faith. It is patently obvious that had a Magistrate been asked to issue separate warrants he would have done so. If one applied the Canadian test, the action of the officers was both reasonable and the admission of the evidence would not have brought, or would not bring, the administration of justice into disrepute. The evidence revealed, on the face of it, a substantial fraud by professional persons against their clients. In my judgment, to exclude such evidence would bring the administration of justice into disrepute. Does the admission of this evidence render the trial so unfair that it ought to be excluded? The question permits only one answer. There is no unfairness at all. Does the prejudicial effect of the evidence outweigh its probative value? The evidence is highly probative of guilt and is prejudicial only in that sense.

30 I deal briefly with what I regard as peripheral matters. That the staff were excluded and that the search took several days is irrelevant as to admissibility. That the defendants were not shown the warrant nor allowed to attend the premises does not influence me. There is no requirement for either in Gibraltar law. The suggestion that one or other defendant, had he been shown the warrant, might have objected to the search of the Pitman's Alley part of the premises, I regard as fanciful and inspired by hindsight.

31 In short terms, in my judgment, the warrant covered the whole of the offices of Marrache & Co. If it did not, then the evidence is relevant, and that it was obtained unlawfully is no bar to its admission.

Order accordingly.