

RUSSELL

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THE HIGH COURT

STATE SIDE

IN THE MATTER OF THE CONSTITUTION 1937 AND ARTICLE 40 THEREOF

AND IN THE MATTER OF THE HABEAS CORPUS IRELAND ACT, 1782

AND IN THE MATTER OF THE EXTRADITION ACT, 1965

AND IN THE MATTER OF ROBERT PETER RUSSELL, AT PRESENT
DETAINED IN PORTLAOISE PRISON

AND IN THE MATTER OF AN APPLICATION FOR CERTIORARI ROBERT
PETER RUSSELL AND DISTRICT JUSTICE BALLAGH

Judgment of Mr. Justice Barr delivered on the 19th day of
January, 1987.

On 31st May, 1984 an application was made on behalf of the State pursuant to Section 47 of the Extradition Act, 1965 (the Act) to the respondent for the extradition of the applicant to Northern Ireland on foot of 19 arrest warrants all of which purported to have been issued and signed by certain Justices of the Peace in that jurisdiction. The applicant was represented at that hearing by solicitor and counsel. Oral evidence was led regarding the arrest of the applicant on foot of the various warrants and as to his identification. There was no evidence viva voce that the warrants had been issued by a judicial authority in accordance with Part III of the Act, but the respondent so found and, being satisfied that all the requirements of the Act had been complied with, including the adequacy of the

Affidavits verifying the signatures of the respective Justices of the Peace on the arrest warrants in accordance with Sec.54(1), he made orders directing the extradition of the applicant to Northern Ireland on foot of each of the warrants. The only point raised by counsel on behalf of the applicant in the District Court related to identification with which I am not concerned. The only matters at issue in the present proceedings are whether the respective Justices of the Peace who issued and signed the arrest warrants in question are judicial authorities within the meaning of Part III of the Act and whether the respondent was justified in so finding.

Part III relates to extradition from this State to Northern Ireland, England, Wales, Scotland, the Isle of Man and the Channel Islands - see section 41. Other relevant provisions are as follows:-

Section 43 (1) provides

"Where

(a) a warrant has been issued by a judicial authority in a place in relation to which this Part applies for the arrest of a person accused or convicted of an offence under the law of that place, being an indictable offence or an offence punishable on summary conviction by imprisonment for a maximum period of at least six months, and

(b) on production of the warrant to the Commissioner of the Garda Siochana it appears to the Commissioner that the person named or described therein may be found in the State,

the Commissioner shall, subject to the provisions of this

Part, endorse the warrant for execution.

Section 54 (1)

Where the Commissioner receives a document appearing to be a warrant issued by a judicial authority in a place in relation to which this Part applies, together with an affidavit verifying the signature on the warrant and appearing to be sworn before a person duly authorised to take affidavits by the law of that place, the Commissioner may, without further evidence, accept the document as being such warrant and as having been duly signed and issued by a judicial authority in accordance with the law of that place and as evidence that the offence for which the warrant is issued is an offence under the law of that place and that the affidavit has been duly sworn before a person so authorised as aforesaid.

Section 55 (1)

In any proceedings, unless the court sees good reason to the contrary-

(a) a document appearing to be a warrant issued by a judicial authority in a place in relation to which this Part applies for the arrest of a person for an offence may, if the signature on the warrant is verified as indicated in subsection (1) of section 54, be admitted in evidence as such warrant and as having been duly signed and issued by a judicial authority in accordance with the law of that place;.....

without further evidence."

The first submission made on behalf of the applicant was that although "judicial authority" is not defined in the Act, it ought to be construed in accordance with the laws of this state and applicable legal standards here and that a purported judicial authority in one of the places specified in section 41 who issues a warrant for backing in this state must be a judicial authority having the essential characteristics which a judicial person must possess in this jurisdiction. It was conceded by counsel for the applicant that, having regard to the law of Northern Ireland relating to Justices of the Peace as set out in the Affidavits of Mr. Philip Magee and Mr. Brian Francis Kerr Q.C. and the oral evidence given by them in that regard in these proceedings, a Justice of the Peace is a judicial authority in accordance with the law of Northern Ireland. But the point was taken that he does not have two characteristics which, it was submitted, are fundamental to the concept of judicial authority in Irish law, i.e. a Justice of the Peace need not have any legal training or qualification and he is removable from office by the Lord Chancellor at will.

I do not accept that the term "judicial authority" in Part III of the Act has the restricted meaning ascribed to it by counsel for the applicant. If the legislature intended that the issuing authority in the requesting place must have all the essential characteristics common to judicial authorities in Irish law then the Act would so state in specific terms. I am satisfied that if the person who issues a warrant for backing in this state is a judicial authority in accordance with the laws of the requesting place then he

complies with the requirements of Part III of the Act in that regard. I also take the view that if, in the alternative, one defines "judicial authority" in objective terms within the context of Part III it means a person appointed to perform judicial functions in a place as defined in Section 41 (or in part thereof) who has no connection with the police or prosecuting authority or other branch of the executive arm of government for that place and who is independent in the exercise of his judicial office. Having regard to the evidence of Mr. Magee and Mr. Kerr as to the powers and functions of a Justice of the Peace in Northern Ireland, it seems to be beyond doubt that such a person is a judicial authority as so defined within the meaning of Part III of the Act. The incidental facts that a Justice of the Peace may be removed from office by the Lord Chancellor at will and that he may not be a person with any legal training or qualification in law do not detract from the essential judicial nature of that office.

Although the specific point at issue in these proceedings was not argued therein, weight is given to the foregoing conclusions by the judgment of the Supreme Court in Gillespie .v. the Attorney General 1976 IR 233. In that case it was alleged that in course of a criminal trial in the Manchester Crown Court in the County of Lancaster the plaintiff had wilfully made a statement material to those proceedings which he knew to be false contrary to section 1 of the Perjury Act, 1911. On the basis of that charge, a Justice of the Peace for the County of Chester issued a warrant for his arrest. Proceedings were then put in train for his extradition from the Republic of Ireland to England.

When the matter came before the District Court, the District Justice was satisfied that the offence charged in the warrant corresponded with the offence of perjury in Irish law and made an order under section 47 subsection (1) of the Act for the delivery of the plaintiff to the Cheshire Constabulary for conveyance to Stockport, Cheshire. In subsequent proceedings brought by the plaintiff in the High Court he sought an order under section 50 of the Act and a declaration that the order of the District Court was invalidly made. Counsel for the plaintiff sought to adduce evidence of an expert in English law to the effect that a Justice of the Peace for the County of Chester had no jurisdiction to issue a warrant for the arrest of a man resident in the Republic of Ireland in respect of an offence committed in the County of Lancaster. The trial Judge ruled that such evidence was not admissible and he dismissed the plaintiff's claim. On appeal to the Supreme Court it was held that where in proceedings under Part III of the Extradition Act, 1965 it is sought to adduce, in the District Court or in the High Court, evidence to disprove the authenticity or the evidential value of the foreign warrant, the Court is bound to receive such evidence provided that it is otherwise admissible. The judgment of the Court which was delivered by Henchy J. contains the following passages at pp 235 and 236.

"The resolution of this point is to be found in s. 55 sub-s. 1 of the Act."

The learned judge went on to quote the sub-section and then continued

"Note first that this provision applies to any proceedings, not merely the proceedings in the District


Court; and this is affirmed by the reference to "the Court" which is not limited by the statute to any particular court. What this enabling provision means, therefore, is that whenever a document purporting to be an arrest warrant is sought to be put in evidence in any proceedings, once the signature has been given statutory verification, the document may be admitted in evidence in those proceedings as being the warrant it purports to be and as having been duly signed and issued by a judicial authority in accordance with the law of that place, without the necessity of any further evidence - unless the court in which it is tendered sees good reason to the contrary. In the absence of such good reason, the document is admissible in evidence and is probative of the matters set out in the sub-section, among which is that the issue of the warrant was lawful.

Since it is not suggested that any good reason to the contrary appeared in the District Court, and since the document had been given statutory verification as to signature, it is clear that the District Justice correctly admitted it in evidence in that court as the arrest warrant, as having been duly signed, and as having been issued by a judicial authority in accordance with the law of the place where it issued. As far as the procedure in the District Court was concerned, the District Justice had statutory support for admitting the warrant in evidence and acting on it. Since there was then no good reason to the contrary, the plaintiff could not have contended otherwise in that court; nor did he attempt to do so. So, if the matter rested entirely on

the proceedings in the District Court, the point now taken would be of no value."

The second point argued on behalf of the applicant was that at the hearing in the District Court there was no evidence to ground the respondent's finding that the Justices of the Peace who issued and signed the respective arrest warrants were judicial authorities within the meaning of Part III of the Act. It seems to me that as no point was taken on behalf of the applicant that the Justices of the Peace in question were not judicial authorities within the meaning of Part III of the Act, the respondent was entitled to rely upon the passage which I have quoted from the judgment of Henchy J. in Gillespie's case and to make the findings which he did in that regard without further evidence in support thereof. Even if he were wrong in so doing, I am satisfied that his error was within jurisdiction and, therefore, not reviewable by way of certiorari proceedings. However it is reviewable by this court on foot of a Habeas Corpus application under Article 40 of the Constitution, 1937 where it is appropriate to look again at the whole proceedings by way of judicial review and determine in the light of all of the evidence now available whether it is proper that the extradition orders in question should have been made. As previously stated herein, I am satisfied that the Justices of the Peace who issued and signed the respective arrest warrants are judicial authorities within the meaning of Part III of the Act and in so far as that particular point only is concerned I hold that the extradition orders made by the respondent are lawful. Accordingly I refuse the applications herein, discharge the Conditional Order of Certiorari made by me on 24th September,

1986 and allow the cause shown by the respondent.

Approved

20th January, 1987.

CASE LAW CONSIDERED

The (State) Lynch .v. District Justice Ballagh (Supreme Court unreported 13th May 1986)

McMahon .v. Leahy [1984] I.R. 525

The State (McFadden) .v. Governor of Mountjoy Prison [1981] I.L.R.M. 113

Gillespie .v. Attorney General 1976 IR 233

The State (Royle) .v. Kelly 1974 IR 259

The State (Attorney General) .v. Judge Durcan 1964 IR 279

The State (Davidson) .v. Farrell and others 1960 IR 438