17 pages.

ROYAL COURT
(Samedi Division) 156

19th November, 1993.

Before: F. C. Hamon, Esq., Commissioner, Single Judge.

IN THE MATTER OF SECTION 2 OF THE EVIDENCE (PROCEEDINGS AND OTHER JURISDICTIONS) ACT 1975

APPLICATION FOR AN ORDER UNDER THE EVIDENCE (PROCEEDINGS AND OTHER JURISDICTIONS) (JERSEY) ORDER, 1983

**Representation of His Honour Judge Mathewman Q.C.
in re: Regina - v - Charlton, Cunningham, Kitchin, Wheeler, Lawlor and Alldread.**

and

**Representation of Diana Black
Justice of the Peace
City of London Magistrates' Court
in re: Regina - v - Clements and Harris.**

**Advocate J.G.P. Wheeler for the Representors.
C.E. Whelan, Esq., Crown Advocate, *Amicus Curiae*.**

JUDGMENT.

THE COMMISSIONER:

There are before me two applications. They are both applications for an Order for Evidence to be obtained in Jersey for use in criminal proceedings in England. The first is a Letter of Request issued by the Nottingham Crown Court; the other is a Letter of Request issued by the City of London Magistrates Court.

In R. v. Charlton and Ors. the Crown alleges thirteen common law offences against the six co-accused of cheating Her Majesty The Queen and the Public Revenue. In R. v. Clements and Harris the Crown alleges breaches of S.39 (3) of the Value Added Tax Act 1983 as amended by S.12 of the Finance Act 1985. The allegation is of fraudulent evasion of Value Added Tax in excess of £250,000 by the

failure of the accused to account for all or any of the Value Added Tax due on the supply of goods at one day sales/auctions. In both actions information concerning Jersey bank accounts are a necessary part of the English procedure.

The applications are made under the Evidence (Proceedings in other Jurisdictions) Act 1985 as applied by the Evidence (Proceedings in other Jurisdictions) (Jersey) Order 1983.

Each application is accompanied by affidavits. In R -v- Charlton and others the affidavit is sworn by David Cook Johnson, a Solicitor of the Supreme Court of England and Wales, employed in the office of the Solicitor of Inland Revenue. In R -v- Clements and Harris, the affidavit is sworn by Kevin David Metcalfe, an Officer of Her Majesty's Customs and Excise, with another by Teresa Margaret Dennehey, also an Officer of Her Majesty's Customs and Excise. Both the affidavits of David Cook Johnson and Teresa Margaret Dennehey affirm that any evidence obtained from Jersey will only be used for the purposes of the criminal proceedings.

The request for assistance in R -v- Clements and Harris came before Mr. Commissioner Le Cras in Chambers. He adjourned the matter to this Court as he wished the matter, for reasons which will soon become apparent, to be argued fully. Soon after that decision the request in R -v- Charlton and other was received and I have therefore considered both matters as the same important issue of law falls to be decided in each of them.

When it became apparent that these matters would, of necessity, have to be argued in open court, Mr. Wheeler was recommended by the Crown to act for the two applicants. The Attorney General, represented by Mr. Whelan also appears as *amicus curiae*. It must be recalled that the applications are applications not by the Revenue *per se* but by the Nottingham Crown Court and the Central London Magistrates Court.

We have on the one hand common law offences of cheating. Smith and Hogan's Criminal Law (5th Ed'n) says at page 533: ***"The common law offence of cheating still retains some importance because though section 32 (1) of the Theft Act abolishes cheating (along with Common Law offences against property) it does so only "except as regards offences relating to the public revenue."***

As a practical matter the offence of cheating has been used, on any scale at all, only in connection with frauds against the public revenue. We have on the other hand the breaches of the Value Added Tax Act. Both the criminal matters on which assistance is sought amount in effect to defrauding or cheating the English revenue authorities.

The matter is not without urgency because in the case of R -v- Clements and Harris although the arrest was made on 18th January, 1993, and there have been a succession of remands (with the bail for

each accused being continued) the next remand hearing on 10th December, 1993, will have a committal date set at the hearing.

We shall need to examine the relief which this Court is empowered by statute to give, in some detail, but before that it is necessary to express the well established rule of law which falls for determination in this case.

Dicey and Morris (11th Ed'n) on the Conflict of Laws put the matter this way (at page 100):

> ***"Rule 3 - English Courts have no jurisdiction to entertain an action:***
>
> ***1. For the enforcement, whether directly or indirectly, of a penal revenue, or other public law of a foreign state or;***
>
> ***2. Founded upon an Act of State."***

In the commentary to that rule the opening sentence is almost written in stone so well-known has it become.

> ***"There is a well established and almost universal principle that the courts of one country will not enforce the penal and revenue laws of another country."***

That is based on the House of Lords Decision in the Government of India -v- Taylor (1955) AC 491 and is well expressed in the words of Lord Denning M.R. in A.G. of New Zealand -v- Ortiz (1948) AC 1 at 20:

> ***"We do not sit to collects taxes for another country or to inflict punishments for it".***

The rule has been considered judicially (and upheld) in two well known cases in Jersey, Re Walmsley dec'd (1983) JJ 35 and Re Tucker (1987-88) JLR. 473.

A similar application to that now before me was prepared for argument by the learned Attorney for consideration by this Court in the Application of the Resident Judge of the Reading Crown Court, England re Brian Anthony Chamberlain (20th December, 1989) Jersey Unreported. The application was withdrawn for reasons extraneous to the issue but, in sitting to determine the question of costs I said this:

> ***"However much a Court may incline to a view (which it might not in any event be entitled to take) that the English proceedings were criminal proceedings and not revenue proceedings, however much one examines the resident Judge's assurances on strict confidentiality, however much one considers that the Attorney General as Amicus Curiae in a carefully argued written representation was drawn to the conclusions that "in the opinion of the Attorney General the present application does not offend any recognised principle***

of international judicial assistance" there can be no doubt that there were serious contentions of law to be tried. Nor can there be any doubt that written skeleton argument is no substitute for the full airing of those arguments in the atmosphere of an open Court."

We have had a full day's argument and a very detailed and helpful form of written submission from the Attorney General. The nature of the application precludes any contrary argument from those whose banking details are sought to be examined. This is unfortunate but having listened to the very careful arguments of Mr. Wheeler and to Crown Advocate Whelan's helpful guidance through the thickets and undergrowth of this difficult matter I am left in no doubt as to the path that I shall take.

JURISDICTION

The Evidence (Proceedings in other Jurisdictions) (Jersey) Order 1983 introduces certain provisions of the Evidence (Proceedings in other Jurisdictions) Act 1975 into the law of Jersey for the purpose of criminal proceedings. Paragraph 3 (2) of the Order reads that:

"Sections 1, 2 and 3 shall not extend to Jersey except for the purposes of section 5 (and accordingly shall have effect in Jersey only for the purposes of criminal proceedings)".

Although Section 5 of the 1975 Act makes reference to the power of a "United Kingdom Court" to assist in obtaining evidence for criminal proceedings in overseas courts, it is clear to me that the Act applies, and is meant to apply, to the Royal Court of Jersey. If that is so then the Royal Court of Jersey can give assistance to an English Court in criminal proceedings.

The relevant sections of the 1975 Act are as follows:

"5 (1) The provisions of sections 1 to 3 above shall have effect in relation to the obtaining of evidence for the purposes of criminal proceedings as they have effect in relation to the obtaining of evidence for the purposes of civil proceedings except that-

(a)* * * * * * * * * * * *

(b) paragraph (b) of [section 1 above] shall apply only to proceedings which have been instituted; and

(c) no order under section 2 above shall make provision otherwise than for the examination of witnesses, whether orally or in writing, or for the production of documents.

(2) In its application by virtue of subsection (1) above, section 3(1)(a) and (b) above shall have effect as if

for the words "civil proceedings" there were substituted the words "criminal proceedings".

(3) Nothing in this section applies in the case of criminal proceedings of a political character."

It is fortunate that the Court has the benefit of the leading decision of Re Tucker (1987-88) JLR 473 where the learned Bailiff gave a most detailed reasoned judgment refusing relief on the basis that the Court did not have jurisdiction to grant an order under the Bankruptcy Act 1914 s.122 for evidence to be taken and documents produced, for use in an English bankruptcy where (by the time of the application) the sole creditor was the UK Inland Revenue. This was decided on the basis that obtaining evidence in these circumstances amounted to an indirect enforcement of UK Revenue laws. As the learned Bailiff said at page 499 of his judgment (and he was dealing with In Re State of Norway Application (1987) QB 433):

"It is interesting to see that the Court referred to the question of international assistance in revenue matters when Kerr L J said (ibid at 473): "International assistance in revenue matters is generally given by Double Tax Conventions, which normally provide for 'exchange of information': see, for example, Article 30 of the Convention between the United Kingdom and Norway of 22 January 1969 (S.I. 1970 No. 154). As already mentioned, there appears to be no reported instance of an ordinary international Convention - whether multi or bilateral for evidential judicial assistance being used for this purpose."

There is, as the Attorney General pointed out, a Double Taxation Agreement in force between the United Kingdom and Jersey and much of the exchange of information between the revenue authorities of each jurisdictions is an administrative and not a judicial matter. The same judge said later:

"However, it is clearly open to argument whether a request for evidential assistance pursuant to section 2 of the Act of 1975, relating to proceedings in a foreign court concerning a foreign residents tax liability, is properly describable as an action for the enforcement, directly or indirectly, of a revenue law of a foreign state. The recent decision of the House of Lords in Williams and Humbert Ltd. -v- W. & H. Trade Marks (Jersey) Ltd.... suggests that the principle stated in Dicey is to be construed narrowly. It is also important to note that by section 5 of the Act 1975, evidence may be obtained, albeit to a more limited extent, in relation to criminal, that is, penal, proceedings in foreign countries. Accordingly, despite the references to the various stages of the process of 'tax gathering' which Lord Somervell of Harrow mentioned, it must be doubtful whether the English Courts would be wholly debarred from considering a request such as the present as a matter of public policy.

Nevertheless, if this issue had arisen in the present case in a different form - that is, if a foreign state had sought to enlist the assistance of the English courts in order to obtain evidence against one of its taxpayers in opposition to the taxpayer - then I would have regarded such a request as part of the foreign 'tax gathering' process to which the English courts should not lend their assistance as a matter of public policy, in keeping with principles which are internationally accepted."

The In Re Tucker decision is however distinguishable in law and on the facts presented to me. I shall need to examine that point in some detail but before doing so, there was a matter of interpretation that concerned me. I asked counsel to address me upon it. It is the meaning of the word "political" in s. 5(3) of the Evidence (Proceedings in other Jurisdictions) Act 1975:

"Nothing in this section applies in the case of of Criminal proceedings of a political nature."

The commentary in 4 Halsbury 45 Evidence at p.488; "Evidence" reads:

"Proceedings of a political character. cf the note "offence of a political character" to the Extradition Act 1870 S.3 Vol 13 p:252. See also <u>re Gross, ex parte Treasury Solicitor</u> (1968) 3 All ER 804."

A reference to that statute and to Re Gross leaves me in no doubt that "political" in the sense used in the statute has a connotation of an offence which related to a political disturbance. The "political" crime will be one that strikes at the fabric of an established government.

As Chapman J said in Re Gross (supra) at page 807:

"What is "an offence of a political character"? A number of distinguished jurists have passed on this question. John Stuart Mill in the House of Commons on Aug. 3, 1866, suggested as a definition (1): "Any offence committed in the course of or furthering of civil wars, insurrection, or political commotion". Everyone is agreed that this is too wide, because something done in the course of political commotion cannot be political if in fact it is motivated by private spite. Sir J. F. Stephen in his History of the Criminal Law of England. (Vol.2.p. 71,) suggested as the test " if those crimes were incidental to and formed part of the political disturbances". This was accepted in terms in Re Castioni, by Hawkins, J., and, not unnaturally, by Stephen J. Denman J., gave a judgment on somewhat similar lines, though perhaps wider:

"I think that in order to bring the case within the words of the Act, and to exclude extradition for such an act as murder, which is one of the extradition offences, it must be at least shown that the act which is done is being done in furtherance of - done

with the intention of assisting as a sort of overt act, in the course of acting in - a political matter, a political rising, or a great dispute between two parties in the State as to which is to have the government in its hands ... before it can be brought within the meaning of the words used in the Act."

This seems to accept that something short of "disturbances" or "commotions" may be sufficient provided there is some sort of dispute between political parties.

This was the basis of the next decision, Re Meunier, in the case of an anarchist who blew up a cafe and military barracks. It was held that the mere fact that an offence was directed against the government or government property was not sufficient to make it political; there must be another party seeking to take over government; mere hatred, distrust of, or disbelief in government as an institution was not enough. As Cave, J. said:

It appears to me that, in order to constitute an offence of a political character, there must be two or more parties in the State, each seeking to impose the Government of their own choice on the other and that if the offence is committed by one side or the other in pursuance of that object, it is a political offence, otherwise not."

This stress on politics may perhaps be carried too far if made the sole or even the dominant criterion. It may well be right to say that a murder would not be political merely because the murderer's attitude was, "I killed him because he was a politicion and I hate all politicians", or even, "I killed him because I did not like his political views", but it may be ventured that a murder could properly be regarded as political if the murderer, albeit he belonged to no political party (perhaps because none were allowed apart from the governing body), was motivated by the feeling that his victim was, as a Minister, a disaster for the country. However that may be, membership of a political party was not regarded as necessary in the case of the seven Polish seamen, Re Kolozynski. The motive there for "the politest revolt in history" (per Sir Hartley Shawcross, Q.C.) was to get away from the intolerable sense of frustration and repression of living in a Communist country with political commissars at hand, even on the high seas, to record their expressions of opinion on political matters. So the seamen overpowered the master and the other members of the crew, only one of whom resisted, and brought their trawler into an English port, where they sought political asylum. Extradition was refused by Cassels, J., and Lord Goddard, C.J. Their grounds seem to be on the surface somewhat different, but not I think really in substance. Cassels, J., founded himself on its being treason in a Communist country to leave or attempt to leave the country. Lord Goddard, C.J., stressed that a political officer was at sea, overhearing and recording their conversations and preparing a case against them on account of their political opinions so that "The revolt of the crew was to prevent

themselves being prosecuted for a political offence.....". In other words, he seems to have put more emphasis on the second limb of s. 3 (1) of the Act of 1870. The substance of the matter, however, would seem to be that even if one is not a member of a political party and even if one is not seeking to oust the governing body or to take over the government of the country, it may still be an offence of a political character if violent measures are taken to get away from a political ordering of society which is regarded as intolerable."

I am satisfied on these authorities that the requests made to me are not of a "political character". The main reservation, then is that expressed by Dicey and Morris as being a common law rule that all enforcement either directly or indirectly of a penal law of a foreign state (albeit a friendly one) will not be entertained.

Both Mr Wheelan and Mr Wheeler have gone to some lengths, and quite properly so, to explain how the common law rule has been steadily and consistently abrogated by Statutes. In that context the Evidence (Proceedings in other Jurisdictions) Act 1975 (extended by the 1983 Order in Council) appears to run contrary to the common law rule. The Headnote of the Act makes it pellucidly clear that the whole purpose of the Act is to supply evidence in one jurisdiction which will lead to the enforcement of the penal laws of that other jurisdiction.

It is interesting to note that in the affidavit of David Cook Jackson he told this court:

"The matters charged in the indictment, a copy of which is annexed to the letter of request, relate to alleged fraudulent schemes operated to evade payment of tax and the defendants are the professional advisers and accountants of the taxpayers who operated the schemes. In relation to the taxpayers' civil liabilities to tax arising out of the use of the alleged illegal schemes, from my knowledge of the case I am able to state that settlement of such liability has been agreed in relation to all matters charged with the exception of Counts 1 and 2."

I have of course the undertaking in both actions that the evidence obtained would only be used for the purposes of criminal proceedings and I must also bear in mind that the request in each case is not a request from the Revenue *per se* but a request from the relevant Court Officer on behalf of the Court so that it may obtain the evidence required. The application is not made by the Revenue to freeze, seize or otherwise deal with funds allegedly held in Jersey banks (that would, in my view, be unsustainable), but the application is made by a Court of criminal jurisdiction for the purposes of the criminal law. The nature of the proceedings to which the application related is, in my view both in form and substance, criminal and not fiscal.

It may be considered, in passing, that the statute excludes criminal proceedings of a political character and makes no reference to excluding criminal revenue cases.

There are, of course, two matters of concern:

It is, as Mr Whelan explained to us, possible that the Revenue, having succeeded in the Criminal forum, might in future use criminal prosecutions as a method of obtaining evidence to assist them in civil proceedings for the recovery of tax in the United Kingdom. If an accused person is convicted, the Revenue might seek to use the findings in the criminal proceedings, notwithstanding any restrictions imposed on the use of the evidence itself, as evidence of the tax due for the purpose of a subsequent civil recovery. In this way a rather complex procedure may well be set up which would assist the Revenue in future cases to obtain evidence from the Royal Court which would enable it to raise a liability to tax in the United Kingdom against citizens of that country. With that in mind it may be argued, both in point of jurisdiction and discretion, that compliance with the request should be refused because it is intended, or possible, that the evidence of witnesses would be made available for the raising of a liability to United Kingdom tax and the enforcement of that liability.

The effect of this problem was considered by the House of Lords in Rio Tinto Zinc Corporation & Others -v- Westinghouse Electric Corporation (1978) 1 All ER 434 where Lord Wilberforce said at Page 444:

> ***"The separate argument rises in this way: on 15th October 1976, soon after the 'environmentalist' documents reached them, Westinghouse commenced in the United States District Court for the Northern District of Illinois Eastern anti-trust proceedings against the RTZ companies and 27 other alleged members of a uranium cartel. Westinghouse claimed, in accordance with United States ant-trust legislation, treble damages against all defendants. The RTZ companies have not accepted jurisdiction in these proceedings and have taken no part in them. The letter rogatory in the Richmond actions were requested on the same day. The coincidence had given rise to a contention by the RTZ companies that the real, or predominant, purpose of the letters rogatory is to further the anti-trust proceedings, and that as those proceedings are of a penal character, because of the treble damages claim, the letters rogatory should not be acceded to. I need not express any opinion whether if the letters rogatory had been issued in the Illinois proceedings they could be implemented in England, for I am of opinion that the appellants' argument fails on an earlier stage. Unless a case of bad faith is made against Westinghouse (which is expressly disclaimed) it is impossible to deny that the letters rogatory were issued for the purpose of obtaining evidence in the Richmond proceedings. The fact, if it be so, that evidence so obtained may be used in other proceedings and indeed may be central in those proceedings is no reason for refusing to allow it to be requested. All evidence, once brought out in court is in the public domain, and to accept***

the argument would largely stultify the letters rogatory procedure. I must therefore reject this separate contention, and express my conclusion on the other factors. That is that, on the whole, I am of opinion that following the spirit of the 1975 Act which is to enable judicial assistance to be given in foreign courts, the letters rogatory ought to be given effect to so far as possible and that it would be possible to give effect to them subject to a severe reduction in the documents to be produced and to the disallowance of certain of the witnesses. Exactly what these should be I need not specify in view of my conclusions on other aspects of the case. It is enough to say that agreeing in principle, if not totally in detail, with the Court of Appeal, I would not set aside the order of 28th October, 1976 on the ground that it provided for illegitimate discovery."

There is however another problem which Mr Whelan expressed in this way. The issue of the order on this case will undoubtedly make further inroads into the principles of banking confidentiality. Against that lies the need to express comity with two English Courts making *bona fide* applications which are not intended to be an abuse of the process of the Royal Court. If I refuse it might stultify the whole purpose of the 1983 order. Confidentiality of bankers (particularly if we may say so, in a jurisdiction such as this which prides itself on a well organised and well controlled system of banking) is of vital importance. The question of confidentiality is the very stock in trade of this Island's jealously guarded reputation. But here we have allegations of serious fraud and crime. This is not, I am satisfied, a "fishing expedition" by the Revenue. That would receive no reciprocity in this, or any other, jurisdiction.

Two matters of significance have occurred since the learned Bailiff gave his decision in Re Tucker.

Firstly, the Criminal Justice (International Co-operation) Act 1990 has been enacted and s.4 of the Act comprehends fiscal offences. It has not yet been registered in Jersey and therefore one has the anomalous situation where an English Court under the Act may grant relief to a Jersey Court but not if the application is made in the other direction. Then, the House of Lords has made an important and far reaching decision In Re State of Norway's Application (Nos 1 and 2) HL 1989 1 All ER 745. Neither of these matters, of course, were before the learned Bailiff in Re Tucker.

The rule expressed in Government of India -v- Taylor (and the two Jersey cases cited above) is usually explained on the basis that taxation is a manifestation of sovereign power and it would be an incursion upon the sovereignty of one country for its courts to enforce sovereign obligations imposed by another.

It was argued before me that although these rules have been well rehearsed in non-criminal matters, in criminal law their field has been more restrained. This aspect has been aired fully in R -v- Chief Metropolitan Stipendiary Magistrate *ex parte* Secretary of State for the Home Department (1988) WLR 1204. The Magistrate, dealing with an

order for extradition of a Norwegian national on numerous charges, allowed some but refused those which he felt were tainted within a revenue context. The Divisional Court dealt with the matter in this way (and referred the matter back with a direction to commit on those remaining charges) when Stuart Smith L J said, at page 1215:

> ***"It is one thing to say that the courts of this country will not entertain a suit by a foreign state to recover a tax; it is another to say that criminal offences which stand independently of revenue offences, albeit in a Revenue connection, are within the rule. This distinction is made clear, as it seems to us, in the Backing of Warrants (Republic of Ireland) Act 1965. Section 2(2) provides:***
>
> ***"Nor shall such an order be made if it is shown to the satisfaction of the Court -(a) that the offence specified in the warrant is an offence of a political character ... or an offence under an enactment relating to taxes, duties or exchange control."***
>
> ***Two points may be made. First, that Parliament is specifically referring to revenue offences, which it does not do in the Act of 1870, save that revenue offences in the sense here defined of offences under enactments relating to taxes are not offences to be found in Schedule 1 as amended. The second is that the limitation is restricted to offences under enactments relating to taxes, and does not extend to the wide definition of revenue offences in the Irish Extradition Act 1965.***
>
> ***The high water mark of Mr. Nicolls' submission is to be found in the European Convention on Extradition 1957 (European Treaty Series No. 24). The United Kingdom took part in the preparation of this Convention, but so far has neither signed nor ratified it. Article 5 provides:***
>
> ***"Fiscal offences: Extradition shall be granted, in accordance with the provisions of this Convention, for offences in connection with taxes, duties, customs and exchange only if the contracting parties have so decided in respect of any such offence or category of offences."***
>
> ***Here, too, there is to our minds doubt whether this provision relates to offences under enactments relating to taxes, as in the Backing of Warrants (Republic of Ireland) Act 1965 or the wider meaning given in the Irish Extradition Act 1965. But assuming that it is the latter, Mr. Nicholls submits that it amounts to good evidence of the international rule of custom and practice.***
>
> ***We were at one time impressed by this argument. But quite apart from the difficulty that the Convention has not been ratified or signed by the United Kingdom, though it has by Norway, and the ambiguity to which we have referred, it is not an absolute rule like that in relation to political offences, but may be modified in the treaties between states. And in any event, the article***

has now been altered by article 2 of the Second Additional Protocol to the European Convention on Extradition 1978 (European Treaty Series No. 98) as follows:

"Fiscal Offences. 1. For offences in connection with taxes, duties, customs and exchange extradition shall take place between the contracting parties in accordance with the provision of the Convention if the offence, under the law of the requested party, corresponds to an offence of the same nature. 2. Extradition may not be refused on the ground that the law of the requested party does not impose the same kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the requesting party."

It is axiomatic that Courts in one State do not try, convict or punish another State's criminals. This is whether the Crime is revenue-connected or not. But there is a very real problem to overcome if one interprets the common law rule inflexibly because one has to question whether a request to supply evidence for use in a prosecution in another State is to be refused because it could in its context amount to indirect enforcement of that State's revenue law. Both counsel relied heavily on the example given by this question of extradition. Let me therefore concentrate upon it for a moment.

EXTRADITION.

In the U.K., the Channel Islands and the Isle of Man, the Extradition Act 1870 (as amended and supplemented by the Extradition Act 1873) formerly supplied a code of rules governing the circumstances in which and the procedure for extraditing a suspected offender from a Commonwealth country to a non-Commonwealth country. With various modifications, this Act also forms part of the law of other Commonwealth territories. As between different Commonwealth countries (including the U.K., the Channel Islands and the Isle of Man) the applicable rules were contained in the Fugitive Offenders Act 1967. (The relevant law is now contained in the Extradition Act 1989,).

In every case it was only criminal offences listed in the statute that could be the subject of an extradition application, and inclusion in this list was subject to subsequent agreement to the contrary between particular different territories. In no case was a strictly "fiscal" offence included, e.g. the offence of failing without just cause or excuse to make a tax return, or (and this is obviously more serious) making an untrue tax return. But some of the offence that were listed might be committed in a revenue connection, such as:

"Forgery, counterfeiting, and altering, and uttering what is forged or counterfeited or altered....

Crimes by bankrupts against bankruptcy law...." (Extradition Act 1870, Sch. 1).

"Any indictable offence under [the Theft Act 1968], [or the Theft Act 1978]...." (Extradition Act 1873, Sch).

"17. An offence against the law relating to forgery.

18. Stealing, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences....

19. An offence against bankruptcy law or company law." (Fugitive Offenders Act 1976).

The offences committed by the accused in Norway were not specifically fiscal offences but more generally offences (such as forgery and theft) in a revenue context.

Mr Whelan in his closely reasoned argument told us that the Divisional Court had held there there was no clear custom or rule of international law forbidding assistance in the revenue context for the criminal proceedings, equivalent to that for civil proceedings. Accordingly it was only treaty and convention, as enacted by statute, that could prevent tax-related offences being extraditable. Revenue offences as such (e.g. making false tax returns) were not listed in the statutes, but general offences such as that with which this case was concerned were. Given also that treaties could and did explicitly exclude strictly fiscal offences (and that statutes such as the Backing of Warrants)(Republic of Ireland) Act 1965 did so) there was no reason to cut down the generality of the extradition offences that were listed. Accordingly the magistrate was wrong to refuse to commit to custody on all eleven charges.

The U,K. Law on extradition is now contained in the Extradition Act 1989 (consolidating the earlier legislation with amendments). The definition of "extradition crime" is broader and more general than under the previous law, and now covers most offences punishable with more than 12 months' imprisonment. The exception for "political" offences remains (Sch 1 para 1 (2)), but as before there is no exception for "fiscal" offences. The 1989 Act is also expressed to extend to the Channel Islands (s29), though with the possibility of modification (which option has not yet been exercised.)

If an offence were listed as extraditable it would not then be refused if it had been committed in a revenue context. Extradition for fiscal offences was distinguishable until the advent of the Extradition Act 1989 which, as we have seen, widened the parameters to include even fiscal offences if they were punishable by 12 months imprisonment or more.

If the supplying of evidence is less of an incursion upon sovereignty than extradition, and if extradition is permitted on such a widening basis, one is left to contemplate why evidence supplied by one jurisdiction to another on the grounds of comity should be less acceptable.

I should also note in passing that section 5 of the Extradition Act 1873 which provided for evidence to be taken in the U.K. for foreign Criminal matters, was not restricted to extradition offences, but applied to: ***"evidence for the purpose of any criminal matter pending in any foreign state."*** Let me for a moment consider a Canadian case which was cited by the Court in Chief Metropolitan Stupendiary Magistratre ex parte Secretary of States for the Home Department (supra). (Re Request for International Judicial Assistance (1979) 102 DLR (#D) 18.) This case helps me to reach the conclusion that it is possible to distinguish In Re Tucker and the other Jersey and English revenue cases that we have mentioned. In his judgment Miller J. said, at page 37:

> ***"While it is perhaps true that the ultimate consequences of guilty findings in the tax evasion charges against the defendants will be a civil liability to pay additional income tax, it is my view that the pith and substance of the charges are criminal in nature and the assistance of our Court is sought primarily to enable a full hearing to be held on the criminal charges rather than to help the United States collect alleged arrears of income tax. I do not think that it is particularly relevant that most of the charges arise out of alleged offences under the International Revenue Code in the United States. The fact is that they are charges which are criminal in nature and which can attract severe monetary and incarceration penalties. In any event, clearly the conspiracy charges against Sedlmayr and Andrews do not fall within any impediment regarding tax collections in a foreign jurisdiction. I do not feel that any compliance with the request in this case runs contrary to the rule against assisting foreign jurisdictions to collect taxes owing."***

I can now turn once more to Re Tucker.

There are two important distinctions to be drawn in that case:

1. It is an authority on a different statute. It is not, technically, an authority on the 1983 order.

2. the evidence sought in that case was for use in civil rather than criminal proceedings. The nexus with the U.K. revenues claim was therefore so close as to be repugnant.

Since the case was decided in 1988, the House of Lords have given their decision in re State of Norway's application (Nos 1 and 2) HL 1989 I ALL ER 745. That case is of course not binding upon me. It is of high persuasive authority. The House of Lords held that while no one State had the right to assert sovereign power within the territory of another State, this did not prevent an English Court from assisting a foreign State to assert its sovereign powers within its own territory by collecting evidence for use in the foreign state (the very point that is at issue here). Although Norway was seeking assistance in obtaining evidence which it would use in revenue

proceedings in Norway this was not (like some of the American anti-trust laws) an attempt to enforce its laws extraterritorially

In the interests of comity, we will allow the applications. We find for the applicants on the particular facts. We have distinguished Re the Estate of Sidney Walmsley and in re Tucker. We consider them still to be good law. We say this in the light of the Statement of Practice of the Inland Revenue annexed to the affidavit of David Cook Jackson. We can see that, following a successful prosecution, monetary penalties could be sought. We would in no way wish to inhibit a future Court in its consideration of a request (if such request were made) for example, to arrest monies held in a bank account in Jersey in these circumstances.

We need to be satisfied as to whether the proper expenses of the financial institutions named in the requests will be met.

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