Freetown
Oct. 14,
1963

Cole Ag.C.J.

REGINA *v.* PETER S. MOULD. *Ex parte* ALHAJI ALLIE AND ALHAJI BAKARR

Certiorari—Review of magistrate's decision—Bias of magistrate—Effect of plea of guilty—Defendants not represented by counsel.

Whether magistrate exceeded jurisdiction in imposing conditional suspended sentence—Jurisdiction of magistrate—Whether errors of law complained of apparent on face of record—Costs.

Tribal Authorities (Makari-Gbanti Chiefdom Regulation of Cattle and Farming Areas) Order, 1959—Tribal Authorities (Farming Areas) Order, 1955 (Vol. VI, Laws of Sierra Leone, 1960, p. 472)—Tribal Authorities Act (Cap. 61, Laws of Sierra Leone, 1960), ss. 8, 11—Criminal Procedure Act (Cap. 39, Laws of Sierra Leone. 1960) s. 150 (2)—Native Courts Act (Cap. 8, Laws of Sierra Leone, 1960), s. 27 (2) (b)—Courts Act (Cap. 7, Laws of Sierra Leone, 1960) ss. 4, 39—Supreme Court Rules, Ord. XLVI, r. 1 (Vol. VI, Laws of Sierra Leone, 1960, p. 230).

The Tribal Authorities Act, s. 8 (*m*) provided that " . . . a Tribal Authority may . . . issue orders, to be obeyed by natives within its area to whom the orders relate . . . for any . . . purpose . . . which may . . . be sanctioned by the Governor. . . ."

Acting under this section, the Governor made the Tribal Authorities (Farming Areas) Order, 1955, section 2 of which provided that " Any Tribal Authority may issue orders for the purpose of setting aside areas within the area of its authority to be specially reserved for grazing and mixed farming, and for allocating and regulating the use of such areas."

In 1959, the Makari-Gbanti Tribal Authority made the Tribal Authorities (Makari-Gbanti Chiefdom Regulation of Cattle and Farming Areas) Order, 1959, which provided for the appointment of a Cattle Settlement Committee " to visit cattle settlement areas for the purpose of supervising negotiations between landholders and cattle owners and to specify areas reserved for the herding of cattle and areas for farming." This Order also provided that any person who disregarded the settlement made by the Committee would be liable to a fine not exceeding £3 or to imprisonment not exceeding one month.

Alhaji Allie and Alhaji Bakarr (the applicants) were cattle owners who had cattle grazing in the Makari-Gbanti Chiefdom. In 1963, the Cattle Settlement Committee did not allocate any grazing lands to the applicants, and ordered them to remove their cattle from the areas where they were within two weeks. When the applicants refused to remove their cattle, they were summoned before the Makari-Gbanti Chiefdom Native Court for grazing their cattle in an area which had been set aside for farming by the Committee, were found guilty and fined £3 each.

The applicants still did not remove their cattle, and the Tribal Authority reported the matter to Peter Mould, District Officer of the Bombali District with headquarters in Makeni. Mould investigated the matter, interviewed the applicants and told them they would have to obey the order of the committee. They promised to leave the area where their cattle were by July 9, 1963. When they failed to do so, they were again summoned before the Native Court.

Mould, acting pursuant to section 27 of the Native Courts Act, transferred the cases to the magistrate's court. The applicants appeared before Mould, sitting in his capacity as magistrate, on July 23, and pleaded guilty to the charge.

He imposed the following sentence on each applicant: "Sentence to one month's suspended sentence to be effective from August 6 if he and all his cattle are not removed from the area and out of the Chiefdom by that date."

The applicants applied to the Supreme Court for orders of certiorari quashing the decisions. The grounds of the application were as follows:

"(1) That the Makari-Gbanti Tribal Authority, by delegating its powers under the Tribal Authorities (Farming Areas) Order, 1955 . . . to a Cattle Settlement Committee, acted ultra vires, and therefore the orders made by the Cattle Settlement Committee were null and void, a violation of which cannot give rise to any penal consequences.

"(2) That the District Officer, acting as a magistrate, with foreknowledge of the facts of the cases, was . . . in law biased and . . . incompetent to sit on the said cases.

"(3) That the District Officer, acting as a magistrate, erred in law in imposing a conditional suspended sentence.

"(4) That the judgment of the District Officer, acting as a magistrate, in impliedly ordering the ejectment of the applicants and their cattle by virtue of the Tribal Authorities (Makari-Gbanti Chiefdom Regulation of Cattle and Farming Areas) Order, 1955, was illegal

(a) because the particular Regulation under which he acted was ultra vires the Tribal Authorities (Farming Areas) Order, 1955, and

(b) if it was not, had, at the date of the judgment, become contrary to section 14 of the Constitution (P.N. 78/61) and

(c) if it is not, does not authorise the removal of cattle, but the ejectment of the cattle owner."

Held, quashing the convictions, (1) that the magistrate was biased in law.

(2) That, since the applicants were not aware that the magistrate was biased in law, they were not precluded from complaining about such bias, even though they had pleaded guilty.

Reg. v. *Campbell, Ex parte Nomikos* [1956] 2 All E.R. 280 distinguished.

(3) That the magistrate did not have jurisdiction to impose suspended sentences on the applicants.

(4) That the proceedings were regular upon their face.

(5) That the errors of law complained of in grounds (1) and (4) of the application were not apparent on the face of the record; and

(6) That no order for costs would be made against the magistrate, since the acts complained of were done by him within the territorial limits of his jurisdiction, such acts were done in the discharge of his judicial duty and he acted in good faith and believed himself to have jurisdiction to do such acts.

Cases referred to: *Frome United Breweries Co.* v. *Bath Justices* [1926] A.C. 586; *Rex* v. *Sunderland Justices* [1901] 2 K.B. 357; *Reg.* v. *Cheltenham Commissioners* (1841) 1 Q.B. 467; *Rex* v. *Williams, Ex parte Phillips* [1914] 1 K.B. 608; *Rex* v. *Sussex Justices, Ex parte M'Carthy* [1924] 1 K.B. 256; *Rex* v. *Essex Justices, Ex parte Perkins* [1927] 2 K.B. 465; *Reg.* v. *Campbell, Ex parte Nomikos* [1956] 2 All E.R. 280.

Berthan Macaulay Q.C. and *Claudius Doe-Smith* for the applicants.

Constant S. Davies (Ag. Senior Crown Counsel) for the respondent.

COLE AG.C.J. These certiorari proceedings are brought on behalf of the applicants, Alhaji Allie and Alhaji Bakarr, both cattle-farmers of Mokot in the Makari-Gbanti Chiefdom. The reliefs sought are orders by this court quashing

two decisions of the respondent, Peter Mould, a magistrate in Makeni, dated July 3, 1963, in two criminal proceedings before the Bombali District magistrate's court entitled *Makari-Gbanti Chiefdom Tribal Authority* v. *Alhaji Allie* and *Makari-Gbanti Chiefdom Tribal Authority* v. *Alhaji Bakarr.*

The grounds of the application, according to the statement dated September 3, 1963, on behalf of the applicants, are four in number and are as follows:

"(1) That the Makari-Gbanti Tribal Authority, by delegating its powers under the Tribal Authorities (Farming Areas) Order, 1955 (Vol. 6, p. 472), to a Cattle Settlement Committee, acted ultra vires, and, therefore, the orders made by the Cattle Settlement Committee were null and void, a violation of which cannot give rise to any penal consequences.

"(2) That the District Officer, acting as a magistrate, with foreknowledge of the facts of the cases, was therefore in law biased, and was therefore incompetent to sit on the said cases.

"(3) That the District Officer, acting as a magistrate, erred in law in imposing a conditional suspended sentence.

"(4) That the judgment of the District Officer, acting as a magistrate, in impliedly ordering the ejectment of the applicants and their cattle by virtue of the Tribal Authorities (Makari-Gbanti Chiefdom Regulation of Cattle and Farming Areas) Order, 1959, was illegal

(a) because the particular Regulation under which he acted was ultra vires the Tribal Authorities (Farming Areas) Order, 1955, and

(b) if it was not, had, at the date of the judgment, become contrary to section 14 of the Constitution (P.N. 78/61) and

(c) if it is not, does not authorise the removal of cattle, but the ejectment of the cattle owner."

The notice of motion for orders of certiorari came up for hearing before me on September 27 and 30, 1963. Mr. Berthan Macaulay, Q.C., with him Mr. S. H. Harding on the first occasion and Mr. Doe-Smith on the second occasion, appeared for the applicants. Mr. Constant Davies, Acting Senior Crown Counsel, appeared for the respondent.

On the first day of the hearing, Mr. Davies, for the respondent, informed the court that his instructions were not to oppose the application in view of the second ground in the statement by the applicants, which he was not contesting. That being so, the applicants were, on the authorities which I shall in a moment deal with, entitled to the relief sought. Mr. Macaulay, however, applied to address the court on the other grounds contained in the statement. Mr. Davies opposed this application on the ground that for this court to pronounce on the other grounds contained in the statement of the applicants would be making declaratory judgments in a proceeding which was entirely different from an action for a declaration. He added that in the making of the Tribal Authorities (Makari-Gbanti Chiefdom Regulation of Cattle and Farming Areas) Order, 1959, which is being called in question, an administrative and not a judicial act was involved; and, according to the authorities, an administrative act cannot, generally speaking, be the subject-matter of certiorari proceedings. Mr. Macaulay, on the other hand, argued that the jurisdiction of the magistrate in convicting the applicants under the Tribal Authorities (Makari-Gbanti Chiefdom Regulation of Cattle and Farming Areas) Order, 1959, was at issue and the question was, therefore, one fit for

determination in these proceedings. He added that, in the alternative, the matter involved an error of law on the part of the magistrate, in which case the court can properly interfere. I allowed Mr. Macaulay to address me on the other grounds contained in the statement of the applicants.

Ground (2) of the statement of the applicants, which alleges bias in law on the part of the magistrate, is short and simple. I shall, therefore, dispose of it at once. The authorities lay down the proposition that it is an elementary principle that (in the absence of statutory authority or consensual agreement) no man can be a judge in his own cause. Therefore, where persons who have a direct interest in the subject-matter of an inquiry before an inferior tribunal take part in adjudicating upon it, the tribunal is improperly constituted and is without jurisdiction and the court will grant an order of certiorari to quash a determination arrived at by it. The authorities also lay down the further proposition that where the interest of the person adjudicating is not pecuniary, the order will not be made unless it is shown that his interest is substantial and of such character that it will give rise to a real likelihood of bias or that his decision was actually biased. Halsbury's Laws of England, Vol. 11 (3rd ed.), p. 67, para. 123, refers. In the case of *Frome United Breweries Co.* v. *Bath Justices*, a House of Lords case, reported in [1926] A.C. 586, on an application to the licensing justices of a county borough for the renewal of an old on-licence the justices referred the matter to the compensation authority of the borough under section 19 of the Licensing (Consolidation) Act, 1910, and at a further meeting they resolved that a solicitor should be instructed to appear before the compensation authority and oppose the renewal on their behalf. The solicitor duly appeared and opposed, and the compensation authority refused the renewal, subject to payment of compensation. Three of the justices who sat and voted as members of the compensation authority had been parties to the resolution of the licensing justices authorising a solicitor to appear on their behalf; it was held that the three justices were disqualified from sitting on the compensation tribunal on the ground of bias and that the decision of the tribunal must be set aside. Viscount Cave L.C. at page 590 said, inter alia—

> "My Lords, if there is one principle which forms an integral part of the English law, it is that every member of a body engaged in a judicial proceeding must be able to act judicially; and it has been held over and over again that, if a member of such a body is subject to a bias (whether financial or other) in favour of or against either party to the dispute or is in such a position that a bias must be assumed, he ought not to take part in the decision or even to sit upon the tribunal. This rule has been asserted, not only in the case of courts of justice and other judicial tribunals, but in the case of authorities, which, though in no sense to be called courts, have to act as judges of the rights of others."

Again at page 591 the very learned and noble Lord Chancellor said, inter alia—

> "From the above rule it necessarily follows that a member of such a body as I have described cannot be both a party and a judge in the same dispute, and that if he has made himself a party he cannot sit or act as a judge, and if he does so the decision of the whole body will be vitiated. Thus, in *Reg.* v. *Lee*, where a member of the Sanitary Committee of a town council who had taken part in directing a prosecution sat and adjudicated upon the charge, the conviction was quashed."

Lord Atkinson, in the course of his very learned judgment in the same case at page 607, quoted with approval the language of the then Master of the Rolls in the case *Rex* v. *Sunderland Justices* [1901] 2 K.B. 357 as follows:

> "It appears to me that, in cases where the decision of justices is impeached on the ground of a bias such as is suggested in the present case, the decision must really turn on the question of fact, whether there was or was not under the circumstances a real likelihood that there would be a bias on the part of the justice alleged to have been so biased. If there is such a likelihood, then it is clearly in accordance with natural justice and common sense that the justices likely to be so biased should be incapacitated from sitting."

Let us now turn to the record of the magistrate in these proceedings. They form part of Exhibit "ABC1" referred to in the affidavit of Arthur Balogun Coker sworn on September 20, 1963, and filed herein. At page 1 of the record the following is recorded by the magistrate to be the facts of the case:

> "The landowners near Makot met the Cattle Settlement Committee, stating that there were too many cattle and that Alhaji Allie and the accused should not have a place this year. The Cattle Settlement Committee visited this area and found that the landowners' statement was correct. The Committee therefore ordered that the two persons should leave their area. They refused to quit. The landowners then came to see the elder in Masongbo. The Tribal Authority put Alhaji Allie and the accused in court. The court ordered them to leave the area and a time of four days was given; Case 108/63 refers. They still did not agree to leave. Again they were put in court and fined five pounds but they still remained in the area. When the District Officer visited here the Paramount Chief and I put the case before the District Officer. We gave them one week to leave, but the District Officer mediated and they promised faithfully to leave within two weeks before July 9. They did not leave. They were called in court again and told they must go, as the Chiefdom had ordered it and otherwise there will be no peace in the area."

It would appear that these facts were told the magistrate by Sori Kamara, who appeared for the Makari-Gbanti Tribal Authority. That the District Officer referred to in the facts above was one and the same person as the magistrate who tried the cases is clear from a look at the order of the District Officer dated July 19, 1963, transferring the cases to the magistrate's court. The order forms part of Exhibit "ABC1" already referred to and reads as follows:

"District Officer's Office,
Makeni.
July 19, 1963.

CF.417/4C
My Good Friend,

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1. In accordance with section 27 (2) (*b*) of the Native Courts Act, I hereby transfer the above matter to the magistrates' court.

2. The court will sit at Masongbo at 2.30 p.m. on Tuesday, July 23. Please see that the criminal summons is served on the two accused. They should be instructed to see that their own witnesses are present. Please see that the witnesses for the Tribal Authority are also present.

Your Good Friend,
P. S. Mould,
District Officer, Makeni.

P.C. Bai Makari,
Makari-Gbanti Chiefdom,
Mawongbon."

In any case this fact has not been challenged by or on behalf of the respondent and I find on the record that the District Officer referred to in the facts as stated on the record was one and the same person as the magistrate who tried the applicants. I find as a fact that there was a real likelihood of bias on the part of the magistrate and he was, therefore, incapacitated from sitting.

It might be said that the applicants must have been aware that the magistrate was a person biased in law and, nevertheless, assented to his acting herein. That being so they cannot afterwards complain. The authorities of *Reg.* v. *Cheltenham Commissioners* (1841) 1 Q.B. 467; *Rex* v. *Williams, Ex parte Phillips* [1914] 1 K.B. 608; *Rex* v. *Sussex Justices, Ex parte M'Carthy* [1924] 1 K.B. 256; *Rex* v. *Essex Justices, Ex parte Perkins* [1927] 2 K.B. 475 establish the proposition that if a party to a cause before justices is aware that a magistrate or the magistrates' clerk is interested in the legal sense in the subject-matter of the cause and, nevertheless, expressly or impliedly assents to his acting therein, that party cannot afterwards object. Can it be said that the applicants herein were aware that the magistrate was biased in law? It is my view that they were not, and I so find. It must be observed that they were not legally represented at the trial, which is of relevance in considering this aspect of the matter. In view of my finding that the applicants were not aware of such an important fact I hold that they are not debarred from complaining afterwards. Taking all the circumstances into consideration I think this is a proper case where the relief sought should be granted on the second ground of the applicants' statement alone. It is true that the record of proceedings shows that the applicants pleaded guilty before the magistrate and there has been no dispute as to whether or not they pleaded guilty. I am satisfied, as far as the authorities go, that this is immaterial where the relief sought is founded on the ground of bias in law on the part of the magistrate, provided the applicants acted without knowledge of bias. In the case of *Reg.* v. *Campbell, Ex parte Nomikos* [1956] 2 All E.R. 280, it was held that certiorari, being a discretionary remedy, would not be granted because the applicant had pleaded guilty before the magistrate, who could not, therefore, be said to have acted without jurisdiction. It should be pointed out, however, that in that case, unlike the present, the applicant was represented by able and experienced counsel and, furthermore, no question of bias arose. Lord Goddard C.J., in the course of his judgment at page 283, said, inter alia—

"It is sometimes forgotten why it is that certiorari will lie for bias in a magistrate. No question of bias arises here, but it is a very common

ground for moving for certiorari that the magistrate has an interest in the matter, and is, therefore, said to be biased. The reason why that is a ground for certiorari is that there is a well-known maxim that no man can be judge in his own cause. If a magistrate is biased, he is supposed to be disqualified from sitting because he would be sitting on a matter in which he himself was interested. Therefore, he has no jurisdiction to sit, and if he sits that is a fatal objection to a conviction."

I now come to the other grounds raised. Perhaps it would be better if I dealt at once with ground (3) of the statement, namely, that the District Officer, acting as a magistrate, erred in law in imposing a conditional suspended sentence. The sentence imposed by the magistrate is as follows: "Sentence to one month's suspended sentence to be effective from August 6 if he and all his cattle are not removed from area and out of the Chiefdom by that date."

That was the sentence imposed on the first applicant, Alhaji Bakarr. In the case of the second applicant, Alhaji Allie, the record reads: "As in the case of Alhaji Bakarr." Both sentences were pronounced on July 23, 1963. An examined copy of the Tribal Authorities (Makari-Gbanti Chiefdom Regulation of Cattle and Farming Areas) Order, 1959, was by consent put in evidence and marked "A." The sentence laid down by section 7 of the Order in question, Exhibit "A"—the section under which the applicants were charged—is "a fine not exceeding £3 or to imprisonment not exceeding one month." There is no power under this Order for a sentence imposed by the magistrate to be suspended. The Order in question—Exhibit "A"—purports to have been made in exercise of the powers vested in the Makari-Gbanti Tribal Authority under section 2 of the Tribal Authorities (Farming Areas) Order, 1955 (Vol. VI, Laws of Sierra Leone, 1960, p. 472). No provision is made for punishment of any infraction of any Orders so issued; but this latter Order—the Farming Areas Order, 1955—was made under and by virtue of section 8 of the Tribal Authorities Act, Cap. 61, which by section 11 provides a penalty of a fine not exceeding £10 or imprisonment for a period not exceeding three months for any breach of Orders made, amongst others, under section 8 of the Act. I can find no provision in the Act for suspended sentence.

Section 150 (2) of the Criminal Procedure Act, Cap. 39, provides that except where express provision is made to the contrary, every sentence shall be deemed to commence from and to include the whole of the day of the date on which it was pronounced. I can find no provision to the contrary applicable to this case. I, therefore, find that the magistrate acted without jurisdiction in imposing suspended sentences on the applicants, and on this further ground the sentences will be quashed.

I now come to grounds (1) and (4). They appear to fall into a totally different category. They attack the validity of the Order—Exhibit "A"—under which the applicants were charged. It has not been argued that, if the Order in question—Exhibit "A"— as it stood was valid and quite apart from the grounds of bias and suspended sentences (which I have already dealt with), the magistrate would have acted without jurisdiction. Before I can determine these grounds I must first of all answer the questions—(a) Are the acts complained of within or without the jurisdiction of the magistrate? If not, then this court can quash. (b) If the acts complained of are within his jurisdiction, has there been an alleged error of law apparent on the face of the record? In other words, are the orders of the magistrate speaking orders?

As regards the first question, it is my view that quite apart from the questions of bias and suspended sentence which I have dealt with the magistrate acted within his jurisdiction.

Section 8 of the Tribal Authorities Act, Cap. 61, gives to a Tribal Authority wide powers to issue Orders to be obeyed by natives within its area to whom the Orders relate. In pursuance of this section the Tribal Authorities (Farming Areas) Order, 1955 (Vol. VI, Laws of Sierra Leone, 1960, p. 472), was made. The Order in question—Exhibit "A"—under which applicants were charged purports to have been made pursuant to section 2 of the Farming Areas Order, 1955. Section 11 (1) of the Tribal Authorities Act, Cap. 61, provides that any native who without lawful excuse continues or fails to obey an order issued by a Tribal Authority under section 8 may be brought before the Native Court and dealt with. To pause here—there has been no dispute that both parties to the proceedings before the magistrate are natives. By section 27 (2) (*b*) of the Native Courts Act, Cap. 8, a District Officer may transfer any cause or matter, either before trial or at any stage of the proceedings, from a Native Court to the magistrate's court for hearing. It was in the exercise of the powers conferred by this subsection that the magistrate transferred the cases to the magistrate's court and dealt with them. From the foregoing it can been seen that all the prerequisites to confer jurisdiction on the magistrate exist in these cases and I hold that the proceedings are regular upon their face. In Halsbury's Laws of England, Vol. 11 (3rd ed.), p. 62, para. 119, it is stated, inter alia:

> "Where the proceedings are regular upon their face and the inferior tribunal had jurisdiction, the superior court will not grant the order of certiorari on the ground that the inferior tribunal had misconceived a point of law. When the inferior tribunal has jurisdiction to decide a matter, it cannot (merely because it incidentally misconstrued a statute . . .) be deemed to exceed or abuse its jurisdiction."

I now come to the second question, namely, are the acts complained of errors of law apparent on the face of the record? In this connection I think I ought at once to mention the general principle that it is well established that prohibition and certiorari, being obtainable only in respect of judicial or quasi-judicial acts, will not issue directly to impugn legislative instruments—Zanir, The Declaratory Judgment (1962), 150.

The validity of subordinate legislation has frequently been directly impugned, that is, as a question preliminary or incidental to the main issue to be decided by the court. This is usually done mainly by way of defence in a criminal prosecution because, as Lord Goddard C.J. said in *Reg.* v. *Campbell, Ex parte Nomikos*, already cited above, at page 283: ". . . until the magistrate had inquired into the facts and construed the regulation it would not have appeared whether or not an offence had been committed." This is not the case here.

I have carefully examined the records here and I am satisfied that the errors of law complained of are not apparent on the face thereof. In other words, there is no speaking order here which would enable me properly to interfere in this matter under grounds (1) and/or (4) of the applicants' statement, nor can I properly in the circumstances make any pronouncement on the validity or otherwise of the Order in question—Exhibit "A."

In the result, because of grounds (2) and (3) of the statement of the applicants, which I find substantiated, I hereby quash the convictions of the

applicants dated July 23, 1963, and the sentences imposed by the magistrate on the applicants on that date.

I now come to the question of costs. Order 46, r. 1, of our Supreme Court Rules, provides as follows:

> " Subject to the provisions of any Ordinance (now Act) and these rules, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the court:
>
> " Provided that nothing herein contained shall deprive an executor, administrator, trustee or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the Rules hitherto acted upon in the High Court of Justice in England:
>
> " Provided also that the costs shall follow the event unless the court shall, for good cause, otherwise order."

From the wording of this rule it is clear that it must be read subject to the provisions of section 39 of the Courts Act, Cap. 7. Although the Supreme Court Rules, of which Order 46 is a part, were made under and by virtue of section 4 of the Courts Act, Cap. 7, and the expression " Subject to the provisions of this Act (Ordinance) " does not appear therein, yet, I think, the words of Order 46, r. 1, are wide enough to justify this interpretation. That being so, can I, in view of the provisions of section 39 of the Courts Act, Cap. 7, award costs of these proceedings to the applicants? Section 39 of the Courts Act, Cap. 7, provides as follows:

> " No judge, magistrate, or other person acting judicially shall be liable to be sued in any civil court for any act done by him within the territorial limits of his jurisdiction in the discharge of his judicial duty, or for any order made by him in the discharge of such duty, whether or not within the limits of his jurisdiction, nor shall any order for costs be made against him, provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of; and no officer of any court or other person bound to execute the lawful warrants or orders of any judge, magistrate, or other person acting judicially shall be liable to be sued in any civil court for the execution of any warrant or order which he would be bound to execute if within the jurisdiction of the person issuing the same."

The words of the section are, in my view, clear and unambiguous. Provided the court is satisfied: (a) that the act complained of was done by a judicial officer within the territorial limits of his jurisdiction; and (b) that such act was done in the discharge of his judicial duty; and (c) that such judicial officer at the time he did so acted in good faith and believed himself to have jurisdiction to do or order the act complained of; such officer cannot in those circumstances be mulcted in costs. I am satisfied that these requirements are fulfilled in these proceedings. In the circumstances I refuse to grant the application of the applicants herein for costs. In fairness to Mr. Macaulay I ought to add that he did at the hearing concede that in the light of the authorities he could not press his clients' claim for costs.