for reserving the coastline for future fishing was the price of chanks, with which the respondent did its business. That amount was paid to obtain an enduring asset in the shape of an exclusive right to fish, and the payment was not related to the chanks, which it might or might not have brought to the surface in this speculative business. The rights were not trasferable, but if they were and the firm had sold them, the gain, if any, would have been on the capital side and not a realising of the chanks as stock-in-trade, because none had been bought by the firm, and none would have been sold by it.

In our opinion, the decision of the High Court, with all due respect, was, therefore, erroneous, and the earlier decision of the Full Bench of the same High Court was right in the circumstances of the case.

In the result, the appeal is allowed; but there will be no order about cost.

BY COURT. In accordance with the majority judgment of the Court, the appeal is allowed, but there will be no order about costs.

MOHAMMAD SERAJUDDIN

v.

R. C. MISHRA

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Customs—Seizure of documents—Warrant issued by Magistrate—Custody of documents—If customs authorities entitled to—Facilities for inspection—Sea Customs Act, 1878 (8 of 1878), s. 172,—Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 96, Schedule V Form VIII.

The respondent was suspected of having exported dutiable goods in contravention of the Sea Customs Act and of having secreted documents in connection therewith in two premises. An application was made to the Chief Presidency

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Magistrate under s. 172 of the Act for issuing warrants to search the premises for the documents. The warrants were issued and after search a large number of documents were seized by the Customs authorities. They then applied to the Magistrate to retain possession of the documents but he ordered that the documents would remain in the custody of the court and that the authorities would be given facilities to inspect them. After having inspected some of the documents the Customs authorities again applied to the Magistrate for custody of the documents and in the alternative for allotment of a separate room where they could inspect the documents in privacy, but the Magistrate rejected both the prayers. On revision the High Court held that the Customs authorities were entitled to the custody of the documents and directed that they be handed over to them immediately.

Held, that the goods and documents seized under a warrant issued by a Magistrate under s. 172 of the Sea Customs Act must be produced before the Magistrate who issued the warrant and it is for him to decide how the goods and documents shall be disposed of. He may make them over ro the Customs authorities or keep them in his custody. The second paragraph of s. 172 provides that a warrant issued under s. 172 shall have the same effect as a search warrant issued under the law relating to criminal procedure. The form prescribed by the Code of Criminal Procedure requires the seized articles to be brought into court, and the Magistrate has jurisdiction to decide about their custody. The Magistrate's order that the documents should remain in his custody and be scrutinised in his court was thus legal.

S. K. Sribastava v. *Gajanand* (1956) 60 C. W. N. 1073, approved.

Calcutta Motor Cycle Co. v. *Colleceor of Customs* (1955) 60 C. W. N. 67 *and Collector of Customs* v. *Calcutta Motor and Cycle Co.* A. I. R. 1958 Cal. 682, not approved.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 158 of 1960.

Appeal from the judgment and order dated July 1, 1960, of the Calcutta High Court in Cr. Revision No. 500 of 1960.

N. C. Chatterjee and *P. K. Chatterjee*, for the appellant.

N. S. Bindra and *T. M. Sen*, for the respondent.

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1961. November 24. The Judgment of the Court was deliered by

HIDAYATULLAH, J.—This appeal is by certificate under Art. 134 (1) (c) of the Constitution granted by the High Court of Calcutta against its judgment and other dated July 1, 1960. The appellant, Mohammad Serajuddin, is the managing partner of Messrs. Serajuddin and Co., of No. 19A, British Indian Street and of p-16, Bentick Street, Calcutta. The said firm carries on business as exporters of mineral ores, and also possesses some mines. The business of the appellant involved the export of manganese ore. Till April, 1948, there was no export duty on manganese ore. On April 19, 1948, export duty at *ad valorem* rates was imposed on manganese ore. This was withdrawn in August, 1954, but was re-imposed in September, 1956 and was withdrawn again in November, 1958. During this period, the appellant exported manganese ore, among other mineral ores.

On November 28, 1959, an application was made under s. 172 of the Sea Customs Act to the Chief Presidency Magistrate, Calcutta requesting that warrants be issued to search the two premises already mentioned, on the allegation that documents relating to and connected with "illegal exportation of dutiable goods which were actually exported in contravention of the Sea Customs Act" were secreted in the above premises. The Chief Presidency Magistrate issued two warrants returnable on December 5, 1959. Subsequently, time for return was extended to December 15, 1959. It appears that the search was carried with somewhat undue zest, and the Chief Presidency Magistrate, on December 12, 1959, limited the search to documents relating to manganese ore and also fixed the time of the day during which the search could be made. Meanwhile, applications for withdrawal of the search warrants were unsuccessfully made by

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the appellant, and, in the end, the Customs authorities seized 959 documents, registers, books, etc. The Customs authorities wished to retain these documents in their own custody for the purpose of scrutiny, and on December 15, 1959, an application was made to obtain this permission. On the same day, the appellant also applied for return of documents unconnected with the export of manganese ore and for retention of the remaining documents in the custody of the Court. The Chief Presidency Magistrate passed an order the same day that the documents would be kept in the custody of the Court and the Customs authorities would be given facilities to inspect them in the Court premises. This inspection commenced on December 17, 1959.

We may now pass over applications made by the appellant for the return of documents unconnected with manganese ore and by the Customs authorities for extension of time and for handing over all the documents to them. Suffice it to say that the Magistrate declined both the requests, and extended time for inspection till April 9, 1960. On February 6, 1960, the Customs authorities filed a last application for getting custody of the documents and for certain facilities for proper inspection in secrecy, if the inspection was to be done in the Court premises. This application was summarily dismissed by the Magistrate the same day.

In the last application made by the Customs authorities, they had, in addition to asking for the custody of the documents, said that the documents were many, and they had to be scrutinised with reference to volumimous records maintained by the Customs and Shipping Departments and also the shipping documents. They also said that certain witnesses and informers had to be questioned, and that it was not possible to complete the work within reasonable time, if the inspection had to be carried on, not only during Court hours but

in the presence of the representatives of the appellant. They had, in the alternative, asked for a separate room where the scrutiny and discussions between the Customs Officers could take place in privacy and for facilities for inspection of the records even after Court hours, because during the day, the staff at their disposal was limited. Both these matters, of course, were disposed of summarily; but the learned Magistrate had, in his earlier orders, said that he could give them only such room as he could spare, since he had not unlimited accommodation at his disposal. The Magistrate also observed that he was, in no event, allowing the Customs authorities to take the documents away, which had been seized as a result of warrants issued by him. He claimed that the documents belonged to him, and could be inspected only as, when and where he ordered.

Against the order of the Magistrate, an application for revision was filed by the Customs authorities in the Calcutta High Court. According to the practice of that High Court, the Chief Presidency Magistrate was also called upon to show cause against the application. He showed cause on the same lines. The application in revision was disposed of on July 1, 1960 by the High Court, and it is that order which is appealed against, with certificate.

The High Court, in its order, observed that the Chief Presidency Magistrate had "placed real difficulties in their way of speedily and properly finishing the task of scrutinising the documents", that due consideretion was not given by the Chief Presidency Magistrate to this expect of the case, and holding that the Customs authorities under the law were entitled to the custody of the documents seized, ordered that all the documents (bar 63 documents) should at once be handed over to the Customs authorities, with an imperative direction to

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complete the scrutiny of the documents within three months from the date the order of the High Court reached the Chief Presidency Magistrate.

In this appeal, two questions arise. The first is whether the Customs authorities are entitled to the custody of records seized by them under a search warrant issued under s.172 of the Sea Customs Act, and the Magistrate cannot deny them the right to carry away the documents for their scrutiny. If the answer to this question is in the negative, a second question arises whether the order of the Chief Presidency Magistrate gave inadequate facilities to the Customs authorities for inspection and scrutiny of the documents.

We shall deal with the question of law first. The Customs authorities claim that the documents seized by them can be retained by them for performing their statutory duties. They say that there is no difference between contraband goods and documents relating to contraband goods, and the same procedure should apply. when goods are seized without a warrent, the Customs authorities are not required under the Act to make them over to a Magistrate; when documents or goods are seized on a warrant, they can only enter the premises for effecting a search, armed with the warrant of a Magistrate. According to the Customs authorities, once a Magistrate has issued a warrant, his connection with the search comes to an end, and whatever is seized as a result of the search is to be disposed of by the Customs authorities in the discharge of their duties to adjudicate whether any contraband goods have been brought into the country against the Customs law. It is contended that just as the goods seized by them under the Act are not required to be produced before a Magistrate, so also documents seized under a warrant from a Magistrate need not be produced before him. They concede, however, that a Magistrate has jurisdiction

over his warrant, which he can withdraw, annul or modify.

It appears that, in the Calcutta High Court, there is a conflict of opinion on this point, which arises on two expects of s.172 of the Sea Customs Act. That section reads:

> "Any Magistrate may, on application by a Customs collector, stating his belief that dutiable or prohibited goods or any documents relating to such goods are secreted in any place within the local limits of the jurisdiction such Magistrate, issue a warrant to search for such goods or documents.
>
> Such warrant shall be executed in the same way, and shall have the same effect, as a search-warrant issued under the law relating to Criminal Procedure."

In an unreported case of the Calcutta High Court, *Calcutta Motor & Cycle Co.* v. *Collector of Customs*(1), Debabrata Mookerjee, J., has held that search warrants must be issued, when the Customs Officer states his belief etc., and the Magistrate is not required to form his own opinion. He has further held that warrants issued under s.172 are not impressed with all the characteristics and features of a warrant under s.96 of the Criminal Procedure Code, and that the form of the warrant prescribed under the Code can be suitably changed under s. 555 of the Criminal Procedure Code. Unfortunately, the judgment of Mookerjee, J., was not produced before us, and the above is a summarry made in the judgment under appeal.

The matter also came before the High Court in two other cases, and the judgments can be read in some unauthorised reports. In *Calcutta Motor Cycle Co.* v. *Collector of Customs* (2), Sinha, J., dealt with the matter under Art. 226 of the Constitution. The view of Sinha, J., was upheld by the Division

(1) Criminal Revision Case No. 693 of 1955.

(2) (1955) 60 C. W. N. 67.

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Bench in *Collector of Customs* v. *Calcutta Motor & Cycle Co.* (1). It is held in that case that a general seach warrant without specifying the goods or documents is a good warrant, and that the warrant for search implies the power to seize goods and documents. Sinha, J. also observes *obiter* that the goods or documents seized as a result of the search need not be produced before the Magistrate, and may be retained by the Customs authorities, and, further, that the warrant should be suitably amended enable the Customs authorities not only to search for goods or documents but also to seize them. In *S. K. Sribastava* v. *Gajanand* (2), Sen, J., dissent from the observations of Sinha, J., and holds that when goods or documents are seized in execution of a search warrant, the ultimate disposal of the books and papers must be under the Magistrate's order, and that there is nothing in the Sea Customs Act to show that the Customs-collector is the final authority to dispose of the papers and books. He also does not accept the contention that, as there is no pending proceeding in the Court, the production of the goods and documents seized is not necessary before the Court. He futher holds that the Magistate has the power to insist that the inspection shall be completed within a reasonable time, and papers and books not required for the purpose of the case are returned promptly to the party. At p. 1078, the learned Judge observes:

> "After seizure by the police in execution of the search warrant, the goods and documents must normally be produced before the court issuing the search warrant. That is implied by the issue of a search warrant by a Magistrate for search of a place within his jurisdiction and is expressly provided for in the prescribed forms for search warrant under sections 96 and 98 of the Code."

In the judgment under appeal, the view expressed by Sinha, J., has been preferr-

(1) A. I. R. 1958 Cal. 682. (2) (1956) 60 C. W. N. 1073.

ed. The learned Judge has referred to the language of s. 172, and has contrasted it with the language of s. 96 of the Code. He observes that the words "wherein the court has reason to believe" do not occur in s. 172 of the Sea Customs Act, and the Magistrate, therefore, has no discretion but to issue the search warrant in spite of the words "may issue" in that section. He however, goes on to say that the Magistrate, in issuing the search warrant, acts judicially, and may examine whether the belief is really entertained by the Customs Officer or not, or whether there is any *mala fide* action. Except for these two matters, the Magistrate has no other discretion. Once the documents have been seized, the second paragraph of s. 172 begins to operate, and the Magistrate's responsibility is at an end. He agrees with Debrabata Mookerjee, J., that all the provisions of the Code do not apply, and after seizure, the action of the Customs authorities is independent and uncontrolled by the Code. He, however, concedes that "the ultimate responsibility" of the Magistrate and his "overall control" still remain. But he states that "the immediate control" must remain with the Customs authorities, who need not produce the documents before the Magistrate, because seizure would be meaningless, if they did not have the power to scrutinise and inspect the documents in their own way.

The pendency of a proceeding before a Magistrate as a condition precedent to the issue of a warrant is no longer a matter for consideration, after the decision of the Privy Council in *Clarke* v. *Brojendra Kishore Roy Choudhury* (1). A Magistrate thus has jurisdiction the moment an application for warrant is made before him, and proceedings on that application can be said to have started under the Code. Section 172 of the Sea Customs Act by

(1) (1912) I.L.R. 39 Cal. 953 (P.C.).

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its second paragraph brings into operation the provisions of the Criminal Procedure Code, and, therefore, the Magistrate's jurisdiction is both under s. 172 of the Sea Customs Act and the Criminal Procedure Code. There can be no doubt also that unlike s. 96, the Magistrate is to be guided by the belief on the Customs authorities, though he may prevent undue harassment in cases, where it can be seen that the belief is not entertained by the Customs officer or his action is *mala fide*. The Magistrate is certainly entitled to satisfy himself about the belief of the Customs Officer, but is not required to make up his own mind independently of that belief. To this extent only is the matter in the control of the Magistrate, before he issues the warrant. After the warrant is issued, it is an order of the Magistrate enabling the Customs athorities to take action, for without warrant, they cannot enter any house or premises. The warrant of the Magistrate, so to speak, opens the door for entry into a house or premises, and the authority to do so is based upon the Magistrate's order. The forms prescribed under the Code require that articles seized as a result of the warrant should be brought into Court, and a Magistrate, who issues a search warrant, is entitled to see that his warrant is not abused, and has been properly executed. In a suitable case, of course, a Magistrate may amend the warrant dispensing with the production of the goods or documents before him. That, however, would be in a clear case only; but if the Magistrate so desires, he need not amend the form, and may keep the control of the goods or documents in himself. This he may find necessary to do, so that the warrant issued by him is not abused or made the instrument of harassment. A condition, therefore, in the warrant that the goods or documents should be produced before the Magistrate must be complied with, and once the goods or documents have been produced before

the Magistrate, it is for him to decide, in the circumstances of each case, whether he would make them over to the Customs authorities or not. Where the Customs authorities have been somewhat indiscriminate in their seizure, the Magistrate may find it necessary to have the goods or documents scrutinised under his control, so that goods or documents not really subject to the Sea Customs Act are not retained for an unduly long period.

The words "ultimate responsibility" and "overall control" used in the judgment under appeal would mean nothing, if they did not imply the power of the Magistrate, to which we have referred. If they mean anything, they mean the power of the Magistrate to see that his own warrant is not used in a manner which he did not contemplate. The second paragraph of s. 172 of the Sea Customs Act, which applies the Criminal Procedure Code, says that the warrant shall be executed in the same way and shall have the same effect as a search warrant issued under the Criminal Procedure Code. The execution of a warrant is one thing, and its effect is another. In talking of the effect, s. 172 of the Sea Customs Act intends to apply not only the Criminal Procedure Code but also the forms prescribed, and if the form says that the goods or documents should be produced before the Magistrate to be dealt with under his direction, then that effect necessarily flows from the words of that section. In our opinion, the view expressed by Sen, J., is correct.

In view of what we have said above, it is clear that the Magistrate's order that the 959 documents, which were seized, should remain in his custody and be scrutinised in his Court, was also correct. No doubt, the documents seized are many, and a still more voluminous record will have to be gone into, to find out the relevance of the documents seized. But that is a matter of detail bearing upon

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the scrutiny and inspection of the seized documents and not upon their custody. If difficulties arise, (and they must have), they are capable of being removed by a judicious action on the part of the Magistrate and colloboration on the part of the Customs authorities. This is a matter of expediency rather than of law. In our opinion, though the learned Magistrate was legally right in retaining control over the documents seized, he was unduly narrow in his view in affording facilities for inspection and scrutiny. Perhaps, his action was somewhat justified, if one looks only at the inordinate delay and the leisureliness with which the inspection was being made. But Magistrates, even though they may desire expedition, must not frustrate other departments of Government in discharging their legitimate duties under the Act.

On this part of the case, learned counsel for the Costoms authorities was very frank and accommodating. He said that the Customs authorities are not keen on the custody of the documents but only on their proper inspection in privacy, because they have to bring in various documents for comparison and have to examine witnesses and informers. He said that if a separate room in the Court premises were given to the Customs authorities, and they were allowed to have inspection even after Court hours, they would be able to complete the inspection within three to four months time. The difficulties of the Customs anthorities are also many. Their supervisory staff has to deal not only with this case but many others, and in view of the volume of records which they have to go through in connection with this case, it is obvious enough that time would be needed.

In our opinion, we must discharge the order of the learned Judge that the documents be handed over to the Customs authorities. The Magistrate is right in keeping these documents in his immedi-

ate custody; but we must direct that due facilities for inspection should be afforded to the Customs authorities in the shape of a separate room and suitable furuiture and time extended beyond the ordinary Court hours. Inspection should be carried on in the presence of a Court official, and adequate privacy for questioning witnesses etc., should be afforded to the Customs authorities, whenever they find it necessary. In our opinion, if these facilities are granted—and we direct that they be granted—a period of four months from the date this order reaches the Magistrate should prove enough. We, therefore, set aside the order for the handing over of the documents to the Customs authorities, and make a direction for the disposal of the records, as stated above. We may add that this order does not apply to the 63 documents, which the Customs authorities have already agreed to return to the party.

Appeal allowed.

THE MANAGEMENT OF TOCKLAI EXPERIMENTAL STATION REPRESENTED BY THE INDIAN TEA ASSOCIATION

v.

THE WORKMEN AND ANOTHER

(And connected appeal)

1961

November 24.

(P. B. GAJENDRAGADKAR, A. K. SARKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Bonus—Puja bonus—Basis of the claim—Profit bonus—Housing accommodation—House allowance.

The appellant, a research institution established for the purpose of improving the quality of tea, was managed by the India Tea Assciation. The employees made claims, *inter*