

**THE HIGH COURT**  
**JUDICIAL REVIEW**

**2008 394 JR**

**BETWEEN**

**PAUL MCGLINCHY, AS NOMINEE OF 'THE GOLDEN GRILL' (LETTERKENNY) LIMITED**

**APPLICANT**

**AND**

**DISTRICT JUDGE CONAL GIBBONS**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS AT THE SUIT OF**  
**INSPECTOR M. WALKER**

**RESPONDENTS**

**JUDGMENT delivered by Mr. Justice O'Keeffe on 27th day of May, 2009**

1. On 7th April, 2008 the Applicant obtained leave of the High Court to apply for judicial review for:-

(i) An order of *certiorari* by way of judicial review quashing a warrant to enter and search granted by the First Named Respondent on 29th March, 2008 pursuant to the provisions of section 24 of the Licensing Act 1874 in relation to the Applicant's premises known as The Golden Grill, Letterkenny, Co. Donegal.

(ii) A declaration that the said warrant is void unlawful and of no legal effect.

(iii) An injunction directing the Second Named Respondent to deliver up to the Applicant all goods/things seized on foot of the said purported warrant to enter and search the aforesaid (premises).

(iv) An order staying all proceedings as against the Applicant by the Second Named Respondent until the determination of this application for judicial review.

2. It was ordered that the further prosecution of the District Court summons issued on 2nd April, 2008 requiring the Applicant to appear at the District Court Letterkenny on 15th May 2008, be stayed pending the determination of this application.

3. The Applicant's license to sell Intoxicating Liquor on its said premises lapsed in September 2006 whilst major renovation works began on the premises and continued for approximately ten months. Part of the premises was then opened to business and the entire premises were opened in November 2007. A notice dated 10th January, 2008 the Applicant applied to the Circuit Court sittings in Letterkenny, Co. Donegal commencing on 5th February, 2008 for a certificate enabling the Applicant to obtain an excise license to sell Intoxicating Liquor for consumption on and off the said premises. The application was adjourned for hearing until 1st April, 2008. The Applicant stated that there were no objections from the Second Named Respondent in February 2008 when the application to revive the license was brought.

4. On 29th March, 2008 Inspector Walker (named in the title hereof) applied to the First Named Respondent for the issuing of a warrant to search The Golden Grill, Ramelton Road, Letterkenny (the Applicant's said premises). Inspector Walker stated that in advance of applying for the warrant, he swore an information under section 24, Licensing Act (iR) 1874. The information stated:-

"I am a member of An Garda Síochána not below the rank of Inspector. I have reasonable grounds for believing that the premises of The Golden Grill at Ramelton Road, Letterkenny, Co. Donegal within the court area of Letterkenny and District Number One an offence under section 26 of the Intoxicating Liquor Act 1962, has been, is being and has and is about to be committed.

The basis for such ground is that the premises has not renewed the Publicans License since 2006. On 28th March, 2008 Sergt. Duffy demanded production from the owner Paul McGlinchey of the license granted under the Intoxicating Liquor Act authorising him to authorise sale, open for sale and supply Intoxicating Liquor. Mr. McGlinchey admitted having no license in respect of the premises. He refused to close the premises to the public on demand by Sergt. Duffy. There were approximately 200 people on the premises and alcohol was being sold. Events were advertised weekly in the local newspapers and I hereby apply for a warrant to search the said premises and seize and remove any Intoxicating Liquor found therein."

5. In an affidavit sworn in response to this application, Inspector Walker states that when he applied to the District Court

the First Named Respondent examined the written information and asked several questions of him in relation to the application which he duly answered. He said that the First Named Respondent indicated to him in open court that he was satisfied that there were reasonable grounds to believe that the facts sworn by him in the information were correct and thereafter he proceeded to issue the warrant. He said the warrant issued by the First Named Respondent was in a pre-printed form obtained from Letterkenny Garda Station. It was entitled:-

"WARRANT TO ENTER AND SEARCH UNLICENSED PREMISES

(37 & 38 Vic., Cap. 69, section 24)

(The warrant stated, *inter alia*,)

WHEREAS it appears by information on oath that there is reasonable ground to believe that intoxicating liquor is sold by retail or exposed or kept for sale by retail at The Golden Grill occupied by the said Defendant, Paul McGlinchey and situate at Ramelton Road, Letterkenny, Co. Donegal in the court area and district aforesaid, and that such intoxicating liquor is not authorised to be sold by retail therein:

THIS IS THEREFORE TO AUTHORISE YOU Inspector Walker to whom this warrant is addressed, at any time or times within one month from the date hereof, to enter, and, if need be, by force, the aforesaid The Golden Grill situate at Ramelton Road, Letterkenny, Co. Donegal and every part thereof, and examine the same and search for Intoxicating Liquor therein, and do all such matters and things as are authorised and required by section 24 of the Licensing Act, 1874, (37 Vic., & Cap. 69).

6. The warrant is signed by the First Named Respondent dated 29th March, 2008 and addressed to the Superintendent of the Garda Síochána at Letterkenny.

7. On affidavit, Inspector Walker stated that he and Sergeant Galligan supervised the seizure of the applicant's goods on the Applicant's premises and that a full inventory of the stock that was taken was kept.

8. Arising from the said search by Inspector Walker, a summons was issued against the Applicant on 2nd April, 2008, charging the Applicant with an offence contrary to section 7 of Intoxicating Liquor (General) Act 1924 in that the Applicant did on 29th March, 2008 at The Golden Grill sell/expose for sale/keep for sale intoxicating liquor without being duly licensed to sell such intoxicating liquor.

9. In the grounds upon which judicial review is sought, it is, *inter alia*, claimed that the warrant to enter and search Applicant's premises does not conform with the requirements of section 24 of the "Licensing Act 1874". The statute under which the warrant was applied for was the "Licensing Act 1874", which it is contended does not exist and that the warrant to enter and search was applied for and issued under the "Licensing Act 1874", section 24. It is submitted that the correct title of the Act is the "Intoxicating Liquors (Ireland) Act" or the Act may be cited as per the Act's construction in short title as the Licensing Act (Ireland) 1874. It was contended by the Applicant that the warrant was bad on its face in that the Act under which the warrant was applied for was incorrect.

10. It was further contended that the First Named Respondent issued the purported warrant to enter and search the Applicant's premises without being satisfied himself that there were reasonable grounds to believe that any intoxicating liquor was sold by retail or exposed or was kept there for sale by retail. It was claimed by the Applicant that the enabling section (section 24 of the "Licensing Act (Ireland), 1874 required the Justice of the Peace to be satisfied by information on oath that there is reasonable ground to believe that any intoxicating liquor sold by retail or exposed or kept for retail (sic) to issue a warrant. The section requires the District Judge himself to be satisfied. It was submitted that nowhere on the warrant as issued does such a statement appear and therefore the purported warrant is bad on its face.

11. It was contended that the warrant was bad on its face as it does not state accurately the basis upon which it was issued nor does it state that the First Named Respondent was satisfied by the information on oath before him. Furthermore, the warrant as issued does not state on its face who swore the information on oath which it is contended was a basic requirement of the warrant prior to its issuance.

12. It is further contended that the First Named Respondent does not state on the face of the warrant that he is satisfied from any particulars recited in the information or in the oral evidence given and that the First Named Respondent gives no reasons why he is satisfied that there was reasonable grounds for the suspicion of the informant as he is required to do.

13. It is claimed that the Applicant's constitutional rights had been violated pursuant to Article 40.5 of Bunreacht na hÉireann and the Applicant was entitled based on the invalidity of the warrant to a return of property seized on foot of the warrant.

14. It is claimed that the warrant comprised of a *pro forma* document used by the Second Named Respondent which was not part of the District Court Rules. It was claimed that it was based on a precedent form set out on page 489 of "The Liquor Licensing Laws of Ireland" by Mr. Woods. It is claimed that the warrant did not reflect the precedent warrant in Mr. Woods Book. In Mr. Wood's precedent the warrant recited "Whereas it appears by information on oath of (a named person), that there is reasonable ground to believe..." where such identification was missing from the warrant issued by the First Named Respondent. Critically it was claimed that the precedent warrant drafted by Mr. Woods provided the following paragraph which was not in the warrant:-

"WHEREAS I AM SATISFIED from the particulars (recited in the said information) (or given on oral evidence before me) that there was reasonable ground for the suspicion of the informant."

Finally it was claimed that the precedent warrant referred to section 24 of the Licensing (Ir) Act, 1874 whereas the warrant referred to section 24 of the Licensing Act 1874.

15. In the Statement of Opposition of the Second Named Respondent, *inter alia*, contends that the prosecution of the Applicant arises out of the seizure of intoxicating liquor at the Applicant's premises on foot of the warrant. The goods seized are retained by Inspector Walker in his capacity as a member of An Garda Síochána and not as a servant or agent of the Second Named Respondent. Such goods comprise evidence in the case. It is claimed that the warrant which was valid for one month after the date of its issue is now spent and the proper place to challenge the warrant and the admissibility of the evidence arising from the execution thereof at the Applicant's premises is before the trial judge. It is claimed that without prejudice to the foregoing, if (which is denied) the seized goods were seized on foot of an illegal search, then the evidence of the seized goods remains admissible in the prosecution of the alleged offence unless the trial court exercises its discretion to exclude the evidence. It is denied that the warrant showed a lack of jurisdiction or that the statutory preconditions for its issuance were not satisfied. It is denied that the warrant does not conform with the requirements of section 24 of the Intoxicating Liquors (Ireland) Act or as per the short title thereof, section 24 of the Licensing Act (Ireland) Act 1874. It is contended that it was clear from the face of the warrant that it was granted pursuant to s. 24 of the 1874 Act.

16. The Second Named Respondent denied that the First Named Respondent issued the warrant to enter and search the premises without being satisfied himself that there were reasonable grounds to believe that any intoxicating liquor was sold by retail or exposed or was kept there by sale for retail. It is denied that the First Named Respondent failed to satisfy himself by information on oath that there was reasonable ground to believe that intoxicating liquor was being sold by retail or exposed or kept for sale at the premises and it is denied that the First Named Respondent failed to comply with any statutory requirement. It was expressly contended that the fact that an express statement to the foregoing effect was not included on face of the warrant and did not adversely affect the validity of the warrant and that it was to be presumed that the First Named Respondent satisfied himself as to the matters in question. It was contended that there was no defect in the warrant and that the First Named Respondent was presumed to have acted in accordance with the Constitution and the law in discharging his functions and that he was presumed to have acted lawfully and properly.

17. The Second Named Respondent admitted that the warrant did not recite on its face that the First Named Respondent was satisfied from any particulars recited in the information or in the oral evidence given, nor does the First Named Respondent state or give reasons why he was satisfied that there was reasonable grounds for the suspicion of the informant. It was denied, however, that the absence of the foregoing rendered the warrant void or susceptible to challenge as alleged or at all.

18. It was denied that the warrant was issued for the incorrect address and it was denied that the Second Named Respondent, its servants or agents carried out any search or seizure on foot of the warrant on any premises outside the scope of the warrant. The search was affected at the Applicant's premises known as The Golden Grill and it is denied that on 29th March, 2008, An Garda Síochána or any of them entered premises not described in the warrant.

19. The warrant was entitled "warrant to enter and search unlicensed premises (37 & 38 Vic., Cap. 69, section 24) and was clearly issued pursuant to the provisions of "The Licensing Act (Ireland), 1874" and under s. 24 thereof, notwithstanding the reference in the body of the warrant to "The Licensing Act 1874". It was contended that if the correct statutory provision was not referred to in the warrant, there was no doubt or ambiguity as to the statute and section thereof under which the warrant issued namely pursuant to the provisions of "the Licensing (Ireland) Act 1874", and under section 24 thereof.

20. It was claimed by the second named respondent that the precise format for a warrant under section 24 of the 1874 Act is not prescribed, either by statute or regulation and that the form of the warrant contained all matters as it is required by law to contain.

21. Section 24 of the 1874 Act provides as follows:-

*"Any justice of the peace, if satisfied by information on oath that there is reasonable ground to believe that any intoxicating liquor is sold by retail or exposed or kept for sale by retail at any place within his jurisdiction whether a building or not, in which such liquor is not authorised to be sold by retail, may in his discretion grant a warrant under his hand by virtue whereof it shall be lawful for any constable named in such warrant, at any time or times within one month from the date thereof, to enter, and, if need be by force, the place named in the warrant, and every part thereof, and examine the same and search for intoxicating liquor therein, and seize and remove any intoxicating liquor found therein which there is reasonable ground to suppose is in such place for the purpose of unlawful sale at that or any other place, and the vessels containing such liquor; and in the event of the owner or occupier of such premises being convicted of selling by retail or exposing or keeping for sale for by retail any liquor which he is not authorised to sell by retail, the intoxicating liquor so seized and the vessels containing such liquor shall be forfeited."*

22. Mr. Peter Finlay S.C. on behalf of the Applicant claimed that the warrant was issued pursuant to a statute that did not exist. He claimed that the First Named Respondent should have satisfied himself that there were reasonable grounds to believe that the intoxicating liquor was sold by retail on the premises. Such a statement should not appear on the face of the warrant. He referred to *Charles Byrne v. Thomas Grey* [1988] I.R. 31 where Hamilton P. referring to the powers given to members of an Garda Síochána to have search warrants issued stated at p. 38:-

*"These powers encroach on the liberty of the citizen and the inviolability of his dwelling as guaranteed by the Constitution and the courts should construe a statute which authorises such encroachment so that it encroaches on such rights no more than the statute allows, expressly or by necessary implication."*

The statute authorising such encroachment provides at s. 26 thereof that a justice of the District Court or a peace commissioner must be satisfied by information on oath of a member of the Garda Síochána that there is reasonable ground for the suspicion before he is entitled to issue the search warrant mentioned in the Act as amended."

23. In *Byrne v. Grey* the warrant recited that the First Named Respondent, a Peace Commissioner was satisfied by the information on oath of the detective garda that there was reasonable ground for suspecting that a plant of the Genus Cannabis was being cultivated in the premises contrary to section 17 of the Misuse of Drugs Act 1977 and 1984. The

information on oath upon which the said search warrant was issued was made by the detective garda and provided:-

"I am a member an Garda Síochána and I have reasonable grounds for suspecting that a plant of the Genus Cannabis is being cultivated contrary to section 17 of the Misuse of Drugs Act 1977 and 1984 on or in the premises or other land at 50 White Brook Park, Tallaght, Dublin 24."

In that case the court said it was quite clear that the District Justice or Peace Commissioner issuing the warrant must himself be satisfied that there is a reasonable ground for suspicion. He was not entitled to rely on a mere averment by member of the Garda Síochána that he, the member of the Garda Síochána has reasonable grounds for suspicion. The First Named Respondent had relied on information on oath from the member of the Garda Síochána which merely stated that he, the member of the Garda Síochána had reasonable grounds for suspicion. In such circumstances, the First Named Respondent acted without jurisdiction in issuing the said warrant because he personally had no information before him which would enable him to be satisfied that there was reasonable grounds for suspicion.

24. The Applicant submitted that since the warrant does not state on its face who swore the information on oath nor did the warrant say that the First Named Respondent was satisfied on the basis of information received and that the warrant was bad on its face.

25. Reliance was further placed by the Applicant on the decision of the Supreme Court in *Simple Imports Limited v. The Revenue Commissioners* [2000] 2 I.R. 243. In that case the Applicants sought to challenge the validity of warrants issued by the second, third and fourth respondents, on foot of which, officers of the first respondent entered and searched a number of premises and seized goods which were alleged to be prohibited and in contravention of customs and excise legislation. The warrants were issued pursuant to s. 205 of the Customs Laws Consolidation Act 1876 and s. 5(1) of the Customs and Excise (Miscellaneous Provisions) Act 1988, which require that the customs officer must have reasonable grounds for his suspicion that such goods are on the premises and secondly, that the District Judge must be satisfied from information on oath given by the officer that the officer had reasonable suspicion for stopping. In each case information was sworn before the District Judge by the customs officer concerned of the reasons for believing that there were uncustomed or prohibited goods on the premises. The warrants, while correctly recording the basis upon which the warrants were issued, showed on their face that the statutory precondition had not been satisfied. The Applicants challenged the validity of the warrants on the following grounds:-

(1) that the warrants on their face showed a lack of jurisdiction;

(2) that there was no information on oath before the District Judges from which it could have appeared to them, or which could have satisfied them, that the officers had reasonable cause for suspecting that there were uncustomed or prohibited goods on the premises or that they had reasonable grounds for suspecting that the books or documents relating to such goods were on the premises.

26. It was held by the Supreme Court that given the necessary draconian nature of powers conferred by the statute, a warrant could not be regarded as valid which carried on its face a statement that it had been issued on a basis which was not authorised by statute. The warrants were therefore invalid and should be quashed. The District Judge must be satisfied when issuing a warrant under the legislation on the basis of the information provided by the officer that, viewed objectively, the cause or ground relied upon by the officer for the suspicion was reasonable. Finally, it was decided that it was to be presumed that the District Judge, in issuing the warrant, would act in accordance with the requirements of the relevant legislation and the onus of establishing that he or she failed to do so rested on the person challenging the validity of the warrant.

27. It was contended that since the warrant does not state on its face who swore the information on oath that the warrant on its face shows a lack of jurisdiction. It was submitted that full information was not given to the District Judge prior to the issuance of the warrant and the warrant refers to a statute that does not exist and obtains its powers from s. 24 of a statute that is incorrectly quoted in the warrant and nowhere does it say that the First Named Respondent that he is satisfied on the basis of information received. Reliance was also placed on the decision in *Director of Public Prosecutions v. David McGoldrick* [2005] 1 E.C.C.A. 84, where the Court of Criminal Appeal held that the requirement of the Statute (and naming the particular section relied on) should be "strictly met" and observed. In all there were seven errors in the warrant in that case.

28. It was claimed that the *pro forma* document used by the Second Named Respondent is now part of the District Court Rules and that it appeared to have been obtained from p. 489 of "*The Liquor Licensing Laws of Ireland*" (Woods) at p. 489. As O. 34 of the Rules of the District Court does not mention this specific statute in relation to search warrants nor does it refer to any particular form of warrant that should be issued, it was submitted the onus is on the respondents in relation to the correctness of the warrant and the jurisdiction on the face of the warrant must be strictly construed in relation to the constitutional rights of the Applicant and the inviolability of the dwelling and business premises of the Applicant.

29. On behalf of the Second Named Respondent, Mr. Kieran Kelly B.L., submitted that the District Judge expressly stated that it appeared that there was reasonable ground to believe that intoxicating liquor was sold by retail or exposed or kept for sale for retail at the Applicant's premises. Reliance for this is placed at para. 5 of the first affidavit of Inspector Walker who said:-

"I say that I made the application for the warrant in open court in Cavan District Court and handed in the aforementioned written information, which I duly swore before the First Named Respondent. I further say that the First Named Respondent examined the written information and asked several questions of me in relation to the application and which I duly answered. I say that the First Named Respondent indicated to me and in open court that he was satisfied that there were reasonable grounds to believe that the facts sworn by me in the information were correct and thereafter he proceeded to issue the warrant."

It was further submitted that the warrant that issued under the hand of the judge expressly states that:-

*"It appears by information on oath that there is reasonable ground to believe..."*

Such reflected a statutory basis for issue of the warrant which required the issuing judge to objectively take a view on the desirability of issuing the warrant.

30. Under section 24 the Judge if satisfied by information on oath that there is reasonable ground to believe...may in his discretion grant a warrant under his hand. It was submitted that there was information on oath and there was the requisite "reasonable grounds" and reliance was placed on the affidavit of Inspector Walker at para. 5.

31. The Second Named Respondent contrasted the instant case with that of *Simple Imports* where it was clear on the face of each of the warrants that the District Judge had not satisfied himself that there was reasonable cause of grounds for the suspicion of the officer concerned and that the statutory pre-condition had not been satisfied resulting in the warrants being quashed. Counsel referred to the assumption by the Supreme Court in the *Simple Imports* case at p. 243 where the Court said:-

"It is to be presumed, moreover, that the District Judge, in issuing the warrant, would act in accordance with the requirements of the relevant legislation and the onus of establishing that he or she failed to do so rests on the person challenging the validity of the warrant."

32. It was submitted that what was determinative in *Simple Imports* was the recital in the warrants indicating the absence of any subjective consideration by the Judge. No distinction was drawn by the Supreme Court between the phrases "it appeared to" and "was satisfied". In the instant case it was submitted that the recital was to the effect that "it appears by information on oath that there is reasonable ground to believe" and the District Judge so concluded.

33. In relation to the recital in the precedent warrant formulated by Mr. Woods to the effect that the Judge was satisfied that, there was reasonable grounds about the suspicion of the informant, it was submitted that it was not a statutory prerequisite and that it was surplus to the requirements of s. 24 of the Act and had no basis in law statutory or otherwise.

34. Finally, it was submitted that having regard to the decision in *Simple Imports* the Supreme Court has drawn a clear distinction between cases where criminal cases are pending and where they are not. In the former case *certiorari* should not ordinarily be granted whereas in the latter if sufficient grounds are made out, relief may be granted. At p. 255 the Supreme Court judgment of Keane J. stated:-

"We are not concerned in this case with an issue which arose in *Byrne v. Grey* [1988] I.R. 31 and in another case decided by Hamilton P. in *Berkeley v. Edwards* [1988] I.R. 217. In both cases the court was of the view that the discretionary remedy of *certiorari* should be refused since the object in seeking it was to have excluded the evidence obtained on foot of the search warrant and the proper forum for the determination of the issue of the admissibility of the evidence was the forthcoming trial of the Applicant."

## **Conclusion**

35. In *Simple Imports* Keane J. examined the challenge to the warrant in *Reg. v. Inland Revenue Commissioners, Ex parte Rossminster* [1980] A.C. 952. This was a case in which searches were carried out on the respondents offices by officers of the Inland Revenue under powers alleged to have been conferred by certain fiscal legislation. The recital in the warrant in that case did not positively misstate the statutory precondition for granting the warrant. The warrant was attacked on a different ground i.e. that, because it did not contain a statement that the judge himself was satisfied that there was reasonable ground for suspecting that a tax offence had been committed and that evidence of it was to be found on the premises, the warrant did not comply with the requirements of the section. Keane J. stated at p. 252:-

"The majority of the Law Lords rejected that challenge, while conceding, with varying degrees of emphasis, that it would be desirable that the warrant should make clear the statutory basis for its being used, i.e. the fact that the judge was satisfied as to the matters in question. They were of the view that there was no defect as such in the warrant and that it was to be presumed that the judge issuing it was satisfied that the preconditions had been met..."

Counsel for the applicants urged that these remarks (that it was to be presumed that the judge issuing the warrant was satisfied that the preconditions had been met) and similar observations in the speech of Viscount Dilhorne, go further than our courts should be prepared to go in presuming, in the absence of evidence to the contrary that judges will act in accordance with the terms of the statute which confers on them a specific jurisdiction. I am satisfied, however, that the Superior Courts in this jurisdiction are entitled to assume, unless the contrary is established that Judges of the District Court act in accordance with the Constitution and the Law in discharging their functions. Different considerations arise, however, where, as here, the warrant itself, unlike the warrant in *Reg v. Inland Revenue Commissioners, Ex parte Rossminster* recites that the District Judge has purported to exercise the jurisdiction where the statutory preconditions for its exercise have not been met. It need hardly be said that the error was clearly unintentional and resulted in the use of the a standard form which had previously been in existence for some time."

36. In this case, there is no prescribed format to a warrant to enter and search under section 24 of the 1874 Act. Furthermore, in my opinion there is no statutory obligation under section 24 that the warrant would contain the recital in the warrant precedent suggested by Mr. Woods namely that the District Judge was satisfied from the particulars (recited in the said information or given an oral evidence before him) that there was reasonable ground for the belief of the District Judge. Furthermore, in my opinion there is no statutory requirement to identify the informant. I am satisfied that the requirement for information on oath and the statement that "As it appears by information on oath that there is reasonable ground to believe..." which are set out in the warrant conform with the requirements of section 24. The failure to identify precisely the title of the Act of 1874 is not to my mind a fundamental flaw. It is apparent that it is referring to a Licensing

Act of 1874 and section 24 thereof. Furthermore, I do not think the Applicant has discharged the onus of establishing the invalidity of the warrant. The District Judge in issuing the warrant should be presumed to act in accordance with the requirements of the relevant legislation in discharging his function and the Superior Courts are entitled to so assume, unless the contrary is established as was stated by Keane J. in the above passage from *Simple Imports*, which reflects the law in this jurisdiction.

37. In my opinion, the Applicant has not made out a case to quash the warrant.

38. If I am incorrect in this, it seems to me nevertheless that the situation is governed by the decision of Hamilton P. in *Byrne v. Grey* as this is a case where a prosecution is pending unlike the situation in the *Simple Imports* case, where the goods were to be returned. At p. 41 of his judgment, Hamilton P. stated:-

"As I have already stated, the issue of an order of *certiorari* is a discretionary one and I agree with the statement of Gannon J. made during the course of his judgment in *The State (Glover) v. McCarthy* [1981] I.L.R.M. 47 at p. 51 when he stated:-

'It seems to me the principal factor which would guide the court in the exercise of its discretion in a case where the alternatives of *certiorari* and appeal lie is the objective of achieving a just resolution of the matters in issue with minimal inconvenience consistent with regularity of judicial procedures.'

Though in the course of the above statement he refers to the alternative of 'appeal', the statement applies with equal validity when there is another forum in which 'the matters in issue' can be determined.

In the course of his judgment in *The State (Shannon Atlantic Fisheries Limited) v. McPolin* [1976] I.R. 93, Finlay P., as he then was stated at p. 100 of the report:-

'I would be prepared to accept the general principle that the court should in its discretion refuse to make an order of *certiorari* in a case where it is clear that the application can derive no benefit from it.'

In this case, the warrant was issued on the 3rd August, 1986, and as appears from the affidavit of the Applicant it was executed by the members of the Garda Síochána therein named a short time thereafter.

Consequently, the warrant sought to be impugned is spent and the only interest which the Applicant has in seeking to have the said warrant quashed by way of *certiorari* is to seek to have rendered inadmissible in the course of his trial the evidence obtained as a result of the said search. This is his interest and the only matter in issue.

In my view, the objective of achieving a just resolution of this matter is in the course of his trial. It is a matter for the trial judge to decide whether the evidence sought to be admitted is admissible or not. Consequently, I will refuse the application made on behalf of the applicant."

The principles set out by Hamilton P. in *Byrne v. Grey* were approved by Keane J. in *Simple Imports* although that case was distinguished on its facts as there would not be necessarily any criminal procedures out of the seizure of the goods in that case, unlike the instant case.

39. In the event of my being incorrect in relation to the judgment I have expressed in relation to the validity of the warrant, it is my opinion that the principles to which I have referred as set out by Hamilton P. in *Byrne v. Grey* are applicable and that *certiorari* should not issue. It is as stated by Hamilton P. a matter for the trial judge to decide whether the evidence sought to be admitted is admissible or not. The Applicant submitted that this principle is not applicable where a person's livelihood had been taken from him and was at issue. I do not accept that this is a justification for a departure from the general principle.

40. The Court will therefore refuse the application and lift the stay granted in respect of the District Court prosecution.