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Case Nos: CO/10748/2009 & CO/11082/2009

IN THE HIGH COURT OF JUSTICE
DIVISIONAL COURT
ON APPEAL FROM BIRMINGHAM MAGISTRATES COURT
District Judge Jellema

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/01/2010

Before :

LORD JUSTICE LAWS

and

SIR THAYNE FORBES

Between :

THE QUEEN (ON THE APPLICATION OF THE DIRECTOR OF REVENUE AND CUSTOMS PROSECUTIONS)	<u>Claimant</u>
- and -	
BIRMINGHAM MAGISTRATES' COURT	<u>Defendant</u>
- and -	
RAYMOND WOOLLEY	<u>Interested Party</u>

Mr David Perry QC and Mr Rupert Jones for the The Director of Revenue and Customs
Prosecutions Office (RCPO) (the Claimant)
Birmingham Magistrates Court (the Defendant) (did not appear)
Mr Mark Summers (instructed by Garstangs) for the Interested Party

Hearing dates : 19 November 2009

Approved Judgment

Lord Justice Laws :

1. This is the judgment of the court, to which both members have contributed.

INTRODUCTION

2. On 19 November 2009 there were, in form, three matters listed before the court. There was first an application for judicial review brought by the Revenue and Customs Prosecutions Office (RCPO) to challenge a decision of District Judge Jellema, given at the Birmingham Magistrates Court on 4 September 2009, to adjourn confiscation enforcement proceedings brought by RCPO against Raymond Woolley (Mr Woolley). The purpose of the adjournment had been to enable either RCPO or Mr Woolley to seek a declaration in the High Court as to whether it would constitute an abuse of process for the magistrates court to proceed to determine the enforcement proceedings. On 5 October 2009 HHJ Bidder QC granted judicial review permission to RCPO.
3. The second matter listed before the court on 19 November 2009 was an application by Mr Woolley for permission for judicial review of District Judge Jellema's further decision, given at the same hearing on 4 September 2009, that he would in principle entertain the confiscation enforcement proceedings brought by RCPO. This application was ordered to be joined with RCPO's judicial review and to proceed as a rolled up hearing. The third matter listed before us was an application by RCPO for an order that Mr Woolley be committed to prison for contempt of court. The contempt was said to consist in breaches of a restraint order made by Harrison J pursuant to s.77 of the Criminal Justice Act 1988 on 27 September 2001, and breach also of an enforcement receivership order made by Owen J on 3 April 2007.
4. All of these proceedings had their genesis in Mr Woolley's conviction of serious criminal offences in December 2002, the making of a confiscation order against him in March 2005 with a four year term of imprisonment fixed in default of payment, his escape from jail and flight to Switzerland the previous month (February 2005) and his extradition from Switzerland to the United Kingdom on 10 March 2009. In the magistrates court on 19 November 2009 Mr Woolley sought to argue that proceedings launched by the RCPO to enforce the confiscation order by activation of the default sentence were an abuse of the process of the court and/or a violation of what is known as the specialty rule (which we shall shortly explain). The district judge declined so to hold, but equally declined to hold the contrary: he considered, founding on reasoning of Lord Griffiths in *R v Horseferry Road Magistrates Court Ex parte Bennett* [1994] 1 AC 42 at 64 B-D, to which we will return in due course, that the decision of such a question was a matter for the High Court and not for him.
5. The judicial review claims respectively launched by the RCPO and Mr Woolley between them complained of both these positions taken by the district judge. The RCPO sought to assert that the judge should not have adjourned the case, but confronted the abuse argument and rejected it. Mr Woolley sought to assert that he

should have accepted it. At the outset of the hearing on 19 November 2009 it was agreed that Mr Perry QC should first open his case for the RCPO, and, given that we would decide the substantive issue whether the enforcement proceedings were or were not an abuse of process or a breach of specialty (as we shall), it would be unnecessary to hear distinct argument on Mr Woolley's judicial review as a separate proceeding. In addition Mr Perry accepted that if we held in his client's favour that the enforcement proceedings were not tainted by abuse or breach of specialty, and so might properly go ahead, the public interest would not require the court to entertain the contempt proceedings (the third matter listed before us).

THE LEGISLATION

6. Before describing the facts it is convenient to give a short account of the legal arrangements in place for extradition between Switzerland and the United Kingdom. These are to be found in the European Convention on Extradition of 1957 (ECE) and, as a matter of British domestic law, the Extradition Act 2003 (the 2003 Act). The ECE provides for the obligation to extradite subject to the provisions and conditions which the ECE itself lays down. Thus Article 2 contains what is known as the double criminality rule. Article 2(1) provides:

“Extradition shall be granted in respect of offences punishable under the laws of the requesting party and of the requested party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. When a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting party, the punishment awarded must have been for a period of at least four months.”

Article 14 contains the specialty rule. It provides in part as follows:

“A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reason restricted in his personal freedom except in the following cases:

- (a) when the Party which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 12 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Convention;
- (b) When that person, having had an opportunity to leave the territory of the Party to which he has been surrendered,

has not done so within 45 days of his final discharge, or has returned to that territory after leaving it”.

7. The speciality rule is reflected in s.151 of the 2003 Act. S.151(2) provides that a person extradited to the United Kingdom from [States which include Switzerland]:

“...may be dealt with in the United Kingdom for an offence committed before his extradition only if –

(a) the offence is one falling within subsection (3), or

(b) the condition in subsection (4) is satisfied.

(3) The offences are –

(a) the offence in respect of which the person is extradited;

(b) an offence disclosed by the information provided to the category 2 territory in respect of that offence;

(c) an offence in respect of which consent to the person being dealt with is given on behalf of the territory.

(4) The condition is that –

(a) the person has returned to the territory from which he was extradited, or

(b) the person has been given an opportunity to leave the United Kingdom.”

S.151(5) provides:

“A person is dealt with in the United Kingdom for an offence if –

(a) he is tried there for it;

(b) he is detained with a view to trial there for it.”

THE FACTS

8. Now we may explain the facts. On 11 September 2001 Mr Woolley was arrested at Schipol Airport in Holland and extradited to England, where he was charged with

conspiracy to cheat the public revenue. The conspiracy was of a kind known as a missing trader intra-Community VAT fraud, or “carousel” fraud. He was also charged with offences of money laundering. On 27 September 2001, Harrison J made a restraint order in the High Court under s.77 of the Criminal Justice Act 1988. On 19 December 2002, before HHJ McCreath at the Birmingham Crown Court, Mr Woolley was convicted by the jury of the conspiracy offence. The next day he pleaded guilty to two offences of money-laundering and on 20 December 2002 he was sentenced to nine years imprisonment for the conspiracy with no separate penalty imposed for the other offences. On 14 December 2003 the Court of Appeal Criminal Division dismissed his appeal against sentence. In June 2004 a management receiver was appointed over his assets. On 23 February 2005 he walked out of Sudbury open prison and fled the United Kingdom. 66 months and 18 days of his prison sentence remained outstanding. On 3 March 2005 a warrant for his arrest for the offence of escape from lawful custody was issued at the Birmingham Magistrates Court. On the same day, in Mr Woolley’s absence, the Birmingham Crown Court made a confiscation order in the sum of £9,497,784-02 to be paid in full by 3 April 2006. A term of four years imprisonment (to be served consecutively to the nine year term) was fixed in default of payment. We should note that only £195,000 has been recovered by the Official Receiver. On 2 February 2007 Mr Woolley’s renewed application for leave to appeal against the confiscation order was refused by a full court of the Court of Appeal Criminal Division, whereupon the confiscation order became final and fell to be enforced. On 3 April 2007 Owen J made an enforcement receivership order against Mr Woolley.

9. On 6 February 2008 the United Kingdom issued a request to the government of Switzerland for Mr Woolley’s extradition. It was put on two bases: (1) that Mr Woolley had been convicted of the conspiracy and money-laundering offences, (2) that he was accused of an offence of escape from lawful custody. On 12 June 2008 an arrest warrant was issued by the Examining Magistrate in Vaud Canton, and on 19 June 2008 Mr Woolley was arrested in Switzerland and detained. On 28 August 2008 the British Embassy at Berne sent a diplomatic note in reply to an enquiry from the Swiss Federal Office of Justice (FOJ). The note contained these statements:

“It is important to make clear that there is no charge, in existence or proposed, for evasion or non-payment of the order. The extradition of Mr Woolley is not sought in respect of non-payment of the confiscation order which was made against him; it is sought in respect of one charge of escape from lawful custody and to finish serving the term of imprisonment passed on him in respect of the offence of conspiracy to cheat.

The confiscation order was part of the sentence passed on Mr Woolley. The effect of the relevant legislation is that such orders are treated in the same way as fines. When a Crown Court imposes a fine on any person, they may allow that person time to pay the fine but they must make an order fixing a term of imprisonment which that person must serve as a last resort if the sum they owe has not been paid or recovered. The confiscation order in this case was made on 3 March 2005, the judge allowed Mr Woolley time to pay – until 3 April 2006,

and set a term of imprisonment in default of 4 years. The order remains outstanding and this office has been taking steps to enforce it.

Activation of a default sentence is one of the many means available to the court to enforce outstanding orders. The court can initiate activation of its own volition or the prosecutor can invite the court to do so. Before activating the default sentence, judges are under a duty to enquire into the defendant's proposals for payment and to determine whether any of the other methods of enforcement might be effective. Mr Woolley would have the opportunity to make representations throughout this process. Mr Woolley still has the option to pay the confiscation order at any time and if his assets are insufficient to meet the confiscation order he may apply to the High Court for a certificate of inadequacy. If one is granted, he may then apply to the Crown Court to reduce the amount of the confiscation order."

10. By a written judgment of 26 September 2008 the FOJ ordered Mr Woolley's extradition in respect of the outstanding part of his nine year sentence only: escape from lawful custody was not punishable under Swiss law, and so that offence did not satisfy the double criminality rule. The judgment confirmed that extradition had not been requested for failure to pay the confiscation order.
11. Mr Woolley appealed the extradition order to the Swiss Federal Criminal Tribunal. His appeal was dismissed. It is clear from paragraph 4 of the judgment that the tribunal, like the FOJ, proceeded on the basis that extradition was "not requested for non-payment of the amount in the confiscation order"; and it is also there asserted that in the event of extradition the FOJ would "indicate in the form of conditions or reservations for the attention of the requesting authority that the extradited person may not be sentenced to the term of 4 years imprisonment [sc. the default term for non-payment]". There was a further appeal to the Swiss Supreme Court which was dismissed on 26 February 2009. The Supreme Court also noted that extradition was not sought "for the sentence relating to the non-payment of the confiscation".
12. And so Mr Woolley was extradited to the United Kingdom, as we have said on 10 March 2009. Since then he has been in custody serving the balance of his nine year sentence. His latest release date (not taking into account the four year default term) is in April 2010, but he has applied for early release having regard to time spent in custody in Switzerland. The Application was refused by the Secretary of State on 17 August 2009.
13. On 11 March 2009, the day after his return, Mr Woolley was taken to the magistrates court in the course of the execution of the warrant for his arrest that had been issued. The RCPO were determined to enforce the confiscation order. An enforcement hearing was fixed for 7 April 2009. On 27 March 2009 RCPO wrote to Mr Woolley

asking for payment proposals, and warning of the possibility of a warrant of commitment being issued which would expose him to the four year default term of imprisonment. The hearing on 7 April 2009 was adjourned, and adjourned again from 11 June 2009. On 29 July 2009 RCPO wrote to the Swiss authorities indicating their intention to proceed with enforcement proceedings. They stated:

“As the sentence for non-payment was part and parcel of the sentence imposed for the extradition offence, it was not possible, or necessary, to seek his extradition in relation to it; as part of the sentence for the extradition offence it was covered by the terms of the extradition request.

It appears from the documentation that we have had sight of that Mr Woolley was returned on the basis that the default sentence referred to above may not be imposed. This decision appears to be made on a misunderstanding of the requesting State’s position as it is set out in the documents provided to the Federal Office of Justice in support of the extradition request.”

By a note dated 24 August 2009, the Swiss authorities stated:

“[I]f the UK authorities intend to ask for the extension of the extradition to include the non-payment of the confiscation order they will have to proceed in accordance with Article 14 of the European Convention on Extradition.”

14. And so the matter went to the magistrates court on 4 September 2009 and District Judge Jellema made the decisions sought to be reviewed. The proceedings were adjourned to 23 November 2009 (when, we assume, they were further adjourned).

THE ISSUES

15. The following three main issues fall to be determined:
- (1) Whether the district judge erred in law in concluding that the Magistrates’ Court had no jurisdiction to entertain the abuse of process argument and proceeding to adjourn the matter for a declaration to be made by the High Court (“the jurisdiction issue”);
 - (2) Whether it would be a breach of the rule of specialty to proceed by way of a warrant of commitment for Mr Woolley to serve the default term of imprisonment for non payment of the confiscation order (“the rule of specialty issue”); and

- (3) Whether it would be an abuse of process to take and/or continue the proceedings to enforce the default term of imprisonment (“the abuse of process issue”).

16. **Issue 1: The Jurisdiction Issue.** In the event, this particular issue was largely academic because Mr Perry made it clear from the outset that he was not seeking to have the matter remitted to the district judge, since this court was now in a position to deal with the two essential issues (i.e. the rule of specialty and the abuse of process issues) and remission would only result in unnecessary expense being incurred and further delay to the enforcement proceedings. Furthermore, on behalf of Mr Woolley, Mr Summers confirmed that it was accepted that the district judge did have jurisdiction to deal with the abuse application. Although we have not had the benefit of any argument to the contrary effect, we are satisfied that the district judge did have jurisdiction to hear the original application and we will briefly state our reasons for that conclusion.
17. In reaching his decision that he did not have jurisdiction to hear the abuse of process application on the particular facts of this case, the district judge appears to have proceeded on the basis that the abuse allegation was to the effect that the RCPO had deliberately misled the Swiss authorities with regard to its intention to proceed with enforcement of the default term after Mr Woolley’s return to the jurisdiction. The district judge then relied primarily upon the authority of *R ~v~ Horseferry Road Magistrates’ Court ex parte Bennett (1994) 1 AC 42* (“*Bennett*”) and, in particular the speech of Lord Griffiths at page 64B, where he said this:
- “Nor do I see any force in an argument developed by the respondents which sought to equate abuse of process with contempt of court. I would accordingly affirm the power of the magistrates, whether sitting as committing justices or exercising their summary jurisdiction, to exercise control over their proceedings through an abuse of process jurisdiction. However, in the case of magistrates this power should be strictly confined to matters directly affecting the fairness of the trial of the particular accused with whom they are dealing, such as delay or unfair manipulation of court procedures. Although it may be convenient to label the wider supervisory jurisdiction with which we are concerned in this appeal under the head of abuse of process, it is in fact a horse of a very different colour from the narrower issues that arise when considering domestic criminal trial procedures. I adhere to the view I expressed in *Reg. v Guildford Magistrates’ Court, Ex parte Healy (1983) 1 WLR 108* that this wider responsibility for upholding the rule of law must be that of the High Court and that if a serious question arises as to the deliberate abuse of extradition procedures a magistrate should allow an adjournment so that an application can be made to the Divisional Court which I regard as the proper forum in which such a decision should be taken.”
18. In our view, the allegations of abuse of process were not in the category envisaged by Lord Griffiths as requiring determination by the High Court. As Mr Perry pointed out, this is not a case where it is being suggested that there has been “*a deliberate*

abuse” of the extradition proceedings. Contrary to the way in which the district judge characterised the abuse allegation, there is no suggestion in any of the written skeleton arguments prepared on behalf of Mr Woolley or in any of Mr Summers’ oral submissions to this court that the Swiss authorities were either deliberately misled or that the extradition proceedings were improperly manipulated (by deceiving the Swiss as to the RCPO’s true intention upon Mr Woolley’s return) so as to ensure that Mr Woolley was returned to the United Kingdom. As Mr Perry observed, the most serious allegation appears to be that the response given in the 28th August 2008 diplomatic note (see paragraph 9 above) was ambiguous and unintentionally misled the Swiss, who treated it as a promise not to proceed in respect of the default term and hence the United Kingdom/RCPO should be bound by it.

19. In those circumstances, we accept Mr Perry’s submission (which Mr Summers did not seek to contradict) that the abuse of process allegation falls clearly within the first category of abuse of process identified by Lord Griffiths in *Bennett*, namely “*such as delay or unfair manipulation of court procedures.*” We are satisfied that this categorisation is sufficiently wide to cover the abuse of process arguments advanced on behalf of Mr Woolley in this case and that the district judge erred in concluding otherwise. In our judgment, these briefly expressed reasons are sufficient to dispose of the first issue which, as we have already made clear, is essentially academic in the particular circumstances of this case.
20. **Issue 2: the Rule of Specialty Issue.** As Mr Perry observed, the rule of specialty means that generally speaking, when a person has been extradited, he will only be prosecuted or punished for the offence or offences in respect of which he was surrendered and that he will not be pursued in respect of any other alleged offence committed prior to his extradition.
21. Mr Perry’s position with regard to this particular issue was very simple and straightforward. It was his submission that, as the United Kingdom’s original request of 6th February 2008 made abundantly clear, Mr Woolley’s extradition was sought in respect of (*inter alia*) his convictions for the offences of conspiracy to cheat the public revenue and money laundering and that it was in respect of those particular convictions/offences that he was extradited in due course.
22. Mr Perry submitted that the default term for non-payment of the confiscation order unarguably forms part of the sentence imposed on Mr Woolley for the convictions/offences for which he was extradited. It was therefore his submission that, in proceeding to impose the default term for non-payment of the confiscation order, the Magistrates’ Court would only be dealing with Mr Woolley for the particular convictions/offences for which he was extradited and that there was thus no infringement of the rule of specialty, nor was there any abuse of process involved in taking any such proceedings. As we explain below, we agree with that submission.
23. For his part, Mr Summers accepted that the confiscation order did form part of the sentence imposed on Mr Woolley for the material offences. However, his primary

submission was to the effect that enforcement of the default term did not actually form part of the original sentence and, thus, not part of either of the relevant offences. He submitted that the essential characteristics of the enforcement proceedings, in which the failure to pay the confiscation order has to be strictly proved before the default term can be imposed, demonstrate that enforcement of the default term is in respect of another and separate offence (i.e. presumably, failure to pay the confiscation order) from the offence in respect of which the confiscation order had been imposed.

24. Other than to argue that the setting of the default term as part of the original sentence is meaningless until there is a breach (i.e. by commission of the separate offence of failing to pay the order within the time prescribed), Mr Summers was quite unable to refer us to any authority or statutory provision that supported his novel submissions on this point. This is not surprising since, in our view, it is plainly wrong. We are entirely satisfied that the default term (which the court is obliged to impose as a matter of law in such circumstances as part of the process of sentencing) forms part of the original sentence, since it is an integral part of the confiscation order which, it is common ground, is unarguably part of the original sentence. To argue that enforcement of the default term involves proving the commission of a further separate offence of (for example) failing to pay within the prescribed time is, in our view, wholly artificial in the absence of any statutory provision (or other authority) to that effect. We therefore have no hesitation in rejecting it.
25. In the alternative, Mr Summers submitted that if (contrary to his primary submission) the default term does form part of the original sentence and that proceeding to enforce it is a process in which Mr Woolley will be dealt with for the original offences, then there must be a mechanism for dealing with the express reservation of the Swiss authorities (i.e. that extradition was not sought for non-payment of the confiscation order: “the Swiss reservation”).
26. In support of that submission, Mr Summers argued first that section 151 should be construed so as to give effect to the Swiss reservation (although he was quite unable to specify how this court could arrive at such a construction of the section). Next he suggested that effect should be given to the reservation of the Swiss authorities in accordance with the normal principles of comity between nations. Again, he was unable to develop this particular argument by reference to any authority or by any means other than to express a general exhortation to that effect.
27. Again, we are satisfied that there is no substance in the submission that there must be a mechanism for giving effect to the Swiss reservation. As we will make clear, that reservation was the result of their misunderstanding of the extent of the United Kingdom’s clearly expressed request. We are satisfied that there is nothing in either of the points urged upon us by Mr Summers in support of this particular submission. There is nothing in the words of the section that would justify or support such an imprecisely expressed construction and we are not aware of any principle arising from the concept of the comity of nations that supports Mr Summers’ arguments.

28. Finally, Mr Summers submitted that, in view of all the circumstances, it would be an abuse of process to allow the enforcement proceedings to go ahead when it is clear that the Swiss authorities would never have agreed to the extradition of Mr Woolley if they had properly understood the true position, namely that, if necessary, proceedings would be taken against Mr Woolley for enforcement of the default term. This submission is, of course, the subject of Issue 3. However, it is convenient at this stage to indicate that, for the reasons we give later, we have come to the firm conclusion that there is also no substance in this particular submission.
29. For his part, Mr Perry emphasised that, in its original extradition request of 6th February 2008, the United Kingdom had made it perfectly clear that Mr Woolley's extradition was being sought for (*inter alia*) the imposition of the default term for non-payment of the confiscation order, if that became necessary, because the default term formed part of the sentence imposed in respect of the offences for which Mr Woolley had been convicted. Mr Perry pointed out that the statement of Francesca Giradot had formed part of the extradition bundle and that paragraph 8 of that statement was in the following clearly expressed terms:

“Arising from the aforementioned trial, and in addition to the above sentence of imprisonment, on 3 March 2005 at Birmingham Crown Court a confiscation order was made against Raymond Woolley in the sum of £9,497,784.02. The Judge ruled that this sum must be paid in full by 3 April 2006 and set a 4 year term of imprisonment in default of payment. As at 17 August 2007, the sum of £195,000 has been paid towards the confiscation order by the Receiver appointed in the matter. I produce an extract from the relevant enactment dealing with the making and enforcement of confiscation orders as my ExhibitFCG/5. It is established law that a default sentence so imposed constitutes part of the overall penalty. Raymond Woolley's return to the United Kingdom is therefore sought in respect of any activation of the default sentence which may become necessary.”

30. There then followed a diplomatic note from the Swiss authorities in which they enquired whether the extradition was being requested for (*inter alia*) “...charges of ...non-payment of the confiscation sum ordered by Birmingham Crown Court on 3 March 2005”. In a diplomatic note dated 28th August 2008, the United Kingdom replied to the Swiss enquiry in the terms quoted in paragraph 9 above. Mr Perry accepted that the first paragraph of this particular note was not happily worded, but submitted (correctly, in our view) that, when read as a whole, the note made it perfectly clear that extradition was not required in respect of any **charge** of non-payment of the confiscation order, since there was no such actual or proposed charge because the order in question formed part of the sentence imposed for the offences of which Mr Woolley had been convicted and in respect of which his extradition was being sought. In other words, it was not necessary to seek extradition specifically for the non-payment because the confiscation order was merely part of the sentence for the offences for which he was to be extradited and was not a separate charge in its own right.

31. Mr Perry accepted that it is clear from subsequent events (see paragraphs 10 to 13 above) that the Swiss authorities simply misunderstood the position, despite the clear terms of the United Kingdom's original request and its subsequent response to the Swiss authorities' enquiry. He submitted that, on a correct understanding of the position taken throughout by the United Kingdom, there was and is no breach of the rule of specialty.
32. It was therefore Mr Perry's contention that the imposition of the default term would offend neither the rule of specialty in section 151 of the 2003 Act nor under Article 14 of the ECE. We agree and we reject Mr Summers' submissions to the contrary effect. Mr Perry then went on to submit that the rule of specialty is thus no bar to the imposition of the default term for the non-payment of the confiscation order in this case and that Mr Woolley has been returned to the United Kingdom for those convictions/offences for which he is now to be dealt with in the proposed enforcement proceedings. Again, we agree and again we reject Mr Summers' opposing submissions.
33. **Issue 3: the Abuse of Process Issue.** In the light of our decision that there is no infringement of the rule of specialty in this case, we have come to the firm conclusion that there is no abuse of process involved in proceeding to enforce the default term against Mr Woolley in the circumstances of this case, notwithstanding the misunderstanding of the position by the Swiss authorities and their expressed reservation.
34. In our view, Mr Summers' submission that to proceed to enforcement of the default term would be an abuse of process in the particular circumstances of this case (see paragraph 28 above) is untenable in light of the decision of the Court of Appeal (Criminal Division) in *R ~v~ Davidson (1977) 64 Cr. App. R 209* ("*Davidson*"). That case concerned an extradition from what was then the state of West Germany. The German Court ordered extradition in relation to certain offences and not others and entered a caveat or restriction as to which offences could be prosecuted. In giving the judgment of the Court, Lord Widgery C.J. said this (at page 212):
- "... when an English Court has to decide whether the accused appearing before it following upon extradition can or cannot be prosecuted in view of the manner in which the extradition was conducted, the Court is not concerned with the treaty between this country and the country from which the fugitive is to come and is even less concerned with any decision of the exporting Court ordering the return of the fugitive under the extradition law. If a British subject is in England charged with an offence alleged to have been committed in England, then the normal principle that he can be charged ... is to be applied without regard to external documents but subject only to section 19 [the then applicable domestic law on specialty]."
35. In our view, and as Mr Perry observed, the effect of the decision in *Davidson* in Mr Woolley's case is clear. For the reasons already given, there is no infringement of the

rule of specialty in this case. Accordingly, it is still possible to proceed against Mr Woolley because this is permitted by section 151 of the 2003 Act, notwithstanding the observations and reservations expressed by the Swiss courts. The decisions and comments of the Swiss courts in respect of the default term for non-payment of the confiscation order are simply not binding on the courts of the United Kingdom and the rule of specialty has not been infringed. For the reasons already given, we are satisfied that the United Kingdom did not deliberately mislead the Swiss authorities, that it always made its intentions clear and that there has been no improper or unfair manipulation of the processes of extradition or for the enforcement of the default term.

36. Accordingly, in the premises we are satisfied that there is no abuse of process involved in proceeding to enforce the default term against Mr Woolley and we reject Mr Summers' submissions to the contrary effect.
37. **Conclusion.** For all the foregoing reasons, the RCPO's application for appropriate relief by way of judicial review succeeds. That of Mr Woolley fails and must be dismissed. We will hear the further submissions of Counsel with regard to the terms of the Order and, in particular, with respect to the terms of such declaratory relief as we consider appropriate in the light of this judgment.