



RODDA CASTLE & C
INTERNATIONAL TRADE CONSULTANTS

OUR REF:

5 May 2003

The Hon. Bronwyn Bishop MP
Federal Member for Mackellar
657 Pittwater Road
DEE WHY NSW 2099

Dear Bronwyn,

Averments Inquiry - Peter Tomson and Australian Customs Service

As agreed at our meeting on Friday, I enclose for information a copy of the Statutory Declaration sworn today in relation to the break and enter of our office on Sunday 27 April 2003, and the subsequent discovery that certain documents relating to the Tomson matter were missing. See Attachment A.

I also enclose copies of correspondence relating to the "independent inquiry" conducted in 2001 by the ACS in relation to the allegations contained in my statement. Barwick Boitano's letter to the ACS dated 5 September 2001 outlines the background. See Attachment B.

Attachment C is a letter dated 7 December 2001 from the ACS to Barwick Boitano. It purports to set out the findings of the inquiry. The letter is self-serving nonsense. The reference to "the absence of the further particulars and information requested in June 2001" is a reference to a demand made on 15 June 2001 for the answers to a total of fifty questions regarding material relied upon for the purposes of the allegations. Barwick Boitano refused to respond to the demand on numerous grounds.

The "findings" of the inquiry exonerating the ACS are not based on a lack of evidence of wrongdoing on the part of its officers. Rather, they are based on our refusal to provide the information which would have enabled the ACS to act as its own judge and jury.

In any event, most of the "findings" are disingenuous and are demonstrably false. It may be worth noting that I was not interviewed during the "inquiry" despite the fact that I was the person who made the allegations. My offer to collaborate with the ACS in the drafting of an agreed statement of facts was also rejected out of hand.

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RECEIVED
- 6 MAY 2003

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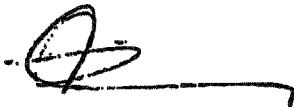
As Attachment C indicates, the ACS has refused to provide to us a copy of the findings, despite the fact that the allegations against its officers are a matter of public record and the inquiry was carried out at public expense.

I suspect that the "findings" are to provide the basis for whatever defence the ACS has planned as its response to the Averments Inquiry. In view of the fact that my allegations are on the public record, and supported by a detailed statement containing several hundred pages of material, I understandably do not wish to be ambushed by anything the ACS may wish to say in its defence.

The Committee may wish to demand production to it of the terms of reference and final report relating to the ACS inquiry. It may help the Committee also if I were given the opportunity to examine that report prior to the commencement of the Averments Inquiry to assist in the drafting of questions for the ACS officers who attend as witnesses.

Please let me have your further thoughts and instructions in due course.

Yours sincerely



(Ian Rodda)

STATUTORY DECLARATION

NSW OATHS ACT

I, Ian Richard Rodda of Suite 11A, Level 1, Andrews House, 185 Military Road, Neutral Bay in the State of New South Wales do hereby solemnly declare and affirm that:-

I am the director of Rodda Castle & Company Pty Limited, a customs and trade consulting practice which operates from leased premises at the above address.

One of my clients is Peter Tomson, who was formerly an importer of apparel and footwear. Mr Tomson was charged in 1992 with a series of offences under the *Customs Act* 1901, including smuggling, evading customs duty, making false statements and producing documents containing untrue particulars.

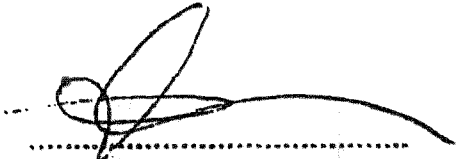
Following a trial in the Downing Centre Local Court which ran from July 1993 to June 1995, Mr Tomson was acquitted on all charges. Subject to the qualification below, it was and remains my opinion that there was nothing in the evidence led during Mr Tomson's trial which suggested that he was guilty of any wrongdoing of any kind.

It was and remains my opinion that the customs officers who laid the charges against Mr Tomson either knew or ought to have known that he was innocent of any wrongdoing. The only evidence of any substance led during his trial which suggested otherwise was a series of averments sworn pursuant to sec. 255 of the said Act. The said averments were admitted as *prima facie* evidence against Mr Tomson.

In mid-2000, I forwarded to the Commonwealth Ombudsman a statement



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JUSTICE OF THE PEACE



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IAN RICHARD RODDA

setting out details of alleged wrongdoing on the part of the customs officers involved in the prosecution of Mr Tomson. A copy of that statement was forwarded to the Australian Customs Service (ACS) in February 2002. In and following June 2000, other copies were forwarded to persons having an interest in the matter, including Mr Ross Barwick (Mr Tomson's solicitor) and the Hon. Alan Cadman, Federal Member for Mitchell. A copy was forwarded to the Hon. Bronwyn Bishop, Federal Member for Mackellar, in May 2002.


The abovementioned statement includes fourteen annexures. Annexure 7 is a copy of an undated statement prepared by Gregory Steffan Grausam, an officer of the ACS in Sydney. (The latter statement is hereinafter referred to as the "Grausam statement"). Mr Grausam appears to have had principal carriage of the Tomson matter from the ACS perspective. The Grausam statement, which was handed to me in the Local Court at the commencement of Mr Tomson's trial in July 1993, provides details of inquiries undertaken in Thailand and Hong Kong in December 1989 by Mr Grausam and another ACS officer. It is my opinion that the Grausam statement in general (and pages 42 to 84 in particular) corroborates, to a very significant degree, the facts contained in my statement describing the manner in which Mr Tomson went about purchasing the trading stock for his businesses in Australia and elsewhere.

A copy of my statement is kept in my office on a bookcase near my desk. Its annexures are, in each case, original documents or the original copy of documents received or created by me at various times prior to or during preparation of the statement since late-1998. As far as I am aware, no person other than myself has ever handled my statement nor handled any other document connected with the Tomson matter otherwise than in my presence.

On 2 April 2003, the Legal and Constitutional Affairs Committee of the House of Representatives (LACA Committee) announced that it intended to conduct an inquiry into the use of averment provisions in customs legislation (hereinafter the "Averments Inquiry"). Submissions were sought from members of the public having an interest in the matter. I wrote to the Committee Secretary on 20 April 2003 to advise that I would be lodging a submission on behalf of Mr Tomson.



JUSTICE OF THE PEACE



IAN RICHARD RODDA

On Friday 25 April 2003, the Sydney Morning Herald published on page 3 an article about the Averments Inquiry and Mr Tomson's interest in it.

On Sunday 27 April 2003, at some time between the hours of 5.00 am and 4.00 pm, my office was broken into by a person or persons unknown. I discovered the break-in myself around 4.00 pm that day when I went to the office to work on Mr Tomson's submission for the Averments Inquiry. I discovered that a digital camera and flat screen monitor from one of the office computers had been stolen. As far as I could tell at the time, nothing else had been stolen. I was surprised by the fact that an amount of cash (over \$100) which was in an unlocked cupboard next to the abovementioned computer was not stolen. A cheque for \$5,000 on a colleague's desk appeared not to have been touched. There were also in the office a number of other relatively small but valuable items which were apparently also not touched. The break-in was reported to the NSW Police a few minutes after 4.00 pm on 27 April 2003. Its reference number is COPS Event No. E17363938.

On the morning of Thursday 1 May 2003, I was preparing an additional copy of my statement for the Secretary of the LACA Committee. The copy for the Committee was to include a copy of each of the annexures from my copy of the statement kept in the bookcase next to my desk. When I reached Annexure 7 (the Grausam statement) during the copying process, I was puzzled by the fact that only pages 1 to 41 of that statement were in the statement folder. My recollection was that the original document contained over 80 pages of material. I then telephoned Mr Barwick to ask if he had his copy of the statement in his office. He told me that he did. We then arranged for me to visit his office that day so that I could inspect his copy. I attended his Parramatta office around 4.00 pm. On examining Mr Barwick's copy of the Grausam statement, I noted that it comprised 84 pages. I asked Mr Barwick if I could borrow it to compare it with what remained of the Annexure 7 document in my office. He agreed. On the morning of Friday 2 May 2003, I compared the two documents and noticed that pages 42 to 84 were missing from my copy of Annexure 7. Pages 42 to 84 of the Grausam statement are vital documents in Mr Tomson's matter as the material in these pages in particular provides strong corroboration of a wide range of fact issues contained in my statement.



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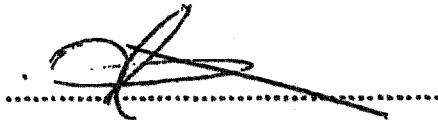
 IAN RICHARD RODDA

Believing that there may be some connection between the break-in and the missing Annexure 7 pages, I reported the matter to the NSW Police shortly thereafter. A statement was made to the Police at the North Sydney Police Station on the same evening. A copy of the statement made to the Police is attached and marked with the letter "A".

Please note that the statement made to the Police incorrectly states in paragraph 13 that a copy of my statement was delivered to the Hon. Bronwyn Bishop in February 2003. On checking my file, I note that the document was actually delivered to her in May 2002. Paragraph 13 also incorrectly states that a copy of the statement was delivered to the Hon. Alan Cadman in late 2002. My notes indicate that the copy for Mr Cadman was in fact delivered to him in or about November 2000. I have written to the Police to advise of the error in my recollection.

And I make this solemn declaration in accordance with the *Oaths Act 1900* and subject to the punishment by law provided for the making of any wilfully false statement in any such declaration.

Declared at Sydney)
this 5th day of)
May 2003)



before me:

Phil Roberts
.....
JUSTICE OF THE PEACE

Philip Walter Roberts,
.....
Print full name and number of JP



NSW POLICE SERVICE

STATEMENT OF A WITNESS

A
This is page 1 of the document referred to my statutory declaration

[Signature]
IAN RODDA

In the matter of: Break Enter & Steal - Documents of importance stolen
Place: North Sydney Police Station
Date: 2 May, 2003

Name: Ian Richard RODDA

STATES:

1. This statement made by me accurately sets out the evidence which I would be prepared, if necessary, to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.
2. I am 56 years of age.
3. I am a Lawyer and the Director of Rodda Castle & Co Pty Ltd. The business is situated at Suite 11A, Level 1, Andrews House, 185 Military Road, Neutral Bay, Australia. The business has been situated in this office for the past eleven months and I have been the Director for the past 14 years.
4. My main expertise lies in the area of Customs and Trade Law, practice and procedure.
5. On Friday the 25th April 2003, I went into work after lunch time. This day was a public holiday and there were no other staff in the office building. I took this opportunity to catch up on some work, whilst the office was quiet. During the day I was mostly working on a submission to the Legal and Constitutional Affairs ("LACA") Committee of the House of Representatives for its 'Inquiry Into Averment Provisions in Australian Customs Legislation'.
6. Between 5.30pm and 6pm the evening of 25th April 2003, I left my office locking both locks of the external door. I did not re-visit the office until about 4pm on the afternoon of Sunday the 27th April 2003. When I arrived at the office I noticed that the glass in the external door had been smashed and was lying on the floor inside the office. I unlocked the office door and entered the office. I contacted the office security company "KSS Security" to notify them of the break in. I rang the Police a couple of minutes later.
7. I had a look around the office prior to the Police arriving. I saw that the computer monitor, which is a Mitsubishi, model DV153 Diamond View valued at \$745 was missing from the desk opposite mine. Also missing was a Kodak Digital Camera model DX4900, from my desk. I looked around the office further and was quite surprised that I could find no other properly missing, as there are other valuable items in the office, including cash which was not stolen.

Witness: _____

Signature: _____

Ian Richard RODDA

Page 2

Statement of Ian Richard RODDA
In the matter of Break Enter & Steal - Documents of importance stolen

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 in my statutory decl
 IAN RODDA*

8. Upon the arrival of Police, I told them what had been stolen and they took a report of the incident. The Police left about 6pm. After the Police left I contacted O'Briens glass company to replace the broken door. Whilst waiting for them to attend the KSS Security guard attended on his normal round and we discussed the break in. He told me that he had noticed that the premises were secure on his round at 5am that morning. At 9pm that evening O'Briens replaced the broken glass door.
9. On Thursday the 1st May 2003, I was preparing material for the inquiry and went to photocopy a number of annexures to a statement I had prepared earlier. One of the annexures was a statement sworn by Gregory Steffan GRAUSAM, an Investigation Officer from the Australian Customs Service. The document, which was attached to my statement, comprised of 41 pages, which surprised me because my recollection was that the original document consisted of over 80 pages of material. I had copied this document on other occasions for other people having an interest in this matter. These people included Mr Ross BARWICK the solicitor for Peter TOMSON, on whose behalf the submission was being made to the inquiry.
10. On noticing that the document appeared to be missing many pages, I telephoned Mr BARWICK to ask if he had in his office a copy of the complete document, he said he did and would deliver it to me that afternoon. I attended his office at about 4pm and he delivered to me the complete document which comprised of some 84 pages.
11. When I arrived at my office on the morning of Friday 2nd May 2003, I compared the document given to me by Mr BARWICK with the remainder of the document in my file and noticed that the missing section covered the interview between Mr GRAUSAM and certain company officers of Trans Air Cargo, a freight forwarding company based in Bangkok Thailand. This particular section of the document is a critical part of the submission to the inquiry, as it corroborates details contained in the statement to be made to the inquiry on behalf of Mr TOMSON.
12. The document referred to above is the original statement between Mr GRAUSAM and the persons interviewed, and was obtained by myself by handed delivery in the Downing Centre Local Court on the 26th July 1993.
13. In late last year (2002) I made a copy of this document for The Honourable Alan CADMAN MP, a member of the LACA committee. A copy was made for Mr BARWICK about the same time and another copy was delivered to The Honourable Bronwyn BISHOP MP about February 2003.
14. Around February 2002, an earlier version of the statement was delivered to the Australian Customs Service. That version did not include as annexures any document which had earlier been obtained from the Australian Custom Service itself.
15. The annexure from which the above mentioned pages had disappeared was one which I believed was already in the possession of the Australian Customs Service, so this annexure was not one of the documents attached to the copy of the statement delivered to Customs in February 2002.
16. On Friday 25th April 2003, an article relating to the inquiry and Mr TOMSON's past relationship with the Australian Customs Service was published on page three of the Sydney Morning Herald.

Witness: _____

Signature: _____

Ian Richard RODDA

Our Ref: RGB:MS 98352

5 September 2001

The Chief Executive Officer
Australian Customs Service
Customs House
5 Constitution Avenue
CANBERRA ACT 2601

*Attention: Mr Geoff Johannes
Legislation Management Unit*

Dear Sir,

**RE: PETER & TOMSON
ALLEGATIONS AGAINST CUSTOMS SERVICE**

We refer to your letter of June 15, 2001 and to the separate request for particulars.

It appears to us, with respect, that your approach to the matter is misconceived. Mr Tomson does not wish to be involved in legalism. There are no legal proceedings on foot. The request for particulars appears to suppose that a claim at Law is being made. You apparently seek protection. Mr Tomson seeks an open enquiry. Presumably at public expense, you have briefed Counsel. Mr & Mrs Tomson have no such advantage and rely on pro bono assistance.

That said, Mr Tomson wish to co-operate as best they can and to advance the serious allegations which have been made. With that in view, it is intended that further material be provided and that this be done by interview. Plainly, any such interview must be conducted by a person of industry experience and independence. Mr Tomson has been advised that he may take steps to initiate a Parliamentary Inquiry but would be prepared to agree to an assessment being carried out, as we have said, by an independent party whose selection is arrived at by mutual agreement. Such a procedure offers the attractions of economy, impartiality and expedition.

It appears that, either with the assistance of the Australian Government Solicitor or otherwise you have briefed Mr Geoffrey Bellew of the New South Wales Bar. He has informed us that it was he who prepared the request for particulars. Plainly, he is briefed by you, would see himself as being your advocate and would obviously be ineligible for appointment in any capacity such as that which we have outlined. The essence of any terms of reference establishing any such inquiry must be to enquire into the purpose, method and manner of the preparation of the prosecution which was brought against Mr Tomson rather than to examine the procedural aspects of the conduct of the hearing which led to the dismissal of the allegations made against them although, of course, there are serious questions relating to the

**PETER & KIM TOMSON
ALLEGATIONS AGAINST CUSTOMS SERVICE**

conduct of the Court proceedings which are relevant. It is not, therefore, a matter, as you appear to suggest, of whether the Magistrate found "a case to answer" but, rather, whether there was falsity and deceit in the preparation of the Customs' case brought against Mr Tomson.

It will also become a relevant consideration as to why the Customs Service should, apparently of its own volition, brief independent Counsel at public expense in order to protect itself. Since there are no legal proceedings on foot and since, in our view, there can be no question of privilege being claimed, we request that we be furnished with copies of all departmental memoranda and directives leading to the engagement of Counsel together with a copy of the brief furnished to Counsel. Further, the advice given by Counsel and the statements taken by Counsel from any officers of the Customs Service should be included. Should these documents or any of them not be forthcoming, consideration must be given to applying for them under Freedom of Information Law. All of these documents, in our view, must be seen to be in the public domain since the questions which are raised involve the public interest.

In the event that the proposal for an independent inquiry is declined and it continues to be your approach to adopt an adversary position, it will plainly be necessary for Mr & Mrs Tomson to engage professional and expert assistance. Please advise in those circumstances as to whether your Service will make an ex gratia payment of money on account of legal and expert's fees to enable fairness to be done. It would seem to us that, if there is to be resort to legalism, the sum of \$50,000.00 would be required to adequately prepare the further submissions to be made on behalf of Mr Tomson, bearing in mind that it may be necessary for expert evidence to be obtained in Thailand.

With regard to the final paragraph of your letter under reply any suggestion that any failure on our part to particularise by the means proposed by you will leave you "to conclude that the various allegations are baseless and incapable of being particularised" is offensive and should be unreservedly and unconditionally withdrawn. The position is that all relevant documents are in the possession of your Service.

Yours faithfully,
BARWICK BOITANO LAWYERS

Per:

RECEIVED
13 DEC 2001



**AUSTRALIAN
CUSTOMS SERVICE**

Reply to the Chief Executive Officer

Customs House
5 Constitution Avenue
Canberra ACT 2601

Quote:

7 December 2001

Messrs. Barwick Boitano
Solicitors
PO Box 546
PARRAMATTA NSW 2150

Dear Sirs,

RE: PETER AND KIM TOMSON

I refer to your letter of 12 February 2001 and my subsequent letter of 15 June 2001 regarding this matter.

Counsel has completed his examination of the allegations made. On the basis of the available material and the absence of the further particulars and information requested in June 2001, Counsel has concluded that the allegations are baseless and incapable of being particularised.

Given the circumstances in which advice was sought, Counsel considers that his advice attracts legal professional privilege and recommends that privilege not be waived by disclosing the nature, content or substance of the advice.

A summary of Counsel's conclusions on each of the allegations is attached. A copy has also been provided to the Commonwealth Ombudsman.

Yours faithfully,

Geoff Johannes
Director
Legislation Management Unit

ALLEGATIONS MADE BY MR I R RODDA ON BEHALF OF MR P TOMSON**SUMMARY**

1. A total of eighteen separate allegations, each of which are set out below, were examined by Counsel retained by the Australian Customs Service. The advice provided by Counsel, given the circumstances in which it was sought, attracts legal professional privilege. It is not proposed to waive that privilege by disclosing the nature, content or substance of the advice that has been provided.
2. Counsel did note that the repeated refusal on the part of Mr Tomson's advisers to provide any particulars of the allegations gave rise to a considerable difficulty in properly considering such allegations. The nature and extent of those difficulties will be apparent from the summary that appears below.
3. In considering the allegations, Counsel had available to him:
 - (1) a complete transcript of the prosecution proceedings against Mr Tomson;
 - (2) extracts from the file held by the Australian Government Solicitor in relation to the matter;
 - (3) extracts from the files held by the Australian Customs Service.

Counsel also had the benefit of a conference with the officer in charge of the investigation and the Customs officer who swore the Informations for the prosecution of the case ("the First Informant").

- A. That the prosecution of Mr Tomson and the businesses in which he had an interest was malicious, was based upon false and fabricated evidence and was never likely to succeed.
4. The officer in charge of the investigation, compiled a Brief of Evidence. In the first instance, that Brief was forwarded to the Legal Branch of the Australian Customs Service, and ultimately to the office of the Australian Government Solicitor (AGS). The AGS then briefed experienced Counsel from the NSW Bar to advise in relation to the matter and such advice was provided, both in writing and in conference, in relation to both the charges themselves and the evidence in support of them. All of these steps were taken before any charges were laid. Having taken such steps the officer in charge of the investigation completely discharged his obligations. The officer in charge of the investigation denies any suggestion that the prosecution was malicious and motivated by some improper purpose. Not only is there no evidence to support that allegation, the evidence of the steps he took prior to charges being laid are wholly inconsistent with it. Moreover, the suggestion was

Page -2-

never put to the officer in charge of the investigation when he was cross-examined at the hearing.

5. As to the allegation that the evidence was "false and fabricated" Mr Rodda declined to particularise the evidence to which he was referring (although in another allegation he suggested that all of the evidence fell into this category). If it were the case that the evidence was fabricated, it would obviously have been inadmissible. Significantly, Counsel for Mr Tomson consented to the tender of all of the documentary evidence upon which the prosecution relied. Similarly, he raised no objection to the admissibility of any of the oral evidence that was relied upon. Such an approach is wholly inconsistent with the suggestion that the evidence was "false and fabricated".
6. As to the suggestion that the prosecution was "never likely to succeed" it should be noted that the Magistrate found that there was a prima facie case made out against Mr Tomson. In other words, he concluded that there was evidence capable of supporting a conviction. This disposes of the suggestion that the prosecution was never likely to succeed. However, it should also be noted that at the close of the prosecution case Mr Tomson's Counsel effectively conceded that a prima facie case had been made out, making no submission to the contrary when given the opportunity to do so by the Magistrate.
- B. That the averments sworn by the Informant were false in material respects and, to that extent, amount to perjured evidence.
7. Each of the Informations sworn by the First Informant in the case contained six averments. Mr Rodda has declined to particularise which of the six he asserts were "false in material respects". Although the Magistrate, at the close of the prosecution case, concluded that some of the averments alleged matters of law rather than fact and were therefore bad as to form this does not bear on the issue that is raised by Mr Rodda.
8. It has already been noted that the Magistrate, at the close of the prosecution case, concluded that the evidence was capable of supporting a conviction. It is important to bear in mind that the fact that the Magistrate ultimately concluded that the prosecution could not prove the various falsities beyond reasonable doubt does not lead to a conclusion that the averments were false in the manner suggested. At the conclusion of the entire proceedings Mr Tomson had himself given evidence, and had called other evidence to rebut evidence that had been called by the prosecution. Obviously, none of that evidence was available to the First Informant at the time of swearing the Informations. It should also be noted that the First Informant specifically denies any allegation of impropriety.

Page -3-

- C. That there was never, at any time, even the slightest possibility that it would be found that the Crown had proved beyond reasonable doubt that the defendants were guilty of an offence.
9. It has already been noted that the Magistrate, on the evidence before him, found that there was a prima facie case. That finding disposes of this allegation.
- D. All of the evidence presented to the Court by the Prosecution was fabricated.
10. This allegation is dealt with in paragraph (5) above.
- E. The officers who conducted the investigation did so with the express intention of securing the conviction of Mr Tomson on charges arising out of the Customs Act 1901 even though there was no reasonable basis for a belief that he was guilty of any wrong doing and irrespective of whether a genuine case to answer could be made out on the facts.
11. This is essentially a further allegation of malicious prosecution that is dealt with in paragraph (4) above. However, it should also be noted that the Magistrate, in finding a prima facie case on the evidence before him, certainly found that a "*genuine case to answer could be made out on the facts*".
- F. The officers who conducted the investigation failed to investigate matters in an impartial and objective manner and pursued and persecuted Mr Tomson for no reason other than to destroy his business and his business interests.
12. This essentially amounts to a further allegation of malicious prosecution that is dealt with in paragraph (4) above.
- G. The officers who conducted the investigation failed to obtain evidence to support what was in fact nothing more than an unfounded and speculative assumption that Mr Tomson had engaged in conduct that amounted to an offence or offences under the Customs Act 1901.
13. The fact that the Magistrate found a prima facie case disposes of this allegation.