

In the Supreme Court of South Africa  
In die Hooggeregshof van Suid-Afrika

{ APPELLATE Provincial Division)  
Provinciale Afdeling)

Appeal in Civil Case  
Appèl in Siviele Saak

CINE FILMS (PROPRIETARY) LIMITED AND FIVE OTHERS Appellant,

versus

COMMISSIONER OF POLICE AND TWO OTHERS Respondent

Appellant's Attorney S. & V.A. Rosendorff Respondent's Attorney J.P. SA (15.11.71)  
Prokureur vir Appellant & Venter Prokureur vir Respondent  
Appellant's Advocate M. Schneider SC Respondent's Advocate M. S. Mofwan SC  
Advokaat vir Appellant M. Koenig Advokaat vir Respondent E. M. de Vries

Set down for hearing on 25-11-1971  
Op die rol geplaas vir verhoor op

F. H. ...

Coram: Wessels, Potgieter, Trolip, Rabie et Muller JJ

9.45 am - 11.00 am  
11.15 am - 12.45 pm  
2.15 pm - 2.45 pm

12.71 Muller S.A  
Vide order in terms of the judgment

*[Signature]*

GRAND CHIEF JUSTICE  
BLOEMFONTEIN

- 3 - 12 - 1971

Bills Taxed—Kosterekenings Getakseer		
Date Datum	Amount Bedrag	Initials Paraaf
Writ issued Lasbrief uitgereik		
Date and initials Datum en paraaf		

IN THE SUPREME COURT OF SOUTH AFRICA.

APPELLATE DIVISION.

In the matter between:

CINE FILMS (PROPRIETARY) LIMITED ..... First Appellant  
GREENSIDE MOVIES (PROPRIETARY) LIMITED ... Second Appellant  
ZENITH FILM DISTRIBUTORS ..... Third Appellant  
GLENRAY INVESTMENTS (PROPRIETARY)  
LIMITED trading as FILM CENTRE ..... Fourth Appellant  
WORLD MOVIE CENTRE ..... Fifth Appellant  
COMPLETE HOME MOVIES ..... Sixth Appellant

AND

COMMISSIONER OF POLICE ..... First Respondent  
ATTORNEY GENERAL FOR TRANSVAAL ..... Second Respondent  
H. J. POTGIETER ..... Third Respondent.

Coram : Wessels, Potgieter, Trollip, Rabie et Muller, JJ.A.

Heard : 25 November 1971. Delivered : 3 December 1971.

---

J U D G M E N T.

Muller, J.A. :

This appeal is against an order of the

Witwatersrand Local Division (Galgut, J.) dismissing with

costs .... / 2

costs an application by the appellants for the setting aside of certain search warrants and for further relief consequential upon such warrants being declared invalid.

The appellants, three registered proprietary companies and three partnership firms, all carry on business, at different addresses in Johannesburg, in the letting out on hire of cinematograph films for viewing in private homes.

The respondents are, respectively, the Commissioner of Police, the Attorney General for the Transvaal and the magistrate who issued the warrants in question.

It appears from the record that a dispute arose during the first half of this year between, on the one hand, two companies, Ster Films (Proprietary) Limited and African Consolidated Films (Proprietary) Limited, which independently carry on the business of distributing and exhibiting cinematograph films in South Africa (the said companies being hereinafter referred to as the complainants) and, on the other hand, the appellants. The complainants

claimed .... / 3

claimed that they were each, respectively, the sole person licensed under copyright to distribute and exhibit, and to sub-license the distribution and exhibition of, all cinematograph films released by certain motion picture production and distribution organisations operating in the United States of America and that, inasmuch as the appellants were distributing in South Africa prints of films made or released by the aforesaid organisations, they (the appellants) were infringing the rights of the copyright owners and of the complainants as copyright licensees. Appellants were, therefore, called upon to desist and refrain from any further unlicensed importation into the Republic of South Africa, and from any further unlicensed distribution and exhibition in the Republic, of films for which the complainants were the licensees under copyright. There was also a demand that appellants deliver up for destruction certain films, the distribution of which the complainants contended were infringing their rights. The appellants, for their part, denied that their

activities were in any way infringing the alleged rights of any copyright owners or of the complainants, but at the same time requested the complainants to furnish certain information relative to their contentions that the films in question were subject to copyright in South Africa.

The complainants refused to furnish the information called for by the appellants and threatened legal proceedings against the appellants. No such proceedings were, however, instituted. Instead, on 29 July of this year, a police officer called at the business premises of each of the appellants, produced a search warrant directing the seizure of certain documents, books, correspondence and films, and, in the execution of the said warrants, various films, books and other documents were taken and removed.

Representations made to the police after the said articles had been seized for the return thereof to the respective appellants were of no avail, in consequence whereof the aforementioned application was made.

In their founding affidavits the appellants contended that, for a variety of reasons advanced by them, the search warrants under which the police had acted were invalid and that, in consequence, the seizure of the films and documents aforementioned was illegal. In addition to their attack on the warrants on purely legal grounds, the appellants also submitted that, because of certain facts mentioned in their affidavits, the Court should infer that the police, in obtaining the warrants, had been actuated, not by concern with regard to prospective criminal proceedings, but by the ulterior motive of obtaining possession of the appellants' stocks of films with the object of stultifying their business activities, thereby inflicting irremediable loss upon them. It was said that the reason for such improper conduct was the willingness of the police to further the interests of the aforementioned complainant companies to the detriment of the appellants. The appellants accordingly prayed for an order setting aside the search warrants in

question and directing that all the articles seized - films and documents - be restored to them.

No useful purpose will be served in discussing all the various grounds upon which it was contended in the Court a quo that the search warrants were invalid, nor to adumbrate further on the charge of improper motives on the part of the police, inasmuch as that charge, as well as some of the contentions advanced for claiming that the search warrants were invalid in law, were abandoned on appeal to this Court. Suffice it to say that the police strenuously denied any improper motives or conduct on their part.

In a written judgment, delivered on 7 September 1971, Galgut, J., after dealing fully with the various contentions advanced on behalf of the appellants, concluded as follows:

"I am not able to find that the police acted improperly in obtaining the search warrant or that the magistrate did not exercise his discretion properly or that the warrant is too general in its terms."

This conclusion, expressed relative to one of the warrants in question, namely, the <sup>one</sup> issued in respect of the premises of the first appellant, applied equally to all six warrants in issue before the Court, and the joint application of the six appellants was, accordingly, dismissed with costs.

On appeal to this Court the appellants' case was substantially narrowed down by the aforementioned abandonment, at the hearing of the appeal, of several of the contentions which had been advanced in the Court a quo.

All the arguments addressed to us were directed at establishing the proposition that the affidavits and supporting documents which were before the Court a quo showed sufficient grounds to justify the inference that, in issuing the search warrants in question, the magistrate (third respondent) had not properly applied his mind to the matter as required by section 42(1) of the Criminal Procedure Act, No. 56 of 1955, and that that was sufficient cause for setting aside the warrants (S.A. Police v. S.A. Associated Newspapers 1966

(2) S.A. 503 (A.D.) at pp. 510/512). In that regard two



main contentions were advanced, namely,

(a) that, if the magistrate had properly applied his mind to the matter, i.e. had properly considered the information placed before him when the warrants were obtained, he would have realized that there was no justification in law for the issue of any warrants at all;

and

(b) that, in any event, the warrants are couched in such wide, imprecise and general terms as to justify the inference that the magistrate had not given proper consideration to the nature or quality of the articles which were to be seizable under the warrants.

The warrants issued by third respondent authorising a search of the respective business premises of the six appellants are, save for the address of the particular appellant, in identical terms and only one of them need, therefore, be referred to.

It reads as follows:

" S E A R C H W A R R A N T.  
(Section forty-two, Act No. 56 of 1955)

TO - ALL - POLICEMEN.

WHEREAS it appears to me on complaint made on oath that there are reasonable grounds for suspecting that there is <sup>or</sup> upon any person/in a receptacle, to wit/upon or at the premises situated at - (here follows the address of the particular appellant)

something in respect of which there are reasonable grounds for believing that it will afford evidence as to the commission of an offence, to wit; a contravention of Section 22 (1) of Act 63 of 1965 - COPYRIGHT ACT.

TO WIT:

All stock books, stock sheets, invoices, invoice books, consignment notes, all correspondence, film catalogues and all films appearing on the attached list's, in respect of which a licence to publish is not held, and any other correspondence or circulars referring to such films.

THESE ARE THEREFORE to direct you to search during the daytime the said person/receptacle/premises and any person found in or upon such premises and to seize the said Documents, books, correspondence and films if found, and to take it before a magistrate to be dealt with according to law.

Given under my hand at Johannesburg this  
28th day of July 1971. ....

-----  
Signature. "

It is clear from the warrants that they were issued under the provisions of paragraph (b) of section 42 (1) of the Criminal Procedure Act, which paragraph circumscribes the discretionary powers conferred on the issuing authority in the following terms:

"42 (1) If it appears to a judge of a superior court, a magistrate or a justice on complaint made on oath that there are reasonable grounds for suspecting that there is upon any person or upon or at any premises or in any receptacle of whatever nature within his jurisdiction -

(a) -

(b) anything in respect of which there are reasonable grounds for believing that it will afford evidence as to the commission .... of any offence; ....

(c) -

he may issue a warrant directing any policeman named therein or all policemen to search such person, premises or receptacle and any person found in or upon such premises, and to seize any such thing found, and to take it before a magistrate to be dealt with according to law."

The offence in respect of which the warrants were issued in the instant case, is mentioned in each of the warrants, namely, a contravention of section 22 (1) of the Copyright Act, No. 63 of 1965. That section provides as follows:

22 (1) "Any person who at a time when copyright subsists in a work -

(a) makes .... / 11

- (a) makes for sale or hire; or
- (b) sells or lets for hire or by way of trade offers or exposes for sale or hire; or
- (c) by way of trade exhibits in public; or
- (d) imports into the Republic otherwise than for his private or domestic use; or
- (e) distributes for purposes of trade or for any other purpose to such an extent that the owner of the copyright is prejudicially affected,

articles which he knows to be infringing copies of the work, shall be guilty of an offence."

The said provisions are made applicable to films by section 22 (3) of the Act.

Counsel for the appellants, in dealing with the first of the main contentions aforementioned, stressed the point that, in terms of section 22 (1) of the Copyright Act, an offence under that section can be committed only by a person who knows that the articles with which he is dealing - in any of the ways mentioned in paragraphs (a) to (e) of the section - are "infringing copies". Appellants, so the argument proceeded, were not aware that the films in their possession were infringing copies and could, therefore, not

be convicted of any offence under section 22 (1) of the Copyright Act, and, if the magistrate had properly considered the information placed before him when the warrants were obtained, he would have realised that, because there was a lack of knowledge on the part of the appellants, there could be no conviction and, therefore, that there could be no justification for the issue of any search warrants at all. With regard to this aspect of the case, counsel for the appellants drew our attention to the letters which had been written, on behalf of the appellants, to the complainants and also to certain organisations in the United States of America requesting information concerning the making and publication of the films in respect of which it was contended by the complainants that appellants were in possession of infringing copies. This information, it was said, if furnished, would have enabled the appellants to gain knowledge either that the films in their possession were in law infringing copies or that they were not infringing copies, but the appellants' requests for information were refused.

Relying on what was stated by Goddard J., in van Dusen

(and in this regard see also "Copyright Law" by Copeling at pp. 142/143) counsel submitted that an alleged infringer must be given a reasonable opportunity of ascertaining whether ~~the~~ ~~the~~ the material complained of infringes copyright or not, and such an opportunity, so he said, had not been allowed in the instant case before the search warrants were obtained. Continuing with this argument, counsel submitted that there was, therefore, at the time when the magistrate exercised his mind on the matter no grounds to support a belief that the appellants had the requisite knowledge. On the contrary, said counsel, it is reasonable to infer that the magistrate had before him copies of the correspondence between the appellants and the complainants and between the former and the organisations in the United States of America to which I have referred.

The inference upon which Counsel relied was stated to arise from the fact that Captain De Beer, the investigating police officer, had in his possession copies of the said correspondence and was heard, after the warrants had been executed, to say that

"he expected that the Applicants would bring an urgent application to court for the return of the films, but that all he would have to do was to inform the court that he had a reasonable suspicion that an offence had been committed and that all the necessary documents to substantiate his statement had been laid before a magistrate who had authorised the issue of a search warrant."

The magistrate, so the argument concluded, would therefore, if he had considered the information placed before him and had properly applied his mind to the matter, have realised that a necessary element for sustaining a conviction under section 22 (1) of the Copyright Act was lacking, and that the issue of search warrants was not justified in the circumstances.

Counsel for the respondents sought to counter this argument by referring to the correspondence which I have mentioned and certain other facts which had a bearing on the appellants' state of mind prior to the issue of the warrants, and contended that, inasmuch as the appellants had been given notice of infringement by the complainant companies as early as April 1971, appellants had been afforded ample opportunity of gaining the requisite knowledge prior to the issue of the warrants on 28 July 1971, and that they had indeed, prior to

the lastmentioned date, been aware of certain facts and had obtained certain information which must have satisfied them that their activities with respect to certain films constituted infringement of copyright.

I do not consider it necessary to discuss in further detail the argument propounded on behalf of the respondents with regard to this aspect of the case, as I am satisfied that there are no grounds to justify a conclusion that the magistrate (~~had~~) failed to apply his mind to the particular matter here under discussion. We have no information as to all the documents placed before the magistrate when the search warrants were applied for. Even if we are entitled to assume that the correspondence referred to above was placed before him, we are not entitled to draw the inference that that was the only information he had concerning the appellants' state of mind. There may have been other information which could have justified the belief that appellants had the requisite knowledge. Or he may have had information affording reasonable grounds for suspecting that there were on the business premises of the



appellants documents in respect of which "there are reasonable grounds for believing that it will afford evidence as to," inter alia, the requisite knowledge on the part of the appellants. (Section 42 (1) of the Criminal Procedure Act).

Third respondent, the magistrate who issued the warrants, deposed as follows in an affidavit filed by him:

2.

"Op 28 Julie 1971 is ek deur Kaptein De Beer genader met klagtes onder eed dat daar op die persele van die ses Applikante, onder andere, rolfilms, voorraadboeke, vragbriewe, korrespondensie en katalogusse was ten opsigte waarvan daar redelike gronde bestaan het om te vermoed dat dit tot bewys van die pleeg, hetsy in die Republiek of elders, van 'n oortreding van Artikel 22 van Wet 63 van 1965, sou strek of dat dit vir die doel van of in verband met sodanige pleging van sodanige misdryf gebruik was. Die genoemde Kaptein De Beer het my daarop versoek om visenteringslasbriewe uit te reik ingevolge Artikel 42 van Wet 56 van 1955 onder andere ten opsigte van die persele van die ses Applikante.

3.

Op grond van die voormelde klagtes onder eed was ek die mening toegedaan dat daar redelike gronde bestaan om aldus te vermoed en het ek derhalwe lasbriewe uitgereik in die vorm van Bylae "A" (Bladsy 184 van die stukke) by Kaptein De Beer se eedsverklaring aangeheg, onder andere, ten opsigte van die persele van die ses Applikante. Die betrokke films was in 'n bylae tot die lasbrief vermeld."

Not knowing what information was placed before the magistrate, we are not in a position to say that, in considering whether the circumstances justified the issue of warrants, the magistrate did not properly apply his mind to the matter.

With regard to the appellants' second main contention, namely, that relating to the particular terms in which the warrants were couched, several submissions were made. Some related to the description in the warrants (the terms of which have been quoted above) of the films which were to be seizable, others related to the documents which were to be seizable.

The films mentioned in the warrants are "all films appearing on the attached lists, in respect of which a licence to publish is not held, ---", and annexed to the warrants, at the time of execution, were lists containing the titles of a number of films. This was the position in respect of each of the warrants in question, and counsel's argument can, therefore, conveniently be dealt with by reference to the particular warrant quoted above.

During the course of counsel's argument a question arose as to the proper construction of that part of the warrant relating to films, which I have just cited, and particularly the words "in respect of which a licence to publish is not held." Counsel on both sides interpreted the said words as meaning, in effect, that the issuing officer was directed not to seize any film, even though the title thereof appeared on the lists annexed to the warrant, if a licence to publish could be produced in respect thereof. I shall, therefore, deal with counsels' arguments on the basis that that is the correct construction.

So construed, the warrant directs the seizure of any film cited in the lists "in respect of which a licence to publish is not held." Counsel submitted that the words "publish" and "licence" are, in the context of the warrant, too vague and imprecise. He drew attention

to the fact that the word "publish" is not defined in the Copy-  
right Act, and referred to the founding affidavits in which  
the appellants stated that "the nature of the licence to  
publish which qualified the films in terms of the search  
warrant is undefined and vague" and that they were "un-  
able to appreciate the import of the reference in the  
warrant to a film in respect of which a licence to publish  
is not held".

I can find no merit in the argument addressed  
to us on this aspect of the case. The word "publication"  
is defined in section 1 of the Copyright Act as follows:

"Publication, in relation to a cinematograph film,  
means the sale, letting on hire or offer for sale  
or hire of copies of the film to the public."

And section 17 (3) (a) of the Act provides that copyright is  
infringed by

"any person who in the Republic and without licence  
of the owner of the copyright -

(a) sells, lets for hire or by way of trade offers or exposes for sale or hire any article;

(b) - - - - - ;  
if to his knowledge the making of the article constituted an infringement of that copyright or (in the case of an imported article) would have constituted an infringement of that copyright if the article had been made in the place into which it was imported."

No valid reason has been advanced why the word "publish" should not, in the context of the warrant, bear the meaning assigned to the word "publication" in the Copyright Act. The appellants carry on the business of letting films out on hire to the public. They, therefore, publish films in terms of the Act.

In so far as the appellants own understanding of the terms of the warrant can at all be a relevant consideration, I can only express my disbelief in their statements that they did not know what a "licence to publish" meant in the context of the warrant, which refers to the Copyright Act. After the lengthy

correspondence between the appellants and the complainants and between the former and the producing and distributing organisations in America, concerning alleged copyright infringement, it seems fanciful to suggest that the appellants would not have understood from the terms of the warrant that, if they were in a position to satisfy the executing officer that they had such authority as is envisaged in the Act (vide Section 36) to publish a particular film, that film would not be seized.

Another submission made by counsel was that the warrants were invalid inasmuch as they, in terms, directed the seizure, not only of films that could be the subject of a criminal prosecution under section 22 (1) of the Copyright Act, but also of films that could neither be the subject of such a prosecution nor have any probative value in such a prosecution. Counsel's argument on this aspect of the case followed the line of reasoning in the judgment of Van Zijl, J., in World Wide Film Distributors Pty. Ltd. v. Divisional Commissioner, S.A. Police, Cape Town and Others

1971 (4) S.A. 312 (C). The argument was that the performance of an act described in section 22(1) of the Copyright Act (the section referred to in the warrants) constitutes an offence only if the film is an "infringing copy." The warrants in question refer generally to films and are not limited to infringing copies. Therefore, so it was argued, the warrants, in permitting the seizure of films irrespective of whether they were infringing copies or not, were couched in too wide terms. From that, it was said, the Court must infer that, in framing the warrants, the magistrate had not properly applied his mind to the important question, namely, what particular films were to be seizable, and that, for that reason, the warrants could not be valid.

Admittedly, a contravention of section 22(1) of the Copyright Act only takes place when the articles with respect to which an act, (~~such~~) as contemplated by the section, is performed, is an infringing copy. All films are not infringing copies. The expression "infringing copy" is a

defined in section 1 of the Act and does not, for example, include a copy of a film in respect of which the copyright has expired (see section 14 of the Act). Section 22 (1) of the Act is not concerned with such a film inasmuch as the section, in so far as it relates to films, is limited in its application to films in respect of which copyright subsists (section 22 (1) read with section 22 (3)).

The seizure of a non-infringing copy of a film, for the purposes of a prospective prosecution under section 22 (1) of the Copyright Act, cannot, therefore, be ordered in terms of paragraph (a) of section 42 (1) of the Criminal Procedure Act, but may, depending on the circumstances, be ordered in terms of paragraph (b) of the said section if there are grounds for believing that it will have probative value with respect to an offence committed in connection with other films which are infringing copies.

Counsel for the respondents in the instant case submitted that van Zijl, J., in his reasoning in the



judgment in the World Wide Film Distributors case (supra) overlooked the distinction between warrants issued under paragraph (a) of section 42 (1) of the Criminal Procedure Act and those issued under paragraph (b) of that section. It is by no means certain that such a conclusion is justified, inasmuch as the learned Judge stated, at page 316 of the reported judgment, that in terms of the warrant under consideration in that case, the police were directed to attach "not only films that could be the subject of a criminal prosecution, but also films that could neither be the subject of such a prosecution nor have any probative value in such prosecution" (my underlining). However, it seems to me that the circumstances of that case are readily distinguishable from those of the instant case. Van Zijl J., stated in his judgment (at pp. 315/316)

"From the affidavits filed on behalf of the first and third and fourth respondents, it is apparent that the police were under the impression when they applied for and were granted the warrant that it was a criminal offence for anyone knowingly to sell or let for hire a film in respect of which they had neither the copyright nor a licence from the copyright holder to sell or let. The second respondent, an additional magistrate of Cape Town, has granted a warrant in terms that would entitle the police to..../25

to attach films that could (not) be the subject-matter of any criminal offence in terms of the Copyright Act. This is particularly significant in view of the fact that the police, in their affidavits, nowhere refer to 'infringing copies'. They have missed the significant fact that the offences they were seeking evidence for can only be committed in respect of infringing copies."

(Having regard to what is stated immediately after the above cited passage, it seems to me that the word "not" was accidentally omitted from the report of the judgment at the place where I have inserted it in brackets.)

In the present case there are no indications whatsoever on the papers before us that either the investigating officer, Captain De Beer, who obtained the warrants in question, or the magistrate who issued the warrants, laboured under any misapprehension as to the meaning and significance of the term "infringing copies" in section 22 (1) of the Copyright Act. That circumstance, in my view, distinguishes the present case from the World Wide Film Distributors case. There is no reason for concluding that Captain De Beer or the magistrate, in considering which films should be the subject

of seizure, did not observe the requirement that such films should be infringing copies, and did not, therefore, exclude from the lists original films and non-infringing copies. I may add that it is significant that, save for the legal contentions that were abandoned on appeal, the appellants did not allege that any of the films seized could in law not be regarded as infringing copies; for example, that they were original films in respect of which there was no copyright vested in some other person, or were copies of films in respect of which copyright no longer subsists.

I find, therefore, that the contention that the magistrate did not properly apply his mind to the question as to what kind of films could be the subject of a charge in terms of section 22 (1) of the Copyright Act, is without substance.

The next question is whether that part of the warrant which directs the seizure of "all stock books, stock sheets, invoices, invoice books, consignment notes, all correspondence, film catalogues" <sup>is</sup> (~~was~~) not too wide in its ambit. Counsel for the appellants contended that it was inasmuch as it

directed the executing officer to attach, without the exercise of any discretion on his part, all documents of the nature aforementioned found on the premises of the appellants, irrespective of whether such documents could in any way have probative value in a prosecution under the Copyright Act.

Relying on what was stated by Beyers, A.C.J., in the S.A. Police v. S.A. Associated Newspapers case, supra at p. 512, counsel argued that the executing officers in the instant case were not only permitted, but indeed directed, to search any "person found in or upon" the business premises of the appellants irrespective of whether they had any connection with the business of the respective appellants or not, and to remove from such premises all business records and all correspondence of whatever nature irrespective of whether such documents had any connection with films or not. In this regard he drew attention to the fact that all the appellants also carry on business in the letting out on hire of film projectors, although that is only a minor part of their business activities. He contended that the warrant was, at least with respect to articles other than films, couched in such wide terms, as to justify the inference

that the magistrate had not properly applied his mind to the drafting of the warrant.

Counsel for the respondents, on the other hand, contended that, because the warrant made reference to a contravention of section 22 (1) of the Copyright Act, it could not be said that the warrant permitted the seizure of all documents of the nature aforestated found on the business premises of the appellants. He argued that the warrants in the instant case were similar to those that were considered in Seccombe and Others v. Attorney-General and Others 1919 T.P.D. 270, and de Wet and Others v. Willers N.O. and Another 1953 (4) S.A. 124 (T), in which the articles to be seized were held to have been identified by reference to the offence mentioned in the warrant. I cannot agree. The warrants in the present case cannot, to my mind, be said to have been drawn in such a manner as to identify the documents directed to be seized with the offence mentioned in the warrants, namely, a contravention of section 22 (1) of the Copyright Act. In this respect I cannot agree with the finding of the learned Judge a quo that "the documents referred to in the warrant must ... be read to refer to such as will relate to the suspected offence. //

Moreover, even if it were possible to say that the general description of the documents mentioned in the first part of the warrant was meant to be qualified by the preceding words "a contravention of section 22 (1) of Act 63 of 1965 - Copyright Act", I find it difficult to visualise how the executing officer could exercise a discretion as to what documents to select where the said section of the Copyright Act makes provision for a number of different kinds of offences relative to copyright.

I agree with counsel for the appellants that the reasons stated by Beyers A.C.J., in the S.A. Police v. Associated Newspapers case (supra) for holding that the warrant which was considered in that case, was bad in part, apply with equal effect to the warrants in the instant case.

A reading of the warrants issued in the present case leads me to the irresistible conclusion that the magistrate either intended that all documents of the kind mentioned in the warrants should be seized, irrespective of whether some of them might or might not afford evidence of a contravention

of the Copyright Act, in which case he would have exceeded the powers conferred on him by section 42 (1) of the Criminal Procedure Act, or he did not so intend, in which case he could not, in framing <sup>the</sup> terms of the warrants, have properly applied his mind to the matter. In either case his act or omission would have the effect of permitting an unlawful seizure and, in the respects in which and to the extent to which, such was permitted, the warrants in question must be held to be invalid.

The question which arises from the finding just stated, is whether that part of the warrants which is bad is severable from the rest. (See S.A. Police v. S.A. Associated Newspapers supra at p. 513.). I think that it is, despite the fact that it is not contained in a separate paragraph. That part of the warrants which describes the films to be seized, and "other correspondence or circulars referring to such films", is clearly distinguishable from the preceding part of the warrants which refers, without qualification, to "All stock books, stock sheets, invoices, invoice books, consignment notes, all correspondence, film catalogues".

A proper order would therefore, in my opinion, be to direct that all the documents seized, other than documents falling within the description of "correspondence of circulars referring to such films", being the films mentioned in the warrant<sup>s</sup>, be returned to the respective appellants.

Finally there is the question of costs to be considered; and in doing so an important fact to be borne in mind is that by far the larger portion of the record on appeal was concerned with matters which, although canvassed in the Court a quo, and again (~~taken up~~<sup>raised</sup>) in the appellants' written heads of argument presented to this Court, were, at the commencement of the argument on appeal, abandoned by the appellants. If the appellants had not raised the matters which they later abandoned, and had not brought into issue the question of their alleged lack of knowledge of infringement, a matter in respect of which their contentions have been rejected by both Courts, the record would have been a very limited one. Instead, because such matters were raised, the record (~~before us~~) is a voluminous one comprising 214 pages



of affidavits and annexures, and a 34-page judgment by the Court a quo. In the circumstances, although the appellants have been partially successful on appeal, the award of costs to them should be limited, both in respect of the costs incurred below and of the costs of appeal. An appropriate order I think would be to award them one-third of their costs in both courts.

The order of this Court is as follows:

A. The appeal is allowed in part. Respondents, in their representative capacities, are to pay one-third of the appellants' costs of appeal, such costs to include the costs of two counsel.

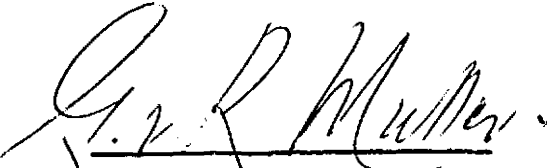
B. The following order is substituted for the order of the Court a quo:

1. First Respondent is directed forthwith to restore to the respective applicants all the books and documents seized from their possession other than documents falling

within..../33

within the description of "correspondence or circulars referring to such films"; the said films being those referred to in the respective search warrants issued by the third respondent.

2. Respondents, in their representative capacities, are to pay one-third of the applicants' costs, such costs to include the costs of two counsel.

  
G. v. R. Muller, J.A.

WESSELS, J.A.

POTGIETER, J.A.

TROLLIP, J.A.

RABIE, J.A.

}  
} CONCUR.  
}