The principle laid down in that case has been followed by the Divisional Court of the Probate, Divorce and Admiralty Division in two subsequent cases to which we were referred, namely *Scutt* v *Scutt* [1950] WN 286 and *Walker* v *Walker* [1967] 1 Appl ER 412. It is, I think, clear that the principle must apply with full force where the order made is of a penal character as it was here. It seems to me that in this case the learned magistrate ought to have given the mother an opportunity of being heard, and for that purpose, on 29 November 1967, notwithstanding the short notice and the flimsy excuse which she gave, he ought to have granted an adjournment."

Bearing those principles in mind we think that the following factors lend some support to the importer's application for an adjournment.

1. Essentially the importer faces criminal proceedings in the District Court. Once the Tribunal makes a finding as to the appropriate classification of the books, the matter will then revert to the jurisdiction of the District Court for final determination. It appears that if convicted the importer could face a maximum fine of approximately $51,339. Mr Leloir advised us that the penalty under section 48 of the Customs Act (which is the section under which the importer is charged) is a $1,000 fine or a fine 3 times the value of the goods seized, whichever is the greater. We were further informed that under section 261 of the Customs Act the Department has calculated that the 3215 paperbacks seized are worth $17,113.

Three times this figure gives the large sum already mentioned, as the potential maximum penalty for the offence. In circumstances where an importer faces a penalty of this magnitude, in a criminal proceeding, we would feel obliged to give the importer every opportunity to make representations relating to one of the essential elements of the offence, namely the issue of whether the publications are indecent.

2. Under section 16 of the Indecent Publications Act the Tribunal is given the power to make such order as to costs as it thinks fit. If the Tribunal were to find the majority of these publications manifestly indecent (although of course the Tribunal expresses no view on the matter at this stage) the Tribunal might well, having regard to the number of publications, impose an order for costs on the importer.

It should be borne in mind that the cost to the taxpayer of the Tribunal's adjudication on this particular reference is approximately $22,000. But, in the absence of hearing any submissions from the importer on the question of the indecency of the publications, or on the question of costs, the Tribunal would be reluctant to make any such imposition of costs.

In expressing this view we bear in mind the Court of Appeal's recent action in quashing the order made by the Royal Commission for $150,000 costs against *Air New Zealand* in *Re Erebus* (No. 2) [1981] 1 NZLR 618, 666. Although the factual situations between the 2 cases are far removed, we nevertheless think there is some connection in principle: namely that where a party affected may have been denied an adequate opportunity to be heard, or where there may be a possibility that a breach of natural justice may have occurred, costs or a financial penalty imposed on the "injured" party may subsequently be quashed, as being inappropriate in the circumstances.

3. Although Mr Travis has been seized of the proceedings since February 1982, we heard through Mr Brooks that he was prepared to swear an affidavit that he had only heard of the date of the present hearing on 7 June 1983. We accept what Mr Travis says without the need for an affidavit. It is also true that the notice of hearing was sent to Mr Stapleton, in error, and that the notice of hearing sent to the importer himself was never received by him because he had shifted addresses since 1981.

Consequently the importer's legal advisor may have had short notice at a substantial hearing further complicated by the fact that his client was overseas at the time of notification.

4. It appears in this case that there have already been significant delays, which cannot be attributed to the fault of the importer. The chronology of events shows that for almost a year the Customs Department did nothing about the publications, and in the end Mr Nicholas was moved to complain at ministerial level about the delay. It further appears that after March 1982 the conduct of the proceedings in the Auckland District Court fell into some sort of limbo, and that matters were not put into train again until February 1983.

In those circumstances we feel that another 2 months' delay will not unduly distort the due process of justice, especially considering that more than 3 years has elapsed since the official seizure of these publications.

5. The final matter is that although the Customs Department were ready to proceed before the Tribunal on 15 June 1983, Mr Leloir made no objection to the application by the importer for the adjournment.

In conclusion therefore we reluctantly agree to adjourn the present hearing until Tuesday, 16 August 1983 when the hearing of this reference will definitely proceed. It is obvious that the importer's solicitor must avail himself of the earliest opportunity to peruse the balance of the books seized in this importation. We have directed the Comptroller to make the balance of the books available as soon as possible.

We also note that we will be unimpressed with any argument (save for the most cogent evidence) that Mr Travis was unable to get adequate instructions from Mr Nicholas because he is presently overseas. The sums of money involved in the importation of the present publications, and the sums involved in any penalty upon conviction, or in the form of any costs that might be imposed, are likely to be substantial. Those costs would seem to us to merit attempts to obtain instructions that perhaps would not otherwise be justified, were the stakes not as high as in the present proceedings.

Therefore, unless the most exceptional circumstances prevail to the contrary, the hearing of this reference will definitely proceed on Tuesday, 16 August 1983.

Our purpose in setting out at this length our reasons for granting the application for adjournment is to ensure that the importer and his solicitor are properly placed on guard as to the possible consequences at their failure to be in a position to proceed on the next hearing of this reference from the Auckland District Court.

District Court Judge W. M. WILLIS, Chairman.

CHRONOLOGY OF EVENTS IN RELATION TO 341 PAPERBACK BOOKS IMPORTED BY N. H. NICHOLAS

19 September 1979:	Information received by Customs that Nicholas would shortly be importing indecent books.
30 November 1979:	341 paperback books forming part of a larger shipment of 10,000 books (stacked on three pellets) were imported at the Port of Auckland on vessel "ACT 4".
17 December 1979:	Entry for home consumption was made in relation to the books.
January 1980:	The books were examined twice by examining officers during this month.
8 February 1980:	Memorandum sent to Head Office Research Division from Auckland, enclosing 35 books.
21 February 1980:	Books examined in Research Division and considered to be indecent and reply sent to Auckland.
26 February 1980:	A further 258 titles were sent to Head Office by Auckland.
28 February 1980:	Decision to prosecute Nicholas was agreed to by Assistant Comptroller of Customs.
3 March 1980:	Memorandum sent to Auckland approving prosecution.
30 April 1980:	Auckland seized 3,215 paperback books. Seizure notice sent with letter to Nicholas indicating that he would be prosecuted for importing indecent publications.
2 May 1980:	Nicholas filed notice to dispute forfeiture with Auckland office (copy enclosed).
15 October 1980:	Memorandum from Auckland regarding delays. Officer in charge of books indicates that he has been away from job for 3 months.
23 October 1980:	Letter sent by Auckland office to Nicholas acknowledging notice to dispute forfeiture and regretting delay in replying.
7 October 1981:	Letter from Auckland office to Crown Solicitor enclosing prosecution file.
5 November 1981:	Crown Solicitor reports that informations had been filed in October 1981.
17 November 1981:	Letter to Auckland office from R. J. Stapleton, solicitor, acting for Nicholas, indicating that a not guilty plea would be entered and indicating that the matter should be set down for defended hearing in early 1982.
14 December 1981:	Case is first called and adjourned for defended hearing on 22 Feburary 1982.
22 February 1983:	The case is adjourned until 15 March so that Mr B. Travis, counsel for Nicholas, can inspect alleged indecent books.
15 March 1982:	Mr Travis appeared and the Court made an order pursuant to section 12 of the Indecent Publications Act 1963 to have the books referred to the Indecent Publications Tribunal and case adjourned until 5 July 1982 so as to give Indecent Publications Tribunal time to classify books.
19 April 1982:	341 books were sent to Miss T. Spain, Crown Solicitor, Auckland.
28 May 1982:	Mr Travis requests Crown Solicitor for 12 books to be sent to him.