make sure that they have no sort of excuse for not appearing. I very much regret that I have to set aside this award, but I think the arbitrators of the buyers have so conducted themselves as to infringe this important principle. That being so, the award must be set aside, and I must set it aside with costs.

N. G.

Attorney for the applicant firm: *S. C. Mitter.*

Attorney for Louis Dreyfus & Co.: *P. K. Roy.*

CRIMINAL REVISION.

Before Walmsley and Shams-ul-Huda JJ.

RAHAMAT ALI

v.

EMPEROR.*

1919

May 22.

Extradition—Requisition by Administrator of French Chandernagore for surrender of a British Indian subject for theft committed there—"Foreign State," meaning of—French Chandernagore not a "Foreign State"—Extradition Treaty with France of 14 August 1876, Art. 16—Extradition Treaty with same of 7 March 1815, Art. 9—Procedure on requisition for surrender—Extradition Act (XV of 1903), s. 2 (c), Chapter II, ss. 7, 8, 8A, 9 and 18.

By article 16 of the Extradition Treaty with France of 1876 the East Indian Possessions of the two countries are excluded therefrom, and are not a "Foreign State" within s. 2 (c) and Chapter II of the Indian Extradition Act (XV of 1903), and the provisions of the chapter are not, therefore, applicable to such Possessions.

Sections 7, 8 and 8A of the Act do not apply to the French Possessions in India.

Article 9 of the Extradition Treaty with France, of 7 March 1815, contemplates the summary surrender of a fugitive criminal, and, read with

* Criminal Revision No. 334 of 1919, against the order of J. Younnie, Subdivisional Magistrate of Serampore, dated April 6, 1919.

1919

RAHAMAT ALI v. EMPEROR.

s. 18 of the Act, excludes the operation of s. 9 of the latter. A British Indian subject may, on requisition by the Administrator of French Chandernagore, be surrendered for theft committed therein, without any preliminary enquiry, under s. 9 of the Act by a Magistrate in British India.

The subject has no right at Common Law to have such preliminary enquiry made before his surrender when there is a treaty excluding such enquiry, and is followed by a statute recognising the treaty.

THE petitioner was a British Indian subject resident at Telinipara in the district of Hooghly. On the 4th April 1919, a French police officer, armed with a "*delegation*" from the *Juge d' Instruction* in French Chandernagore directing him to arrest the petitioner with the aid of the British police, appeared before the Subdivisional Officer of Serampore, who directed the sub-inspector of Bhadreswar to assist in arresting the petitioner. He was accordingly arrested on the 5th, when his house was also searched and some silver articles seized. He was produced before the Subdivisional Officer the next day, and remanded to jail till the 11th. On the 7th, the Magistrate reported the arrest to the Under-Secretary to the Government of Bengal, Political Department, and applied for sanction of the Government to the petitioner's surrender. The petitioner was released on bail, the next day, by the Sessions Judge of Hooghly, and on the same day the Administrator of French Chandernagore addressed a letter to the Chief Secretary to the Government of Bengal forwarding the warrants of arrest issued by the *Juge d' Instruction* against the petitioner for theft committed in French Chandernagore, and requesting his extradition. The case before the Magistrate was taken up on the 11th instant and postponed to the 17th. In the meantime, on the 14th, the Under-Secretary forwarded the Administrator's letter and the warrants in original to the District Magistrate of Hooghly requiring him to take the necessary steps

for the arrest and surrender of the person named in the warrant to the French authorities at Chandernagore and informing him at the same time that the petitioner was probably the person so named. On the 17th the District Magistrate sent the warrant to the Superintendent of Police, and copies of the other papers received by him to the Subdivisional Magistrate who had already adjourned the case to the 29th.

The petitioner then moved the High Court on the 22nd and obtained the present Rule on the ground that the proceedings before the Subdivisional Magistrate and his orders were *ultra vires*, and, further, that there were no materials before him to justify such orders.

The Deputy Legal Remembrancer (*Mr. Orr*), for the Crown showed cause. The provisions of the Extradition Act (XV of 1903) do not apply to this case. The procedure depends on the class of State which makes the requisition for the surrender of the fugitive. Refers to the definition of a "Foreign State" in s. 2 of the Act. The East Indian Possessions of England and France are expressly excluded from the Extradition Treaty of 1876: see article 16. French Chandernagore is not, therefore, a "Foreign State" within Chapter II of the Indian Act. The procedure is governed entirely by Art. 9 of the Convention between Great Britain and France, dated the 7th March 1815: see Muddiman's Law of Extradition, pp. 6—8. Even if the Magistrate's proceedings be irregular the High Court cannot interfere: *Tops* v. *Emperor* (1).

Babu Manmatha Nath Mukherjee, for the petitioner. The High Court has no general powers of revision in extradition proceedings, but it is settled law

(1) (1918) I. L. R. 46 Calc. 31.

1919

RAHAMAT ALI v. EMPEROR.

that it can interfere where the Magistrate acts illegally or without jurisdiction : *Gulli Sahu* v. *Emperor* (1), *Emperor* v. *Huseinally Niazally* (2) and *Emperor* v. *Mahamadbuksh Karimbuksh* (3). Comments on and distinguishes *Stallmann* v. *Emperor* (4); *In re Stallman* (5), *Stallmann* v. *Emperor* (6) and *Gulli Sahu* v. *Emperor* (7). French Chandernagore is not a State. The "States" are the High Contracting Powers, England and France. There is no authority for Mr. Muddiman's view on p. 7. France is a "Foreign State" as there is the Extradition Treaty of 14th August 1876, and the Order in Council of 16th May 1878. The Treaty of 7th March 1815 was intended to provide only for the protection of the salt revenue, and made no distinction between extraditable and non-extraditable offences. It was incorporated in the Treaty of 1876 by article 16. The Indian Extradition Act, therefore, applies. The Sovereign has no right at Common Law to extradite an offender except under a statute: see Piggot on Extradition p. 77, Encyclopædia of the Laws of England, Vol. 5, p. 643. The Treaty of 1815 cannot be taken as standing by itself. Article 9 is unworkable, there being no statute to give effect to it. The Order in Council of 16th May 1878 makes no exception as regards the French Possessions in India. The only effect of art. 16 of the Treaty of 1876 is to re-affirm the terms of the earlier one and to make the Indian Act applicable thereto. The arrangement is contained in the Treaty but the machinery for carrying it into effect is in the Act.

Cur. adv. vult.

(1) (1913) I. L. R. 41 Calc. 400.
(2) (1905) 7 Bom. L. R. 463.
(3) (1906) 8 Bom. L. R. 507.
(4) (1911) I. L. R. 38 Calc. 547, 551.
(5) (1911) I. L. R. 39 Calc. 164.
(6) (1911) 15 C. W. N. 736.
(7) (1914) I. L. R. 42 Calc. 793.

WALMSLEY J. This Rule raises an interesting question. It was obtained on behalf of one Rahamat Ali who says that he is a British subject residing at Telinipara in the district of Hooghly. The necessary facts are as follows.

On April 4, a jemadar of the French police came to the Subdivisional Magistrate of Serampore with a "delegation" from the *Juge d' Instruction* at Chandernagore. The "delegation" directed the jemadar or *adjutant de police*, to proceed to Telinipara and with the assistance of the British police, to arrest Rahamat Ali on a charge of theft. The Magistrate directed the sub-inspector of Bhadreswar to assist in arresting Rahamat Ali; and on April 5 the petitioner was arrested, and next day he was produced before the Magistrate, who remanded him to custody, and ordered a letter to be written to the Bengal Government asking for an extradition warrant. On April 7th the Magistrate wrote a letter to the Bengal Government reporting that the police had arrested one Rahamat Ali on the requisition of the French authorities at Chandernagore, and saying that the man would be handed over to the French authorities on receipt of the formal sanction of Government to his extradition. On April 8th, the Administrator of Chandernagore wrote to the Government of Bengal enclosing a warrant of arrest issued by the *Juge d' Instruction* against Rahamat Ali and two others, and asking for their extradition.

On April 14th, the Bengal Government sent a copy of the Administrator's letter with the warrant, to the District Magistrate of Hooghli, directing him to take the necessary steps for arresting Rahamat Ali and making him over to the authorities at French Chandernagore under proper escort. This letter was forwarded to the Subdivisional Magistrate

1919

RAHAMAT ALI v. EMPEROR.

WALMSLEY J.

of Serampore on 17th April. By that time the petitioner had again been remanded to custody, and the date fixed for his production was 29th April. On 22nd April, this Rule was issued by us, and in the meantime the petitioner was released on bail under the orders of the Sessions Judge.

The present position then is that the petitioner has been arrested but released on bail, and that the Government of Bengal has directed the Magistrate of Hooghly to make over the petitioner to the French authorities.

It was urged before us that the procedure was not in accordance with the provisions of Act XV of 1903, in particular because there was no enquiry held by the Magistrate of Serampore.

Cause has been shown by the Subdivisional Magistrate in a letter, and by Mr. Orr, verbally, on behalf of the Crown. Unfortunately, they do not take up the same line of reasoning. The learned Magistrate contends that his procedure is in accordance with sections 3 and 4 of the Act, while Mr. Orr says that those sections are not applicable to the circumstances.

It will be convenient to deal first with Mr. Orr's arguments, for if he is right it will not be necessary to consider the Magistrate's explanation. His argument is based on the first five paragraphs of part I of Mr. Muddiman's book on The Law of Extradition from and to British India. It is as follows:—A Foreign State, as defined by the Indian Extradition Act, means a State to which for the time being, the Extradition Acts 1870 and 1873, apply. Those Acts may be made applicable by an Order in Council to any State with which an arrangement has been made with respect to the surrender to such State of any fugitive criminals. Such an arrangement was made

with France by the Treaty of 1876, and an Order of Council, dated 16th May 1878, made the Extradition Acts applicable to France. France is, therefore, a Foreign State. But it is argued that the East Indian Possessions of France are not a Foreign State because a Treaty was made in regard to them in 1815, and in the Treaty of 1876 there was a clause excluding them from the operation of the later Treaty. The saving clause is the last clause of article 16 of the Treaty. Mr. Orr urges, in accordance with Mr. Muddiman's view, that the effect of that clause is to place the French Possessions in British India entirely outside the Treaty of 1876. The same view is expressed by Sir Francis Piggott at page 187 of his work on Extradition when he says: "In the treaty with France, the arrangement established in the East Indian Possessions of the two countries by the Treaty of 1815 is preserved." I think that an examination of the Treaty of 1876 shows that view to be correct. Art. 1 sets out that the High Contracting Parties make an engagement; then follows an exception for native born and naturalized citizens, then an enumeration of extraditable offences, then a stipulation as to the fugitive being tried for the offence in respect of which he has been surrendered, and then a saving as to political offences. Beginning with article 6 is a series of articles as to the manner in which the extradition shall take place, first on the part of the French Government in France, and then in the Dominions of Her Britannic Majesty, other than the Colonies or Foreign Possessions of Her Majesty. Then article 16 deals with the manner of proceeding in the Colonies and Foreign Possessions of the two High Contracting Parties, and consuls and governors are substituted for ambassadors and ministers, but the methods are to be, as nearly as

1919

RAHAMAT ALI v. EMPEROR.

WALMSLEY J.

possible, according to the provisions set out in the earlier articles. The last clause of that article, however, runs: "The foregoing stipulations shall not in any way affect the arrangements established in the East Indian Possessions of the two countries by article 9 of the Treaty of the 7th March 1815."

We have been asked to hold that the meaning of this clause is nothing more than that the reference to the Chief Consular Officer shall not apply in the case of the East Indian Possessions of the two countries. Such a construction is opposed to the plain meaning of the words, and I have no doubt that by that last clause in article 16 the East Indian Possessions of the two countries are entirely excluded from the Treaty arrangements of 1876.

That being so, the provisions of chapter II of the Extradition Act have no application here, and we have to turn to chapter III. Sections 7, 8, 8A contemplate States where there is a Political Agent and, therefore, cannot apply to French Chandernagore. The ninth section, however, is general: it directs that a requisition from a non-foreign State shall be dealt with in the same manner as a requisition from a Foreign State. This direction seems to obliterate the difference between Foreign and non-foreign States, but section 18 lays down that nothing in this chapter shall derogate from the provisions of any treaty for the extradition of offenders, and the procedure provided by any such treaty shall be followed in any case to which it applies, and the provisions of this Act shall be modified accordingly. The question then is whether article 9 of the Treaty of 1815 is of such a nature as to exclude the East Indian Possessions from the scope of section 9. It is true that the article has none of the detail to be found in the Treaty of 1876, but that I have no doubt is to be

explained by the fact that the two Governments did not intend the procedure to be elaborate; the words are "shall be delivered up" on the part of the British Government, and "shall be delivered up on demand being made" upon the part of the French Government. I think these words clearly mean that the procedure was to be summary. A comparison of the words in the Treaty of 1815 with the words used in the Treaty of 1802 concluded between Great Britain and France confirms this view, for in the Treaty of 1802 provision is made for a preliminary enquiry on the part of the authorities of the country where the fugitive is residing, and this fact warrants the inference that the omission to provide for such an enquiry in the Treaty of 1815 was intentional. The reasons for a difference in procedure are too obvious to need mentioning. In my opinion, therefore, the procedure that has been adopted in the present instance is in accordance with the terms of the Treaty of 1815. In this view, it is unnecessary to deal with the explanation furnished by the Magistrate.

An argument was advanced that, even if we hold that extradition proceedings with Chandernagore are governed by the Treaty of 1815, the subject has a right at common law to a preliminary enquiry before surrender. I think this view is fallacious. Extradition under any conditions is an invasion of the common-law right, and when there is a treaty, followed by a statute recognising the treaty, the procedure must be in accordance with the treaty and statute, and no further condition can be imposed by the Courts.

I think, therefore, that the Rule should be discharged.

SHAMS-UL-HUDA J. I agree.

E. H. M. *Rule discharged.*