We now come to the last question—

(3) Should the writ be granted in the present case ?

As I have held that this Court has no jurisdiction to issue a writ of *certiorari* against the Local Government, this question does not arise for consideration.

In the result, the Civil Miscellaneous Petition is dismissed with costs.

K.R.

APPELLATE CRIMINAL.

Before Mr. Justice Wallace and Mr. Justice Jackson.

IN RE MUTHU REDDI AND ANOTHER (PETITIONERS), PETITIONERS.*

1930, March 14.

Indian Extradition Act (XV of 1903)—East Indian Dependencies of France—Whether "Foreign States" within meaning of the Act—Article IX of Treaty of 7th March 1815—Right of British Indian Government to deliver up a British Indian subject to Pondicherry Government on statement by latter of commission of theft by such subject, and on its demand, without satisfying itself of existence of prima facie *case—Unilateral act of one of the Parties—Whether can impose procedure more elaborate than that contemplated in treaty.*

The East Indian Dependencies of France, having been expressly excluded from the Extradition Treaty of 1876, and not being States or parts of a State to which the Extradition Acts of 1870 and 1873 apply, are not "Foreign States" within the meaning of the Indian Extradition Act of 1903.

Extradition in the East Indian Possessions of Great Britain and France are governed by Article IX of the Treaty of the 7th March 1815; and that article contemplating summary delivery at the request of any authority of either High Contracting Party and not providing any special procedure for the

* Criminal Revision Case No. 78 of 1920 and Criminal Miscellaneous Petition No. 133 of 1930.

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purpose of extradition, the British Indian Government may, on the statement of the Government of Pondicherry that a British Indian subject has committed the offence of theft within its territory and on its demand, deliver him up to the Government of Pondicherry, without holding an enquiry to satisfy itself that there is a *prima facie* case against the person whose extradition is sought.

Where the treaty practically provides for surrender on demand, a more elaborate procedure cannot be superimposed by the unilateral act of one of the parties.

Rahamat Ali v. *Emperor*, (1919) I.L.R., 47 Calc., 37 and *In re Cullington*, (1920) I.L.R., 48 Calc., 328, referred to.

PETITIONS under sections 435 and 439 of the Code of Criminal Procedure, 1898, and section 107 of the Government of India Act, and under section 491 of the same Code praying the High Court to revise the orders of the Court of the District Magistrate, South Arcot.

K. S. Jayarama Ayyar and *K. R. R. Sastri* for petitioners.

Advocate-General (*A. Krishnaswami Ayyar*) and *K. Venkataraghavachari* for *Public Prosecutor* (*L. H. Bewes*) for the Crown.

JUDGMENT.

WALLACE J.

WALLACE J.—The point raised in this criminal revision petition is of considerable importance, namely, what is the procedure to be observed in extradition proceedings between the British Government in India and the French Settlements in India.

The District Magistrate of South Arcot has, on a demand from the Governor of the French Settlement of Pondicherry and on information from him that judicial proceedings are pending in Pondicherry against two British subjects, arrested these two men and proposes to hand them over without further inquiry to the

French authorities. The two arrested men have put in this petition alleging that the action of the District Magistrate is illegal, inasmuch as he has under the Extradition Act of 1903 no authority to deliver them up in this summary fashion, but must first hold an inquiry and satisfy himself that there is a *prima facie* case against them, as provided for in Chapter II of that Act. The learned Advocate-General on behalf of the Government contends that Chapter II of the Act has no bearing on the case, and that the case is governed by the provisions of, and the procedure indicated in, Article IX of the Treaty of 1815, the necessary legislative sanction for which has been provided by section 18 of the Extradition Act. The petitioners rejoin that section 18 has no application to cases where no procedure has been prescribed by the Legislature, and that, in any case, its application is restricted to cases coming under Chapter III of the Act. They further urge that the extradition provision in the Treaty of 1815 had been abrogated by the Treaty of 1876 and by the English Extradition Acts of 1870 and 1873. They argue further that any part or dependency of a Foreign State is for the purpose of the Indian Extradition Act a Foreign State to which Chapter II and not Chapter III will apply.

To take the last point first, a Foreign State is, by definition in the Act, a State to which the Extradition Acts of 1870 and 1873 apply. Whether or not a part or dependency of a Foreign State is itself a Foreign State need not be decided here, since I am of opinion that in any case the East Indian Dependencies of France were expressly excluded from the Extradition Treaty of 1876, and therefore they are not States or parts of a State to which the Extradition Acts of 1870 and 1873 apply. This is the view taken by a Bench

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of the Calcutta High Court in *Rahamat Ali* v. *Emperor*(1). In a subsequent case in Calcutta, *In re Cullington*(2), a single Judge, BUCKLAND J., differed, holding that Article XVI of the Treaty of 1876 does not exclude the East Indian Dependencies of France, but was intended to preserve the provision of the Treaty of 1815, and that the effect of the Order in Council of 16th May 1878 was to put into operation as regards these Dependencies section 25 of the English Extradition Act, 1870. The learned Judge admitted that he had not then before him the exact terms of the Order in Council. That is a matter of regret, since, if he had had these terms before him, I doubt, speaking with respect, if he would have differed from *Rahamat Ali* v *Emperor*(1). The concluding terms of the Order in Council are that the Extradition Acts of 1870 and 1873 shall after 31st May 1878 "apply in the case of the said Treaty", that is, the Treaty of 1876, "with the President of the French Republic". So that it is only in respect of that Treaty and not in respect of all Treaties then in force that these Extradition Acts apply; and unless that Treaty abrogated the Treaty of 1815 in respect of French Dependencies in East India, the Extradition Acts of 1870 and 1873 do not apply to them, and they would therefore not be Foreign States within the meaning of the Indian Extradition Act of 1903.

Article XVI of the Treaty of 1876 sets out "the manner of proceeding", "in the Colonies and Foreign Possessions of the two High Contracting Parties", and ends up, "The foregoing stipulations shall not in any way affect the arrangements established in the East Indian Possessions of the two countries by the IXth Article of the Treaty of the 7th March, 1815." Now, as

(1) (1919) I.L.R., 47 Calc., 37. (2) (1920) I.L.R., 48 Calc., 328.

petitioners themselves argue, this Article IX contains no *procedure*, strictly so called. Therefore what the saving clause at the end preserves, and intended to preserve, is the extradition "arrangements" provided by that Article. In other words, that Article is in no way affected by Article XVI of the Treaty of 1876, and extradition in the East Indian Possessions of the two countries remains governed by the Treaty of 1815. This is the view which has been taken of this clause both in *Rahamat Ali* v. *Emperor*(1) and *In re Cullington*(2).

The petitioners urge that, as Article IX of the Treaty of 1815 provides no procedure, it is in effect unenforceable. This argument I do not follow. If that Treaty provided no procedure such as was provided by the prior Treaty of 1802 or by the subsequent Treaty of 1876, that is a clear indication that the High Contracting Parties did not agree upon or intend that there should be any formal procedure for extradition. I do not follow the argument that the Treaty cannot be brought into operation until the Legislature has provided and sanctioned a procedure. That would obviously be exceeding its province. The Legislature can only sanction a procedure if the Treaty provides for one. The procedure must be found or provided for in the Treaty itself before any Legislature of either party can legislate about it. The Legislature cannot alter either by addition or subtraction the essentials of a Treaty, which is the contract between the High Contracting Parties, or impose upon one party conditions which do not form part of that contract. That would be tantamount to the subjects of one High Contracting Party forcing on its own Government a breach of the Treaty, or making it impossible for its own Government to keep its pledged word with the other party. See *The Queen* v. *Wilson*(3).

(1) (1919) I.L.R., 47 Calc., 57. (2) (1920) I.L.R., 48 Calc., 328.
(3) (1877) 3 Q.B.D., 42.

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Section 18 of the Indian Extradition Act lays down that "nothing in this chapter", that is Chapter III, "shall derogate from the provisions of any treaty". That is, it incorporates in effect the provisions of such treaty in the Municipal Law of India. When, therefore, the Treaty says that offenders shall be extradited on demand, it is not open to a Municipal Court to say that they shall not be delivered up until some form of procedure initiated, prescribed and sanctioned by itself alone and not agreed upon by the High Contracting Parties is satisfied. There is, on this finding, no point here in emphasizing that section 18 of the Extradition Act refers to Chapter III alone, since, as already pointed out, the French possessions in India are not a Foreign State, and therefore Chapter III is the only one which would apply to the present case.

Article IX of the Treaty of 1815 which is therefore, in my view, the provision to be followed contemplates summary delivery at the request of any authority of either High Contracting Party. That is the view which the Local Government itself has taken of its obligations as set out in the Extradition Manual, Chapter III, section 2 (*a*), and I think we may assume that that is the view authorized by the High Contracting Party from whom this Government derives this authority. The procedure in the Manual, however, seems to be regarded as applicable to the case of "grave" offences, and neither side has been able to point us to any orders of Government under which the general provision of Article IX of the Treaty of 1815 has been so restricted. This question, however, does not arise here as theft is a "grave" offence. I find therefore that there is no substance in this petition and it is dismissed.

The collateral petition (Crl.M. P. No. 133 of 1930) put in under section 491 of the Criminal Procedure

Code must also fail since the detention of the petitioners is not illegal or improper; and it is also dismissed.

JACKSON J.

JACKSON J.:—I agree. Under the Indian Act (XV of 1903), a Foreign State means a state to which the English Extradition Acts of 1870 and 1873 apply. The main Act is that of 1870. (Vol. 1, page 443, Coll. Stat.) As provided in section 2 of that Act, the application of that Act to any Foreign State shall be by Order in Council. If the Order in Council has not applied the Act to French possessions in India, the Act does not apply and these possessions are not a Foreign State as defined in the Indian Act (XV of 1903).

The Order in Council applied the Act not generally to France, but in a restricted sense "in the case of the Treaty with the President of the French Republic". This is the Treaty of 1876 which in terms does not affect the arrangements in the East Indian possessions of the two countries (Article XVI). Therefore the Extradition Act of 1870 has not been applied to that part of France which is Pondicherry and Pondicherry is not a Foreign State.

Therefore, Chapter III of the Indian Act (XV of 1903), "Surrender . . . . in case of States other than Foreign States", applies to Pondicherry. Section 18, falling within Chapter III, expressly preserves the provisions of any treaty for the extradition of offenders and its procedure. This makes the provision of the Treaty of 1815 applicable to the present case, and gives statutory sanction to its procedure. There is therefore no room for an argument that the treaty cannot affect individual rights in the absence of statutory sanction.

BUCKLAND J. in *In re Cullington*(1) says, "By an Order in Council, dated 16th May 1878, the Extradition

(1) (1920) I.L.R., 48 Calc., 328 at 335.

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Acts were made applicable to France." It is here that with all respect I differ from him. I should have agreed, if the Order in Council stated "in the case of France" instead of "in the case of the said Treaty."

I agree that as the Treaty of 1815 practically provides for surrender on demand, a more elaborate procedure cannot be superimposed by the unilateral act of one of the parties.

B.C.S.