

suspension of payment and on all monies advanced by the Bank after the date when it recovered the monies due on the appellant's bills.

As appellant has not been successful in the whole of his claim we direct that parties bear their own costs.

N. F. E.

Appeal accepted in part.

REVISIONAL CRIMINAL.

Before Mr. Justice Martineau.

HANS RAJ, Petitioner

versus

THE CROWN, Respondent.

Criminal Revision No. 1625 of 1925

1926

Feb. 2.

Extradition Act, XV of 1903, section 7—Warrant issued by Political Agent of a Native State against a resident in British India—Responsibility for legality of.

The responsibility for the legality of a warrant issued under section 7 of the Extradition Act rests with the officer by whom it was issued, and the Magistrate to whom it is addressed is not required to make any inquiries.

Giyān Chand v. King-Emperor (1), followed.

Where therefore a warrant of arrest was issued against the petitioner at Gujranwala for an offence under section 420, Indian Penal Code, by the Political Agent in Indore State and sent to the District Magistrate at Gujranwala for execution, it was not the latter's duty to ascertain whether a *prima facie* case existed against the petitioner.

Application for revision of the order of the District Magistrate, Gujranwala, dated the 23rd September 1925, executing the warrant of arrest upon the petitioner

1926

HANS RAJ
v.
THE CROWN.

MOTI SAGAR, for Petitioner.

Nemo, for Respondent.

JUDGMENT.

MARTINEAU J.—It is alleged in this application that a warrant for the arrest of the petitioner, who lives at Gujranwala, for an offence under section 420, Indian Penal Code, was issued by the Political Agent in Indore State under section 7 of the Extradition Act and sent to the District Magistrate of Gujranwala, that the warrant was executed and the petitioner released on bail under section 8, and that the District Magistrate has ordered the petitioner to present himself before the Indore State authorities on such date as may be fixed for the hearing of the case. Mr. Moti Sagar on behalf of the petitioner contends that it is the duty of the District Magistrate to ascertain whether the warrant issued under section 7 of the Extradition Act was a legal warrant, and he asks that the District Magistrate may be directed to inquire into this matter.

In *Giyān Chand v. King-Emperor* (1), where a warrant had been sent by a Political Agent to the District Magistrate of Gujrat, it was held that it was no part of the duty of the Chief Court or of the Gujrat authorities to ascertain whether a *prima facie* case existed against the petitioner, and that the responsibility rested with the officer by whom the warrant had been issued. I agree with that view. Section 7 of the Extradition Act lays down that the Magistrate to whom the warrant is addressed shall act in pursuance thereof, and does not require him to take evidence. Had it been intended that he was to take

(1) 3 P. R. (Cr.) 1909.

evidence in regard to the legality of the warrant before acting upon it there would have been an express provision to that effect as there is in the case of proceedings under sections 3, 4 and 10. It is unnecessary to discuss the various authorities which have been cited before me as section 7 itself is perfectly clear. I dismiss the application.

N. F. E.

Revision dismissed.

REVISIONAL CIVIL.

Before Mr. Justice Campbell.

PIROJ SHAH AND COMPANY (PLAINTIFF) Petitioner

versus

QARIB SHAH (DEFENDANT) Respondent.

Civil Revision No. 429 of 1925.

1925

Dec. 8.

Revision (Civil)—from order setting aside on ex parte decree on a time-barred application—Civil Procedure Code, Act V of 1908, section 115—Punjab Courts Act, VI of 1918, section 44—Limitation for application — onus probandi—Indian Limitation Act, IX of 1908, section 3, article 164.

On the 28th February 1924 the plaintiff-petitioner obtained an *ex parte* decree; on 18th April 1924 the defendant-respondent applied to have the decree set aside, alleging that he had no knowledge of the suit and on 16th October 1924, the Subordinate Judge passed an order that it would be set aside on security being furnished. On the point of limitation the Subordinate Judge held that, although the defendant was aware of the institution of the suit, there was nothing to shew on what date he had knowledge of the decree. On 27th May 1925 the security bond was accepted and the defendant directed to put in his pleas. The plaintiff then applied to the High Court for revision of the order setting aside the *ex parte* decree.