

Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed with costs. As regards the petition for special leave to appeal from the order of the Court of Appeal imposing certain conditions upon granting leave to appeal, under the circumstances it is unnecessary to advise His Majesty to make any order. The costs of that petition will be costs in the appeal.

J. C.
 1911
 ALLARDICE
 v.
 ALLARDICE.

Solicitors for appellants : *Minet, May & Co.*

Solicitors for respondents : *Blyth, Dutton, Hartley & Blyth.*

[PRIVY COUNCIL.]

ATTORNEY-GENERAL FOR THE } APPELLANT ;
 DOMINION OF CANADA }

J. C.*
 1911
 July 13.

AND

FEDORENKO RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH FOR
 MANITOBA.

Extradition—R. S. C., 1906, c. 155, s. 10—Proof of Requisition not a Condition of Arrest or Committal.

Under art. IX. of the Extradition Treaty with Russia, 1886, after a requisition in due form it is obligatory on the authorities to arrest the fugitive. The article does not provide that there shall be no arrest till after requisition ; and is not inconsistent with s. 10 of the Extradition Act (R. S. C., 1906, c. 155).

APPEAL by special leave from a judgment of Robson J. (December 17, 1910) discharging the respondent under a writ of habeas corpus from custody under the Chief Justice's warrant of committal with a view to his extradition to Russia.

The question raised was whether it is necessary in extradition

* *Present* : EARL LOREBURN L.C., VISCOUNT HALDANE, LORD MACNAGHTEN, LORD SHAW OF DUNFERMLINE, LORD DE VILLIERS, and LORD ROBSON,

J. C. proceedings to put in evidence the requisition by the foreign
1911 State requiring the extradition before the judge to whom appli-
cated for a warrant is made.

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R. S. C., 1906, c. 155 (the Extradition Act), provides in s. 10:
“Whenever this part applies, a judge may issue his warrant for
the apprehension of a fugitive on a foreign warrant of arrest, or
an information or complaint laid before him, and on such
evidence or after such proceedings as in his opinion would,
subject to the provisions of this part, justify the issue of his
warrant if the crime of which the fugitive is accused, or of
which he is alleged to have been convicted, had been committed
in Canada”

On November 24, 1886, a treaty for the mutual surrender of
fugitive criminals was signed between Great Britain and Russia
containing the following articles :—

Art. VIII. “The requisition for extradition shall be made
through the diplomatic agents of the High Contracting Parties
respectively.

“The requisition for the extradition of an accused person must
be accompanied by a warrant of arrest issued by the competent
authority of the State requiring the extradition, and by such
evidence as, according to the laws of the place where the accused
is found, would justify his arrest if the crime had been com-
mitted there.”

Art. IX. “If the requisition for extradition be in accordance
with the foregoing stipulations, the competent authorities of the
State applied to shall proceed to the arrest of the fugitive.”

The requisition in this case was made on May 7, 1909, by the
Russian Consul for the Dominion on the Minister of Justice for
the Dominion. On September 26, 1910, the Chief Justice of
Manitoba, sitting as judge under the Extradition Act, issued a
warrant for the arrest of the respondent, based upon a sworn
information of the police officer. Evidence in support of a
charge of murder was adduced and the Chief Justice issued his
warrant of committal dated October 18, 1910. It was not
proved that any requisition for his arrest had been made in
accordance with art. VIII. of the treaty. Robson J. held that
the absence of proof of requisition having been made under

arts. VIII. and IX. of the treaty invalidated the warrant of committal, and discharged the respondent from custody. His judgment was as follows: "My view of the matter is that to proceed under s. 10 without observing the provisions of art. IX. of the treaty would be to contravene the arrangement. In other words the treaty says that if the requisition be in accordance with certain stipulations, then the proper or competent authorities shall proceed to the arrest of the fugitive, and s. 3 says the treaty must not be contravened. Each of the High Contracting Parties has indicated to the other the manner in which it wishes the arrangement to be carried out. It may be a matter of policy with the demanding State that applications shall not be permitted on its behalf, unless evidenced in a defined manner. It would seem to be the duty of the 'competent authorities' of the State applied to to see that the requisition is in accordance with the stipulations of the treaty before proceeding to the arrest of the fugitive. The 'competent authorities' in Canada are those named in the Extradition Act, i.e., the persons authorized to act judicially in extradition matters. They must not only see that there is a requisition; but also see that it complies with art. VIII. of the treaty."

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Sir R. Finlay, K.C., Newcombe, K.C., and Theobald Mathew, for the appellant, contended that proof of a diplomatic requisition was not necessary as a preliminary to arrest under the Extradition Act. Sect. 10 of the Extradition Act is not in contravention of the treaty of November 24, 1886, which authorizes the issue of a warrant on an information without any reference to the requisition. The duty of the judge is to follow the direction of the Act, which does not make either arrest or committal dependent on a preliminary requisition. Reference was made to *Re Lazier* (1) and *In re Counhaye* (2), a judgment of Blackburn J.

The respondent did not appear.

The judgment of their Lordships was delivered by

EARL LOREBURN L.C. The only question in this appeal is whether the absence of a requisition by the Russian Government

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(1) (1899) 30 O. R. 419; 26 A. R. 260. (2) (1873) L. R. 8 Q. B. 410.

J. C. for extradition vitiated the proceedings under which this accused was arrested and committed for surrender.

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Robson J. held that these proceedings should be founded upon a certain preliminary requisition, and that therefore, as there was not such a preliminary requisition, the accused should be discharged. His reason was that upon his construction of the treaty with Russia this condition had to be complied with, and that in so far as the Canadian Extradition Act (c. 155 of the Revised Statutes, 1906) was inconsistent with that treaty the treaty must prevail.

Their Lordships are of opinion that what was done in the arrest and committal was in accordance with s. 10 of the Extradition Act, and that there is no inconsistency between the Act and the treaty. The treaty provides by art. IX. that, after a requisition in due form, the authorities of the State applied to shall proceed to the arrest of the fugitive. In that case the proceeding to arrest is obligatory. The article does not provide that there shall be no arrest till after a requisition.

Their Lordships desire to say that nothing has come before this Board except this point of law. The other rights of the accused and of the State remain wholly unaffected.

Their Lordships will humbly advise His Majesty that this appeal should be allowed, and that the order of Robson J., dated December 17, 1910, should be discharged.

Solicitors for appellant: *Charles Russell & Co.*