1895

WOODSIDE v. GLOBE MARINE INSURANCE COMPANY.

Mathew J.

underwriters' liability. This has been clearly the law since the case of *Shawe* v. *Felton*. (1)

I am unable to distinguish such a loss as the present from any other in which, while the subject-matter of insurance still exists and there is no suggestion of fraud, a diminution in its value is relied upon to exonerate the underwriter from the whole or from part of his liability. It is impossible, as Lord Kenyon said (2), to draw the line between a greater or less diminution of value. I therefore give judgment for the plaintiffs.

Judgment for the plaintiffs.

Solicitors for plaintiffs: *Lowless & Co.*

Solicitors for defendants: *Waltons, Johnson, Bubb & Whatton.*

A. P. P. K.

1895

Dec. 21.

In re ARTON.

Criminal Law—Extradition—Jurisdiction—Bona fides of Demand for Surrender—Offence of a Political Character—Extradition Act, 1870 (33 & 34 *Vict. c.* 52), *s.* 3, *sub-s.* 1.

Where the surrender of a fugitive criminal is demanded by the Government of a friendly State for offences within the provisions of the Extradition Act, 1870, and of the extradition treaty with that State, the Court has no jurisdiction to inquire whether the demand for surrender is made in good faith and in the interests of justice.

The provision of s. 3, sub-s. 1, of the Extradition Act, 1870, by which a fugitive criminal shall not be surrendered if he proves to the satisfaction of the Court that the requisition for his surrender has been made with a view to try or punish him for an offence of a political character, applies only to an offence of a political character which has been already committed.

APPLICATION for habeas corpus.

The motion was made on behalf of Emile Arton for an order nisi calling upon the Secretary of State for the Home Department, Sir John Bridge, the chief magistrate of the metropolis, and the Government of the French Republic, to shew cause why a writ of habeas corpus should not issue, directed to the governor of Holloway Prison, commanding him to bring the body of Arton into court to abide the judgment of the Court.

(1) 2 East, 109. (2) 2 East, at p. 115.

1895

In re ARTON.

The prisoner had been arrested in England and brought before the chief magistrate at the Bow Street Police Court, and by him committed to prison for the purpose of extradition. The offences in respect of which the order of committal was made were six in number: (1.) falsification of accounts and using falsified accounts; (2.) fraud by an agent, trustee, director, and public officer of a company; (3.) obtaining money and goods by false pretences; (4.) offences against the bankruptcy laws; (5.) larceny, and (6.) embezzlement. The motion was made upon the four following grounds: (1.) That the prisoner had been committed for offences not within the extradition treaty between England and France: this objection applied only to the charges of falsification of accounts and using falsified accounts. (2.) That he had been committed for offences of which no primâ facie proof was disclosed by the depositions. This objection applied to the charges of fraud by an agent, &c., and of obtaining money and goods by false pretences; but as it was admitted that the depositions contained sufficient primâ facie proof of the charges for offences against the bankruptcy law, larceny, and embezzlement to justify a committal in respect of those offences, this ground was abandoned without argument. (3.) That the demand for extradition was not made in good faith and in the interests of justice. (4.) That the offences imputed were all of them political in their character, and that the surrender was demanded from exclusively political motives.

C. W. Mathews, for the prisoner. As to the first point: falsification of accounts is not included in the offences enumerated in art. 3 of the extradition treaty with France, or in the 1st schedule to the Extradition Act, 1870. In the order of committal the offence is described by its French name, "faux," which is improperly translated as falsification of accounts and using falsified accounts; it really means "forgery," and in respect of the charges of forgery against the prisoner the learned magistrate refused to commit. The 18th clause of art. 3 (1)

(1) Art. 3, clause 18, of the treaty with France is as follows: "Fraud by a bailee, banker, agent, factor, trustee, or director, or member, or public officer of any company, made criminal by any Act for the time being in force." The language of the 1st schedule to the Extradition Act, 1870 (33 & 34 Vict. c. 52), is identical.

1895

In re ARTON.

of the treaty deals with fraud by bailees and persons in other named capacities; but that does not cover falsification of accounts, which was made a crime in this country long after fraud by bailees, &c., had been declared to be criminal. There is nothing to connect the falsification with a person acting in any of those capacities. The committal is also made in respect of a charge of fraud by a bailee eo nomine; so that, assuming that the falsification of accounts could have been made in the character of a bailee so as to come within the 18th clause, it is clearly to be inferred in the present case that it was not so made, but that the charge is a wholly distinct one of the crime of falsification of accounts as known to our law, for which no provision is made by the Extradition Act or treaty.

As to the fourth point (1), admitting that the offences in respect of which extradition is demanded are not in themselves offences of a political character, the facts shew that the extradition of the prisoner is demanded in order to try or punish him for an offence of a political character. (2) The case is in many respects similar to that of *In re Castioni* (3), where, the extradition of the prisoner being demanded on a charge of murder, he was held to be entitled to be discharged from custody on its being shewn from the facts that the act was committed during a revolutionary disturbance of a political character. In the present case the facts contained in the affidavits will shew the object with which the demand for surrender is made.

[LORD RUSSELL of KILLOWEN C.J. The Court cannot permit you to argue the point that a friendly State is not acting in good faith in making this application: that is not a question which the judicial authorities of this country have any

(1) The second point was abandoned, and the learned counsel was directed by the Court to argue the fourth point before the third.

(2) By 33 & 34 Vict. c. 52 (The Extradition Act, 1870), s. 3, "The following restrictions shall be observed with respect to the surrender of fugitive criminals:—

"(1.) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate or the Court before whom he is brought on habeas corpus, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character."

(3) [1891] 1 Q. B. 149.

1895

In re ARTON.

power to entertain. What is the offence of a political character for which you suggest that the prisoner will be punished?]

Refusing to disclose political secrets to the French government. Under the French judicial system the tribunal which tries him will interrogate him as to these secrets, and, whatever may be the technical description of the offence for which he is extradited and put upon his trial, his punishment will depend upon his disclosure or non-disclosure of these political secrets.

[WILLS J. How is that an offence? "Offence" must mean something which is definitely brought within the criminal law of France.]

It may be admitted that it is impossible to describe the offence in a word or in technical language; but it is conduct for which the prisoner will be punished.

[LORD RUSSELL of KILLOWEN C.J. The statute clearly contemplates that a political offence has been already committed, and that under cover of trying the accused for a crime the foreign tribunal will punish him for that past political offence; but your suggestion in the present case is pure speculation.]

The facts would shew that the prisoner had already in 1892 and 1893 refused to disclose political secrets to the French Government.

LORD RUSSELL of KILLOWEN C.J. It is not necessary for us in the present case to consider the general law of extradition, except for the purpose of pointing out the distinction between its political and its strictly judicial aspect, with the latter of which alone we have to deal. The law of extradition is, without doubt, founded upon the broad principle that it is to the interest of civilized communities that crimes, acknowledged to be such, should not go unpunished, and it is part of the comity of nations that one state should afford to another every assistance towards bringing persons guilty of such crimes to justice. But in the application of this principle certain matters, such as the conditions upon which, and the class of crimes in respect of which, extradition is to be granted, and the formalities to be observed upon an application for extradition, are primarily matters for the two political powers concerned to arrange in the

1895

In re ARTON.

Lord Russell C.J.

first instance by treaty; having arranged them by treaty, the next step is by legislative enactment to give them the force of law, and to express in an Act of Parliament the conditions and limitations imposed upon the grant of extradition and the class of crimes to which extradition is to apply. It is to the expression of the Legislature in Acts of Parliament, and to that alone, that judicial tribunals can refer. As I have already said in the course of the argument, Acts of Parliament are the sole source, and at the same time the strict limitation, of the judicial functions. We are sitting here as judges only, and have nothing to do with political considerations, except so far as they may have been introduced into the language of the Acts which we are called upon to construe.

The grounds on which the present motion is made are four in number. The first point made is that the person in custody has been committed in respect of crimes which are not within the extradition treaty: this applies to one out of six charges in respect of which the order of committal was made—the offence described as "faux," or falsification of accounts, and the using of falsified accounts. It has been argued before us that this is not within the enumeration of offences described in the treaty; and there is no doubt that in order to justify a committal the offence for which the accused is committed must come within the language both of the treaty and of the Extradition Act. The only category in art. 3 of the treaty which has any application to the case is the eighteenth, which speaks of "fraud by a bailee, banker, agent, factor, trustee, or director, or member, or public officer of any company, made criminal by any Act for the time being in force." The point is this: that in the order of committal the charge is described simpliciter as falsification of accounts and using falsified accounts, while the accused is not charged with such falsification in the character of bailee, banker, agent, factor, trustee, or director, or member, or public officer of a company, within the meaning of the 18th category of art. 3 of the treaty. The point taken on behalf of the prisoner is said to be strengthened by the fact that in the same order of committal in which he is charged with the offence of "faux" there is a distinct and separate charge which is within the

express terms of the 18th category. It is argued, therefore, with some show of reason, that this may be construed as a charge of fraud other than a fraud in any one of the characters mentioned in category 18 of art. 3. I think that sufficient has been advanced by the learned counsel to justify us in granting a rule upon that ground; and if, when the rule comes on for argument, those who represent the Crown are unable to satisfy the Court that the charge has been properly included in the order for committal, steps will be taken to prevent the prisoner being charged with that offence.

The second point taken is that there has been a committal for offences in respect of which there was no primâ facie proof before the learned magistrate; and the learned counsel is quite right in saying that the Court is entitled, and is indeed bound, to see whether there has been made out such a primâ facie case of guilt as would entitle a magistrate to commit in the ordinary case of an offence against the municipal law of this country. The allegation of the want of sufficient proof is restricted to two charges out of six—that of fraud by an agent (which comes within the 18th category of art. 3, to which I have already alluded), and that of obtaining money and goods by false pretences; but it is admitted that both these charges are within the treaty and the Extradition Act, and that extradition may be granted in respect of them. It is also properly and candidly conceded that in respect of the remaining charges, offences against the bankruptcy law, larceny, and embezzlement, it could not be successfully contended that there was not sufficient primâ facie evidence to justify a committal. In view of that admission, the learned counsel has not thought it right to insist upon this point.

The third ground urged was that the demand for extradition was not made in good faith and in the interests of justice. I pass this by for the moment, and come to the fourth ground, which we directed the learned counsel to argue before the third—namely, that the offences for which the prisoner was committed were political in their character, and that his surrender was demanded from political motives. No doubt if the learned counsel were able to shew that the surrender was demanded for

1895

In re ARTON.

Lord Russell C.J.

an offence of a political character, or that it was demanded in order that the prisoner might be tried or punished for an offence of a political character, it would furnish ground for the intervention of this Court, and for a declaration by this Court that for such an offence extradition could not legally be granted. Let us consider whether there is any real ground for either of the suggestions made. First, is this offence, or is any of the offences in respect of which the order of committal was made, one of a political character? The bare enumeration of them seems to afford a sufficient answer to that suggestion: they are falsification of accounts and using falsified accounts, fraud by an agent, fraud by a trustee, fraud by a director of a company and by a public officer; obtaining money and goods by false pretences, offences against the bankruptcy laws, larceny, and embezzlement. The mere enumeration of these offences shews that they are completely divested of any trace of a political character. Then, can it be said that the application for extradition has been made with a view to try or punish the prisoner for an offence of a political character? It is clear what this suggestion means: it means that a person having committed an offence of a political character, another and wholly different charge (which does come within both the Extradition Act and the treaty) is resorted to as a pretence and excuse for demanding his extradition in order that he may be tried and punished for the offence of a political character which he has already committed. In the present case we have not been told, although we have pressed for the information, what is the offence of a political character which it can be alleged that the accused has committed; the answer to our inquiries has been that it is impossible to give it a name or to describe it. As to that fourth point, therefore, I am of opinion that we have no evidence before us to warrant our coming to the conclusion either that the offence in respect of which extradition is demanded is one of a political character, or that the requisition for extradition is made with a view to punish the prisoner for such an offence.

I come now to the third, and last, ground upon which this rule has been moved—that the demand for extradition is not made in good faith and in the interests of justice. It has been

pointed out by myself and my learned brothers during the argument that this is in itself a very grave and serious statement to put forward, and one which ought not to be put forward except upon very strong grounds; it conveys a reflection of the gravest possible kind, not only upon the motive and actions of the responsible Government, but also impliedly upon the judicial authorities of a neighbouring and friendly Power. Is it open to us at all to consider such a suggestion? In my judgment, it is not, and I have already stated the grounds for my opinion. This question bears on the political aspect of extradition, and it must be determined upon a consideration of matters into which this Court is not competent and has no authority to enter. Such considerations, if they exist at all, must be addressed to the executive of this country; they cannot enter, and ought not to enter, into the judicial consideration of this question, which in this case turns solely upon the construction of the Extradition Act and the treaty. There will, therefore, be no rule except upon the first ground.

WILLS J. I am entirely of the same opinion, and I desire to add a few words upon one point only—that is, that the application for extradition is made with a view to try or punish the accused for an offence of a political character. In my judgment, it is impossible to doubt, applying the ordinary principles of construction, that the offence of a political character of which the Act speaks must be one which has been already committed. It is admitted by the learned counsel that he cannot suggest any conduct of the prisoner which can properly be so described; but he contends that, if upon sufficient evidence the prisoner is properly extradited in respect of the crimes charged against him, the consequence will be that when he gets into the hands of the French judicial authorities he will be compelled either to disclose other matters which he knows, and which it is said other people are interested in knowing also, or in default of disclosure to undergo an indefinite period of imprisonment, as I understand the suggestion, until he satisfactorily answers their questions. I can only say that the same considerations must enter into this question that

1895

In re ARTON.

Wills J.

have led us to the conclusion that we cannot enter into the question of whether the action of the executive of a foreign country at peace with us is honest or dishonest; we must assume that the French Courts will administer justice in accordance with their own law; and so long as they do that, or whether they do it or not, we cannot interfere beforehand to prevent them from exercising in this particular case the procedure which they exercise with regard to any criminals who may be brought within their jurisdiction. In the present case the prisoner either will or will not comply with the requirements of the French law, whatever they may be; if he complies, he will have committed no offence for which he can be either tried or punished; if he does not, he must take the consequences of his refusal. It seems to me that that is an absolute and complete answer to the argument on that head.

WRIGHT J. I am of the same opinion.

Rule nisi on first ground only.

Solicitors for defendant: *Arthur Newton & Co.*

W. J. B.

C. A.

1895

Dec. 13.

[IN THE COURT OF APPEAL.]

DUNN *v.* THE QUEEN.

Crown, Prerogative of—Civil Service—Tenure of Office—Power of Dismissal at Pleasure.

Servants of the Crown, civil as well as military, except in special cases where it is otherwise provided by law, hold their offices only during the pleasure of the Crown.

APPLICATION for judgment or a new trial, on the ground of misdirection, in a petition of right tried before Day J., with a jury.

The case set up by the suppliant was that Sir Claude McDonald, Her Majesty's Commissioner and Consul-General for the Niger Protectorate in Africa, acting on behalf of the Crown, had engaged him in the service of the Crown as con-