Privy Council Appeal No. 17 *of* 1931.

Grégoire Kossekechatko and others - - - - - *Appellants*

v.

The Attorney-General of Trinidad - - - - - *Respondent*

FROM

THE SUPREME COURT OF TRINIDAD AND TOBAGO.

REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 22ND OCTOBER, 1931.

Present at the Hearing:

VISCOUNT DUNEDIN.
LORD BLANESBURGH.
LORD ATKIN.
LORD RUSSELL OF KILLOWEN.
LORD MACMILLAN.

[*Delivered by* LORD RUSSELL OF KILLOWEN.]

In this case an appeal was brought before the Board, by special leave, from a judgment of the Supreme Court of Trinidad and Tobago, given on the 25th November, 1930. This judgment discharged two writs of *habeas corpus ad subjiciendum*, and remanded certain persons (including the appellants) to be detained in custody, under a warrant dated the 6th November, 1930.

Their Lordships, at the conclusion of the arguments, intimated that they would humbly advise His Majesty that the appeal should be allowed, and that the appellants should be released from custody. They further stated that they would give their reasons at a later date, and this they now proceed to do.

On the 7th August, 1930, a party of nine men landed at Chatham, in the island of Trinidad, from a small boat. The three appellants were members of the party. They had, they said, come from the French penal settlement at Cayenne, French Guiana. The whole party was immediately arrested under the

French Guiana Extradition Ordinance, nereinafter mentioned, and brought before a magistrate, as thereby provided.

Before completing the narration of the facts which led up to the appeal to His Majesty in Council, it is necessary to explain what are the provisions which apply to and regulate the extradition from Trinidad of fugitive criminals from French Guiana, and the procedure in relation thereto.

The Extradition Act, 1870, is the principal Act of the Imperial Parliament relating to the surrender to foreign states of fugitive criminals, and it is under or by virtue of that Act that the present appellants would, if at all, be liable to be detained in custody under the warrant before referred to. The relevant provisions of this Act need careful attention accordingly.

The definition section (Section 26) declares that in the Act "unless the context otherwise requires :—

> "The term 'extradition crime,' means a crime which, if committed in England, or within English jurisdiction, would be one of the crimes described in the first Schedule to the Act.
>
> "The term 'fugitive criminal' means any person accused or convicted of an extradition crime committed within the jurisdiction of any foreign state who is in or is suspected of being in some part of Her Majesty's dominions; and the term 'fugitive criminal of a foreign state' means a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that state."

Section 2 provides that where an arrangement has been made with any foreign state with respect to the surrender to such state of any fugitive criminals, Her Majesty may, by Order in Council, direct that the Act should apply in the case of such foreign state.

Section 6 is the foundation of the jurisdiction against the appellants. It enacts that where the Act applies in the case of a foreign state, every fugitive criminal of that state who is in or suspected of being in any part of Her Majesty's dominions, or that part which is specified in the Order applying the Act (as the case may be), "shall be liable to be apprehended and surrendered in manner provided by this Act."

Sections 7 to 12 inclusive contain the provisions under which a fugitive criminal who is in the United Kingdom may be apprehended and ultimately surrendered or discharged out of custody.

The Secretary of State may (after requisition from a foreign state for surrender of a fugitive criminal) by order require a police magistrate to issue a warrant for the apprehension of the fugitive criminal (Section 7). A warrant for the apprehension of a fugitive criminal may be issued by a police magistrate on receipt of the said order, and on such evidence as is provided for in Section 8, and (without such order) by a police magistrate or any justice of the peace in the circumstances and manner specified in the same section. In either case the fugitive must be brought before a police magistrate. Section 9 provides that the police

magistrate shall hear the case in the same manner, and have the same jurisdiction and powers, as near as may be, as if the prisoner were brought before him charged with an indictable offence committed in England. Section 10 contains, in regard to a fugitive criminal who is a convict, the following provision :—

> " In the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, prove that the prisoner was convicted of such crime, the police magistrate shall commit him to prison, but otherwise shall order him to be discharged."

The criminal, if committed, is committed to prison, there to await the warrant of a Secretary of State for his surrender. Section 11 provides for an interval of 15 days between committal and surrender, to enable an application to be made for a writ of *habeas corpus*. Upon the expiration of the 15 days, or after the decision of the Court upon the return to the writ, as the case may be, the Secretary of State may, by warrant, order the fugitive criminal to be surrendered. Section 12 provides for the discharge out of custody of fugitive criminals who have been committed, if not surrendered and conveyed out of the United Kingdom within two months after such committal.

Section 17 relates to proceedings as to fugitive criminals in British possessions. It provides that the Act, when applied by Order in Council, shall, unless it is otherwise provided by such Order, extend to every British possession in the same manner as if throughout the Act the British possession were substituted for the United Kingdom or England, as the case may require, but with certain modifications. One of these modifications is that no warrant of a Secretary of State shall be required, and that all powers vested in or acts authorized or required to be done under the Act by the police magistrate and the Secretary of State, or either of them in relation to the surrender of a fugitive criminal, may be done by the governor of the British possession alone.

Sections 18 and 25 are in the following terms :—

> " 18. If by any law or ordinance, made before or after the passing of this Act by the Legislature of any British possession, provision is made for carrying into effect within such possession the surrender of fugitive criminals who are in or suspected of being in such British possession, Her Majesty may, by the Order in Council applying this Act in the case of any foreign state, or by any subsequent order, either
>
> " suspend the operation within any such British possession of this Act, or of any part thereof, so far as it relates to such foreign state, and so long as such law or ordinance continues in force there, and no longer ;
>
> " or direct that such law or ordinance, or any part thereof, shall have effect in such British possession, with or without modifications and alterations, as if it were part of this Act.
>
> " 25. For the purposes of this Act, every colony, dependency and constituent part of a foreign state, and every vessel of that state, shall (except where expressly mentioned as distinct in this Act) be deemed to be within the jurisdiction of and to be part of such foreign state."

In the year 1877 the Legislature of Trinidad enacted an Extradition Ordinance, clause 2 of which ran thus :—

"2. All powers vested in and acts authorized or required to be done by a police magistrate or any justice of the peace in relation to the surrender of fugitive criminals in the United Kingdom under 'The Extradition Acts, 1870 and 1873,' are hereby vested in and may in the colony be exercised and done by any magistrate, in relation to the surrender of fugitive criminals under the said Acts."

This Ordinance was not to come into operation until Her Majesty should, by Order in Council, direct that it should have effect within the colony as if it were part of the Extradition Act, 1870.

By an Order in Council dated the 11th July, 1877, it was directed (pursuant to the second alternative in Section 18 of the Extradition Act, 1870) that the said Ordinance should have effect in the colony of Trinidad without modification or alteration as if it were part of the Extradition Act, 1870.

On the 8th April, 1878, ratifications were exchanged of a treaty for the mutual extradition of fugitive criminals, which had, on the 14th August, 1876, been concluded between Her late Majesty and the President of the French Republic, and on the 16th May, 1878, an Order in Council was made whereby after reciting the Extradition Act, 1870, and the Act to amend the same passed in the year 1873, and after reciting the treaty, it was ordered that from and after the 31st May, 1878, the said Acts should apply in the case of the said treaty.

The relevant provisions of the treaty are as follows :—

"ARTICLE I.

"The High Contracting Parties engage to deliver up to each other those persons who are being proceeded against or who have been convicted of a crime committed in the territory of the one Party, and who shall be found within the territory of the other Party, under the circumstances and conditions stated in the present Treaty.

"ARTICLE IV.

"The present Treaty shall apply to crimes and offences committed prior to the signature of the Treaty ; but a person surrendered shall not be tried for any crime or offence committed in the other country before the extradition, other than the crime for which his surrender has been granted.

"ARTICLE VII.

"In the dominions of Her Britannic Majesty, other than the Colonies or Foreign Possessions of Her Majesty, the manner of proceeding shall be as follows :—

"(A) In the case of a person accused :—

"The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary of State for Foreign Affairs by the Ambassador or other Diplomatic Agent of the President of the French Republic, accompanied by a warrant of arrest or other equivalent judicial document, issued by a judge or magistrate duly authorized to take cognizance of the acts charged against the accused in France, together with duly authenticated depositions or statements taken on oath before such judge or magistrate, clearly setting forth the said Acts, and containing a description of the person claimed, and any particulars which may serve to identify him. The said Secretary of State shall transmit such documents to Her Britannic Majesty's

Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some police magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

" On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom he shall issue his warrant accordingly.

" When the fugitive shall have been apprehended, he shall be brought before the police magistrate who issued the warrant, or some other police magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner, if the crime of which he is accused had been committed in England, the police magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender; sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

" After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be surrendered to such person as may be duly authorized to receive him on the part of the President of the French Republic.

" (B) In the case of a person convicted :—

" The course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the Ambassador or other Diplomatic Agent in support of his requisition shall clearly set forth the crime of which the person claimed has been convicted, and state the fact, place and date of his conviction. The evidence to be produced before the police magistrate shall be such as would, according to the law of England, prove that the prisoner was convicted of the crime charged.

" ARTICLE XII.

" If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes committed upon their respective territories, his surrender shall be granted to that State whose demand is earliest in date; unless any other arrangement should be made between the Governments which have claimed him, either on account of the gravity of the crimes committed, or for any other reasons.

" ARTICLE XVI.

" In the Colonies and Foreign Possessions of the two High Contracting Parties the manner of proceeding shall be as follows :—

" The requisition for the surrender of a fugitive criminal who has taken refuge in a Colony or Foreign Possession of either Party, shall be made to the Governor or chief authority of such Colony or Possession by the chief Consular Officer of the other in such Colony or Possession; or, if the fugitive has escaped from a Colony or Foreign Possession of the Party on whose behalf the requisition is made, by the Governor or chief authority of such Colony or Possession.

" Such requisitions may be disposed of, subject always, as nearly as may be, to the provisions of this Treaty, by the respective Governors or chief authorities, who, however, shall be at liberty either to grant the surrender or to refer the matter to their Government.

" 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."

In 1894 the Legislature of Trinidad enacted an Ordinance known as the French Guiana Extradition Ordinance, which was to come into operation and take effect only after Her Majesty should, by Order in Council, direct that it should have effect in the colony, and after such Order in Council should have been published in the official Gazette.

The relevant provisions of this Ordinance are of the first importance in the present case, and must now be referred to :—

"2. In this Ordinance—

. . . . . .

"'Extradition Acts' means 'The Extradition Acts, 1870 and 1873,' and includes any Act of Parliament hereafter to be passed relating to the extradition of persons accused or convicted of crime ;

"'Fugitive criminal' means any person accused or convicted of any crime in respect of which extradition may be lawfully granted under the provisions of any Order in Council applying the Extradition Acts who may be lawfully surrendered under the provisions of any Order in Council applying the said Acts as regards the Colonies and Foreign Possessions of France ;

"3.—(1) Any constable may arrest and detain any person whom there is reasonable cause to suspect of being a fugitive from French Guiana.

"(2) Every person so arrested and detained shall be brought before a magistrate as soon after the arrest as may be practicable, and, if it appear from the evidence adduced that there is reasonable cause to suspect that such person is a fugitive criminal from French Guiana, it shall be lawful for such magistrate to call upon such person to declare :—

"(*a*) his name and the country to which he belongs or is subject ;

"(*b*) the port or place from whence he came ;

"(*c*) the vessel by which, and the day on which, he arrived in the colony ;

"and for the purpose of identification to order such person to be photographed.

"(3) If such person fails to make it appear to the satisfaction of such magistrate that he is not a fugitive criminal from French Guiana, the magistrate shall thereupon order that such person shall be detained in custody until the Governor's pleasure be known, and shall thereupon issue his order of detention, which may be in the form contained in the Schedule to this Ordinance or in such other form as the circumstances may require.

"(4) The person referred to in any such order may be detained in custody thereunder for any period not exceeding three months, but for no longer period ; and may, during such period, be detained in any prison, constabulary station, or convenient place, and may from time to time be removed from any one place to any other by order of the Inspector-General or any magistrate.

"4. Where requisition is made for the extradition of any person who is detained in custody under the provisions of this Ordinance, the same proceedings in all respects shall be taken as if such person were not so detained.

"5.—(1) Where requisition is made by the Governor of French Guiana for the surrender of a fugitive criminal, the Governor may, by order under his hand, signify to a magistrate that such requisition has been made, and require him to issue his warrant for the apprehension of the fugitive criminal ; and thereupon such magistrate, if the fugitive criminal is brought before him, shall hear the case and shall have the like jurisdiction and powers as are given to police magistrates and Justices of the Peace under the Extradition Acts.

"(2) If the magistrate commits any such fugitive criminal to prison there to await the warrant of the Governor for the surrender of such fugitive criminal, he shall forthwith send to the Governor a certified copy of all the proceedings together with the photograph of such fugitive criminal, a certificate of the committal, and such report upon the case as he may think fit.

"7. Any extract purporting to be an extract from any register of convicted criminals in French Guiana giving a description of the criminal, and stating the particulars of conviction, the crime of which the criminal was convicted, the sentence passed on the convicted criminal, and the date thereof, or stating any of such particulars, if authenticated by a Seal purporting to be the Seal of the Governor of French Guiana, may be received in any proceedings relating to the extradition of any person alleged to be a fugitive criminal from French Guiana as *prima facie* evidence of all the facts therein set forth."

By an Order in Council made on the 20th November, 1894, and published in the official Gazette of the 26th December, 1894, it was directed that this Ordinance should have effect in the colony of Trinidad without modification or alteration, as if it were part of the Extradition Act, 1870. This Ordinance is now chapter 250 of the Laws of Trinidad and Tobago (Revised Edition), 1925, and is hereafter referred to as the Ordinance of 1894.

These being the documents which contain the conditions of, and the procedure relating to, the extradition from Trinidad of fugitive criminals from French Guiana, it will be convenient at this stage to summarize the effect of them :— (1) If there is reasonable cause to suspect a person in Trinidad of being a fugitive from French Guiana, any constable may arrest him. (2) That person shall be brought before a magistrate in Trinidad, and if he fails to satisfy the magistrate that he is not a fugitive criminal from French Guiana, the magistrate must order that he be detained in custody until the Governor's pleasure be known, and must issue his detention order accordingly. (3) Detention under this order may not exceed three months. (4) If requisition is made by the Governor of French Guiana for the surrender of a fugitive criminal, the Governor of Trinidad may require a magistrate to issue his warrant for the apprehension of the fugitive criminal. (5) Upon issue of the magistrate's warrant the person (even though already detained in custody under a detention order) is apprehended and brought before the magistrate, and thereupon Sections 9 and 10 of the Extradition Act, 1870, come into play. (6) The magistrate, having heard the case, must either commit the person to prison or order him to be discharged. If (in the case of a convict) such evidence is produced as would, according to the law of England, prove that the prisoner was convicted of an extradition crime, the magistrate must commit, otherwise he must discharge. (7) If the magistrate commits he must commit the fugitive criminal to prison, there to await the warrant of the Governor for his surrender.

The narrative of the facts in the present case may now be resumed.

The nine men, having been arrested under Section 3 (1) of the Ordinance of 1894 were brought before a magistrate under Section 3 (2) of that Ordinance. After certain remands the matter was dealt with on the 14th August, 1930, upon evidence, which included the evidence of the prisoners themselves. In the result the magistrate (Mr. Perez) made an order (dated the 14th August, 1930), under Section 3 (3) of the said Ordinance, ordering that the nine men " be detained in custody until the Governor's pleasure be known."

Down to this point the proceedings were regular, and no fault is, or could be, found therewith. If nothing further had happened the detention in custody would, after 3 months, have ceased. The efficacy of the order would have come to an end on the 14th November, 1930.

Subsequently, however, the Governor of French Guiana made a requisition for the surrender of eight of the men, including the three appellants, and thereupon the Governor of Trinidad, under Section 5 of the Ordinance of 1894, by order dated the 30th October, 1930, required the magistrate to issue his warrant for the apprehension of the eight men. On the 4th November, 1930, the magistrate (Mr. Perez) issued his warrant accordingly, commanding that the eight men be apprehended and brought before him or some other magistrate, to show cause why they should not be surrendered in pursuance of the Extradition Acts.

On the 6th November, 1930, the eight men were brought before Mr. Perez, and were charged with being fugitive criminals from French Guiana. The conviction of each man seems to have been sought to be proved by documents authenticated by the seal of the Governor of French Guiana, and said to fall within the provisions of Section 7 of the Ordinance of 1894. From them it would appear that the appellant Caullier was convicted in France of " vol avec violences," that the appellant Kossekechatko, was convicted in France of " meurtre," and that the appellant Retzenger, was convicted in France of " complicité de meurtre, vols qualifiés et complicité." These documents were produced by Emmanuel Emerand Mouttet, a solicitor in the Supreme Court of Trinidad and Tobago. This gentleman was sworn both as an interpreter and as a witness, and he, in his evidence, translated the above offences as " robbery with violence," " murder," and " complicity to murder and housebreaking," respectively. That was the only evidence in relation to the crimes for which the men had been convicted.

Having heard the evidence and arguments, Mr. Perez would seem to have considered that the case had, as against each of the eight men, been made out ; in other words, that, in accordance with the requirements of the second paragraph of Section 10 of the Extradition Act, 1870, it was proved that the prisoner was convicted of an extradition crime. That this was his view is shown by an entry signed by him in the Magistrates' case book

for the 6th November, 1930, opposite the names of the eight prisoners, viz. :—

> " Extradition ordered, all informed that they will not be surrendered until after the expiration of 15 days, during which time they may apply for a writ of *habeas corpus*."

The next step to be taken was clear. It was for Mr. Perez to sign a warrant or order committing each of the eight men to prison there to await the warrant of the Governor for his surrender, and this under the joint operation of Section 10 of the Extradition Act, 1870, and Section 5 of the Ordinance of 1894. This course was not pursued. What in fact happened was that another magistrate (Mr. Harris), who had not heard the case, made an order under his hand, dated the 6th November, 1930, which recited that it appeared to him that there was reasonable cause to suspect that the eight men were fugitive criminals from French Guiana, and ordered that they be detained in custody until the Governor's pleasure be known. This was a detention order under Section 3 (3) of the Ordinance of 1894.

Applications by motion on behalf of the appellants (and others) for writs of *habeas corpus* were made to the Supreme Court. These motions were heard on the 21st November, 1930, on which day the Court ordered the writs to issue as a matter of convenience, but not as finally deciding the question. Writs were accordingly issued returnable on the 25th November, 1930.

On the return to the writs the only warrant alleged for the detention in custody was Mr. Harris' order of the 6th November, 1930. The arguments were resumed and concluded on the 25th November, 1930, on which day the judgment of the Court was delivered, discharging the writs and remanding the prisoners to custody. It is from this judgment that an appeal was, by special leave, brought before their Lordships' Board on behalf of the three appellants.

It was contended on their behalf before this Board that they ought to have been discharged from custody because there was no valid order or warrant authorizing their detention, the order of the 6th November, 1930, which was the only authority in that behalf, being invalid on four grounds, viz. :—

(*a*) That it had not been proved as to any of the appellants that he was convicted of an extradition crime, *i.e.*, that there was no evidence, or no sufficient evidence that he had committed a crime which, if committed in England or within English jurisdiction, would be one of the extradition crimes described in the Extradition Acts, 1870 and 1873.

(*b*) That there was no evidence as to any of the appellants that he had been convicted of a crime committed in the territory of the French Republic.

(*c*) That there never existed as to any of the appellants any order under Section 10 of the Extradition Act, 1870, the order of the 6th November, 1930, being an order for detention under

Section 3 (3) of the Ordinance of 1894, and not an order for committal to prison under Section 10 of the Extradition Act, 1870, and

(*d*) That even if the said order could be said to be an order for committal to prison under Section 10 of that Act, it was made by a person who had never heard the case, and who, therefore, had no power to make it.

In regard to the first contention, the underlying question was the necessity of establishing by affirmative and sufficient evidence not merely that the fugitive criminal had been convicted in France of a crime falling within the crimes described in the French version of the treaty schedule, but that such conviction necessarily involved the commission by him of that which, if committed in England or within English jurisdiction, would be one of the crimes described in the Extradition Acts, 1870 and 1873. It may be that in the present case it could be said, that the evidence of Mr. Mouttet was sufficient for this purpose. However that may be, their Lordships, having regard to the views which they hold in relation to the other contentions in the case, do not deem it necessary to express any opinion as regards either the necessity for such evidence, or the sufficiency of the evidence which was adduced in the present case.

The second contention involves the consideration of two matters, viz. (*a*) Whether upon the true construction of the treaty it covers a crime not committed in the territory of the French Republic ; and (*b*) whether it was proved in the present case, as regards each appellant, that the crime of which he was convicted was, in fact, committed in that territory.

Upon the true construction of the treaty their Lordships feel no doubt, that Article I (which is the crucial Article) relates only to crimes committed within the territory of the Power which is seeking extradition. It was suggested by the Solicitor-General that the words "in the territory" refer to the locality of the proceedings and conviction, and not to the locality of the commission of the crime. In support of this view he pointed to Article VII (B), which did not require that the warrant there mentioned should state the place where the crime was committed. The Supreme Court relied upon this fact as disposing of the point ; but while appreciating the force of the argument, their Lordships feel unable to escape from the plain words of Article I, which, as a matter of grammar, clearly refer to convicted persons as persons "who have been convicted of a crime committed in the territory of the one Party." This view as to what might be termed the territoriality of the crime, is borne out, not only by the French version of Article I, but also, their Lordships think, by Articles IV and XII, and their references to crimes committed in the country or the territory of a Power which is seeking extradition. In their Lordships' opinion no one of the appellants was liable to be extradited under the treaty, unless the crime of which

he was convicted was, in fact, committed within the territory of the French Republic.

This being the case it next falls to be considered whether this essential fact was proved. It is admitted that no such proof was tendered in the case of any of the appellants. Nevertheless, it might have been unnecessary to do so, if it could have been shown that under French law no conviction in France of any of the appellants would have been possible unless the crime of which he had been convicted had, in fact, been committed in French territory. Any doubt which might have existed upon this point has been removed at the hearing before this Board; for the affidavit of Monsieur Frederick Allemés makes it clear that, in the case of each appellant, his conviction in France did not necessarily involve that the crime of which he had been convicted had been committed in the territory of the French Republic.

The omission to prove this essential fact (if it be the fact) is, in their Lordships' opinion, fatal to the validity of the order of the 6th November, 1930, even if in other respects it were beyond reproach.

The remaining contentions of the appellants reveal, however, other reasons for holding that the said order was invalid. It is open to attack on two further grounds. It was the wrong order to make, and it was made by the wrong person. The only order which could be made at that particular stage was an order (under Section 10 of the Extradition Act, 1870) for committal to await the Governor's warrant; instead of that the order made was an order (under Section 3 (3) of the Ordinance of 1894) for detention. Even if it were possible to overlook this irregularity the second ground of attack is fatal. The order was not made by the magistrate who heard the evidence, but by Mr. Harris who for this purpose is no better than a stranger. In short, the order, which is the sole justification for the appellants remaining in custody, was made *coram non judice*.

It was sought to establish that the entry in the magistrate's case book, signed by Mr. Perez, was the equivalent of an order under Section 10 of the Extradition Act, 1870, and justified the detention of the appellants. The foundation of this contention was the Summary Conviction Offences (Procedure) Ordinance, of which Sections 11 and 12 run thus :—

> "11. Every magistrate and justice shall keep or cause to be kept, a record of all complaints brought in his district, distinguishing the nature thereof, and the mode in which, and the name or names of the magistrate or justice by whom, the same shall have been disposed of.
>
> "12. Such record when signed by the magistrate or justice as aforesaid shall be conclusive evidence of the several matters and things therein set forth and contained."

These sections cannot, in their Lordships' opinion, cure the invalidity of the order of the 6th November, 1930. They operate to establish the fact that the decision of Mr. Perez was to make what is termed in the case book an "extradition order"; but

the fact remains that no order was made or is in existence except the one made by Mr. Harris, which, as has been pointed out, is invalid.

Finally, authorities were cited with a view to establishing that if a Court is satisfied that good reason exists why persons in custody should remain in custody, the Court will not order their release in consequence of some mere irregularity or defect in procedure.

The cases upon which reliance was placed were *ex parte Servini* ([1914], 1 K.B. 77), *ex parte Krans* (1 B. and C. 258), and *Rex* v. *Marks* (3 East 157). The two last-named cases have nothing to do with extradition. They are instances in which the Court has refused to be deterred by some technical irregularity from exercising its jurisdiction over persons normally subject to that jurisdiction. They do not assist their Lordships in the consideration of the present case. *Ex parte Servini* was an extradition case, and was cited by the Supreme Court in support of its decision. It is, however, very far removed in its facts from the facts affecting the appellants here. There was no omission in that case to prove a fact personal to the individual, which was essential to the establishment of jurisdiction over him. What was omitted was merely formal proof of the existence of an Order in Council as to the making of which no possible doubt could exist.

Their Lordships fully realize that the appellants, as convicted criminals, have no claim to benevolent consideration, but the only jurisdiction which exists in Trinidad in relation to them is founded upon the Extradition Acts, and the treaty, and that jurisdiction can arise and be exercised against them only if the requirements of those documents are fulfilled. The French authorities have failed to furnish proof of the existence of one requirement under the treaty, viz., that the crimes were committed in French territory, and the legal authorities in Trinidad have failed to bring into existence one requirement under the Acts, viz., a valid order justifying the detention of the appellants in custody.

It follows, therefore, that the Supreme Court should be directed to discharge the appellants, and their Lordships have humbly advised His Majesty accordingly.

In the Privy Council.

GREGOIRE KOSSEKECHATKO AND OTHERS

v.

THE ATTORNEY-GENERAL OF TRINIDAD.

DELIVERED BY LORD RUSSELL OF KILLOWEN.

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