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May 5.

[IN THE COURT OF APPEAL.]

EX PARTE ALICE WOODHALL.

Practice—Appeal—Jurisdiction—“Criminal Cause or Matter”—Habeas Corpus—Extradition Proceedings—Extradition Act, 1870 (33 & 34 Vict. c. 52)—Judicature Act, 1873 (36 & 37 Vict. c. 66) s. 47.

The Queen's Bench Division having refused an application for a writ of habeas corpus made on behalf of a person who had been committed to prison under s. 10 of the Extradition Act, 1870, as a fugitive criminal accused of an extradition crime:—

Held, that the decision of the Queen's Bench Division was given in a “criminal cause or matter” within the meaning of s. 47 of the Judicature Act, 1873, and therefore that no appeal would lie to the Court of Appeal.

MOTION made on behalf of Alice Woodhall, by way of appeal from a decision of the Queen's Bench Division, for an order nisi for the issue of a writ of habeas corpus.

Alice Woodhall was brought before Sir James Ingham, the chief magistrate of the Bow Street Police Court, charged under the provisions of the Extradition Act, 1870 (33 & 34 Vict. c. 52), as a fugitive criminal accused of having committed forgery in New York.

The magistrate, upon the evidence appearing from depositions duly taken, under s. 14 of the Act, in New York, committed the accused, under s. 10 (1), to a prison in Middlesex.

An application was thereupon made on her behalf to a Divi-

(1) 33 & 34 Vict. c. 52, s. 10: “In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorizing the arrest of such criminal is duly authenticated, and such evidence is produced as (subject to the provisions of this Act) would, according to the law of England, justify 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, but otherwise shall order him to be discharged.”

By s. 11: “If the police magistrate

commits a fugitive criminal to prison, he shall inform such criminal that he will not be surrendered until after the expiration of fifteen days, and that he has a right to apply for a writ of habeas corpus.”

By s. 26: “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 this Act;” and in the first schedule “forgery” is one of the crimes specified.

sional Court for an order nisi for the issue of a writ of habeas corpus to be directed to the keeper of the prison, on the ground that the magistrate, at the hearing of the case, had declined to adjourn it in order that evidence in favour of the accused obtained from New York, which evidence was expected to arrive in England shortly, might be tendered on her behalf; and that upon the evidence before the magistrate he ought not to have committed her.

The Divisional Court (Field and Wills, JJ.) refused to grant an order nisi on those points, and the applicant now moved by way of appeal from their decision.

Finlay, Q.C. (David, with him), for the applicant. This Court has jurisdiction to hear the motion. By s. 19 of the Judicature Act, 1873, the Court of Appeal "shall have power to hear appeals from any judgment or order, save as hereinafter mentioned, of Her Majesty's High Court of Justice, or of any judges or judge thereof." The exception from the jurisdiction, which it is material to consider, is that contained in the last clause of s. 47, which provides that "no appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save from some error of law apparent upon the record, &c." An application for a writ of habeas corpus is not a criminal cause or matter within the meaning of s. 47. By s. 100 "'cause' shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown"; and "'matter' shall include every proceeding in the Court not in a cause." An application for a writ of habeas corpus is a collateral matter, not necessarily having reference to any criminal proceeding. The primary object of such an application is to secure that the person who has detained the applicant shall produce him. In such a case an appeal lies from an order of the High Court, either granting or refusing the writ: *Ex parte Rev. James Bell Cox* (1). In *Reg. v. Justices of Central Criminal Court* (2), the Queen's Bench Division discharged a rule for a certiorari to remove an order for the restitution of goods obtained

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(1) 20 Q. B. D. 1.

(2) 18 Q. B. D. 314.

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by false pretences after the conviction of the prisoner for that offence. In *Reg. v. Foote* (1) the appeal was from a refusal of the Queen's Bench Division to admit a prisoner to bail: and in *Reg. v. Steel* (2) the appeal was from the decision of the Queen's Bench Division discharging a rule to review the taxation of the costs of the trial of an information for libel, where the defendants succeeded. In each of those cases the matter in respect of which the decision appealed from was given was clearly criminal, so that the judgments of the Court of Appeal in each of them do not apply to this case.

It is also contended that the words "criminal cause or matter" were meant only to apply to criminal causes or matters triable in England, i.e., over which the Courts of this country have cognizance.

[As the Court of Appeal decided the case on the question of jurisdiction, it is unnecessary to state the arguments of counsel with respect to whether the magistrate was justified, upon the evidence before him, in committing the applicant to prison.]

LORD ESHER, M.R. In this case a Divisional Court refused to grant an order nisi for a writ of habeas corpus with respect to a person in custody, who had been brought before Sir James Ingham for the purpose of obtaining a warrant for her extradition to America. The applicant appealed to this Court, and the first question which arises is whether we have any jurisdiction to hear the appeal. That depends upon whether or not the appeal is from a decision of the Queen's Bench Division in a "criminal cause or matter" within the meaning of s. 47 of the Judicature Act, 1873. If the decision is brought within those words in s. 47, it is clear that no appeal will lie to this Court. The question, how wide an interpretation the latter part of s. 47 ought to receive, has been before this Court on former occasions. In *Reg. v. Weil* (3), the Court, composed of the late Master of the Rolls, Lord Justice Cotton, and myself, declined to decide whether in a case like the present one an appeal would lie. We

(1) 10 Q. B. D. 378.

(2) 2 Q. B. D. 37.

(3) 9 Q. B. D. 701.

refused the application for a writ of habeas corpus upon the facts, but gave no opinion on the question of jurisdiction. We might dispose of the present case in the same way, because we are all of opinion that, if we had jurisdiction to grant the rule nisi for a writ of habeas corpus, we ought not to grant it upon the facts which have been brought before us. But we consider that we ought not any longer to flinch from determining whether we have, or have not, jurisdiction to hear an appeal in such a case as this; and we desire to rest our decision, not upon the facts of the particular case, but upon the determination of the question of jurisdiction.

The result of all the decided cases is to shew that the words "criminal cause or matter" in s. 47 should receive the widest possible interpretation. The intention was that no appeal should lie in any "criminal matter" in the widest sense of the term, this Court being constituted for the hearing of appeals in civil causes and matters. The meaning of the words "criminal cause or matter" was considered in various cases which have been cited, but the case which helps one most to the true construction is, I think, *Reg. v. Fletcher* (1), following *Reg. v. Steel*. (2) In *Reg. v. Fletcher* (1) the appeal was from a decision of the Queen's Bench Division discharging a rule for a certiorari to bring up for the purpose of quashing a summary conviction by justices. The Court of Appeal held that the appeal was from a judgment of the High Court in a criminal matter within the last clause of s. 47. Mellish, L.J., said: "In *Reg. v. Steel* (2) we held that clause was not confined, as was contended, to the High Court when sitting as the Court to hear points reserved in criminal cases, but extended to all criminal cases in the High Court, and therefore to criminal cases in the Queen's Bench Division. The question here is somewhat wider—whether the exemption from appeal extends to a proceeding in the Queen's Bench Division, which might be said to be not strictly a criminal proceeding in that court, but was a proceeding taken in that court for the purpose of quashing a conviction before justices which was clearly a criminal proceeding. Was that proceeding in the Queen's

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Bench Division a proceeding in a criminal matter? Now the intention of the legislature appears to me clearly to have been to leave the procedure in criminal cases substantially unaltered.” He held that the proceeding was in a criminal matter; and he proceeded to say that he had no doubt the clause—“No appeal shall lie from any judgment of the said High Court in any criminal cause or matter,” was intended to refer to all criminal matters whatever coming before the High Court. I said: “In the present case it is said that the judgment must be confined to a judgment in a criminal cause or matter in the High Court itself, and does not extend to a proceeding in a case which has not its inception in the High Court. I cannot agree to that. I should read the clause as meaning ‘no appeal shall lie from any decision of the High Court by way of judgment in any criminal cause or matter.’” In the present case, I think I must try to express my meaning in other words. I think that the clause of s. 47 in question applies to a decision by way of judicial determination of any question raised in or with regard to proceedings, the subject-matter of which is criminal, at whatever stage of the proceedings the question arises. Applying that proposition here, Was the decision of the Queen’s Bench Division, refusing the application for a writ of habeas corpus, a decision by way of judicial determination of a question raised in or with regard to the proceedings before Sir James Ingham? I am clearly of opinion that it was, and I think it is impossible to say that what took place before him was not a proceeding the subject-matter of which was criminal. If the proceeding before the magistrate was a proceeding the subject-matter of which was criminal, then the application in the Queen’s Bench Division for the issue of a writ of habeas corpus, which if issued would enable the applicant to escape from the consequences of the proceeding before the magistrate, was a proceeding the subject-matter of which was criminal. It follows, therefore, that this Court has no jurisdiction to hear the appeal. It does not follow that this Court would have no jurisdiction to hear any appeal with respect to the granting or refusing of a writ of habeas corpus. If the subject-matter of the proceedings in respect of which the application

was made was criminal, this Court would have no jurisdiction to hear the appeal. If such subject-matter was not criminal this Court would have jurisdiction. As I have said, our real and binding decision in this case is that we have no jurisdiction to grant the order. The motion must, therefore, be dismissed.

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LINDLEY, L.J. I am of the same opinion. Whether one regards the language of s. 47, or the cases which have been decided upon the construction of it, the result is precisely the same. The true construction is that put by Mellish, L.J., in *Reg. v. Steel*.⁽¹⁾ The question in that case was with respect to the taxation of the defendant's costs in a prosecution for libel, and the doubt which arose, and was dissipated, was whether s. 47 excepted all criminal matters, or whether its application was limited to appeals from judgments of the High Court, when sitting as a Court for Crown Cases Reserved. Mellish, L.J., said: "No doubt the first part of the section refers to the Court for Crown Cases Reserved; but it goes on and says that 'no appeal shall lie from any judgment of the said High Court in any criminal cause or matter.' Are you to confine this to the Court for Crown Cases Reserved, or is it general, extending the exception or exemption from appeal to all criminal causes or matters? I am clearly of opinion that it is general; and that the saving clause was necessary to retain the former rights of appeal for error on the record. If this were not so there would be an appeal from the Court of Queen's Bench, not only on every judgment, but on any order in a criminal case. The intention of the latter part of s. 47 was to prevent this; and there appears no reason, but the contrary, why the words 'no appeal shall lie from any judgment of the said High Court in any criminal cause or matter,' should be confined, as the appellants contend, to the High Court when sitting as a Court for the consideration of Crown Cases Reserved." That construction put upon the words of the Act in 1876, has been continued in the subsequent cases. Can we say that the application in the present case is not an application in a criminal cause or matter? I think that in

(1) 2 Q. B. D. 37.

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substance it certainly is. Its whole object is to enable the person in custody to escape being sent for trial in America upon a charge of forgery. I am of opinion that we have no jurisdiction to entertain the matter; but it does not follow that we have no jurisdiction to entertain other appeals from decisions of the High Court upon applications for the issue of writs of habeas corpus, where—and there are plenty of such cases—the application is not made with respect to any criminal cause or matter.

BOWEN, L.J. I am of the same opinion. I agree that we ought now to decide the question of jurisdiction in the interests of justice, and not to leave persons subject to extradition proceedings in uncertainty as to whether such an appeal as this can be brought.

Whether we have jurisdiction or not depends upon whether the decision of the Queen's Bench Division was a judgment in a criminal cause or matter within s. 47. That decision was given in an application to obtain the discharge from custody of a person committed under s. 10 of the Extradition Act, 1870. It is necessary to look at that section in order to see how she came to be committed. The section in terms is to apply "in the case of a fugitive criminal accused of an extradition crime." It must therefore be the case of a person who has fled from foreign justice; and the crime of which he is accused must be one of those specified in the schedule which would be a crime according to the law of this country. The magistrate is charged with the duty of considering, upon the evidence before him, whether that evidence is sufficient according to English law to justify the committal for trial of the accused person. How can the matter be other than criminal from first to last? It is a matter to be dealt with from first to last by persons conversant with criminal law, and competent to decide what is sufficient evidence to justify a committal. The questions upon which the application for a writ of habeas corpus depend, are whether or not there was evidence before the magistrate of a crime, which would be a crime according to English law, having been committed in a foreign country, and whether or not that evidence was sufficient

to justify him in committing the accused for trial if the crime had been committed in England. These must be questions arising in a criminal matter; and it follows that the judgment given upon the application for a writ of habeas corpus is a judgment in a criminal matter. I will only add that upon the facts of this case I entirely agree that we ought not to interfere with the magistrate's order.

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Motion dismissed.

Solicitors for applicant: *Brooks & Co.*

W. A.