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July 25.

REX v. GOVERNOR OF BRIXTON PRISON.

Ex parte STALLMANN.

Criminal Law—Habeas Corpus—Second Writ—Grounds of Detention of Prisoner—Extradition—“Trial and discharge” of Prisoner—Subsequent Proceedings for Extradition—Obtaining Money by False Pretences—Money won by Cheating at Cards—Habeas Corpus Act, 1679 (31 Car. 2, c. 2), s. 6—Extradition Treaty with Germany, 1872, Articles II., IV., and XV.—Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 17.

Sect. 6 of the Habeas Corpus Act, 1679, only applies where the return to the second writ of habeas corpus raises for the opinion of the Court the same question with regard to the validity of the grounds of detention as the first.

Therefore, where a prisoner, a German subject, was discharged from custody upon directions given by a High Court of Judicature in India in the nature of habeas corpus on the ground that his detention was illegal in consequence of an informality in the course of proceedings before a magistrate for the extradition of the prisoner from India to Germany :—

Held, that he could be re-arrested in England and committed by a magistrate for extradition to Germany in proceedings validly conducted before him upon the same charge as that which formed the subject of the invalid extradition proceedings in India.

By article IV. of the Extradition Treaty with Germany, 1872, extradition is not to take place if the person claimed has already been “tried and discharged” :—

Held, that the prisoner had not been “tried and discharged” in India, inasmuch as the word “tried” in the treaty is used in the strict sense of the term, and does not include a preliminary investigation as to whether there is sufficient evidence for extradition.

By article II. of the Treaty of 1872 the crimes for which extradition is to be granted are (*inter alia*) obtaining money or goods by false pretences.

By the Gaming Act, 1845, s. 17, a person who by any fraud in playing at cards wins from any other person any sum of money or valuable thing is to be deemed guilty of obtaining the money or valuable thing by a false pretence with intent to cheat or defraud the other person.

The prisoner was charged with obtaining money and goods by false pretences from D. There was evidence that the prisoner, D., and a third person played a game of cards at which the prisoner and the third person in collusion cheated D. As the result of the play a sum of 80,000 marks (about 4000*l.*) was won from D. by the third person. The third person drew some blank bill forms out of his pocket, and the prisoner requested D. to accept one. D. accordingly wrote his acceptance upon

it, and it was subsequently signed by the third party as drawer and indorsed by him and the prisoner :—

Held, that there was evidence upon which the prisoner could properly be charged with obtaining money and goods by false pretences, and that as that crime is included in the Extradition Treaty with Germany, 1872, an order could be made for the extradition of the prisoner from England to Germany.

Reg. v. Danger (1857) 1 Dears. & B. C. C. 307, considered and distinguished.

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RULE Nisi granted upon an application on behalf of Rudolf Stallmann calling upon the governor of His Majesty's Prison at Brixton to shew cause why a writ of habeas corpus should not issue directed to him to have the body of the applicant immediately before this Court to undergo and receive all and singular such matters and things as this Court should then and there consider of and concerning him in that behalf.

The prisoner had been committed to the custody of the governor of Brixton Prison under a warrant of committal for extradition to Germany hereinafter mentioned and dated July 1, 1912, issued by Mr. Curtis Bennett, a metropolitan magistrate.

The following facts appeared from the depositions taken before the investigating magistrate in Berlin and affidavits which had been made in the course of the proceedings against the prisoner. On June 1, 1910, Lieutenant von Dippe, of the 10th Hussar Regiment of Stendal, went by train from Stendal to Berlin, and on the way in the dining car met a person who had previously been introduced to him as von Henrichs at a horse race meeting at Magdeburg by an acquaintance, and who on June 1, 1910, was passing under that name. This was all the knowledge Lieutenant von Dippe had of the so-called von Henrichs. They continued their journey in each other's company to Berlin, where von Henrichs invited Lieutenant von Dippe to come with him to the Hotel Fürstenhof. At the railway station at Berlin they met a third person whom von Henrichs introduced to Lieutenant von Dippe as "von König." Until that introduction von König had been completely unknown to Lieutenant von Dippe. "Von König" was in fact the prisoner Rudolf Stallmann. At the Hotel Fürstenhof all three lunched together. Champagne was drunk, and von Henrichs and the prisoner kept on

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drinking to von Dippe. The lunch lasted from about 2 until 4 o'clock. They drank very heavily. After the lunch von Dippe was invited to drink coffee in a room upstairs. There both coffee and cognac were drunk. The three talked about the game of bridge, and the prisoner wished to shew von Dippe the game and ordered the waiter to bring up at least two packs of cards. While von Dippe was considering a game of bridge, which the prisoner had shewn him with one of the packs of cards, the other two occupied themselves with the game of rouge et noir. Von Henrichs betted the prisoner about 100 francs that he would win a game of rouge et noir. They then began to play, but did not pay winnings or losses, but noted them down. When this had continued for some time the prisoner asked von Dippe to help him. The game was played in the following manner. Von Henrichs held the bank, that is, he had the pack of cards in front of him, and kept drawing a single card. The prisoner put any amount he chose upon the chance whether the card thrown down by von Henrichs was a red card or a black one. Amounts of various magnitude were laid, among others of 5000 marks and upwards. The whole amount in the bank was considered to be stakes, that is, the amount which the keeper of the bank had noted as won for himself. Von Dippe helped the prisoner by advising the laying of a certain amount or the whole bank. The bank holder von Henrichs lost when the amounts were small, but always won when the amounts were large, e.g., of about 5000 marks, and particularly when the bank was put on. When the prisoner and von Henrichs were playing with one another the amounts staked were small, but they became high when von Dippe took part in the game. Play continued until von Henrichs had drawn the pack of cards once completely and once half. Then it was ascertained that an amount of 80,000 marks was noted as won for the bank. Thereupon the prisoner jumped up and exclaimed that that was too high for him and tore up the cards into small pieces. At the beginning von Dippe assumed that he was only to help the prisoner with his advice and that it was only a matter of deciding the bets and that the money was not really being staked, but during the play the prisoner told von Dippe that if

he took part in the play he would have to bear the costs, that is, be responsible for the loss. In the course of about a quarter of an hour Lieutenant von Dippe and the prisoner had each lost 80,000 marks. After the prisoner had torn up the cards a discussion took place between him, von Henrichs, and von Dippe as to how the matter was to be settled. Von Henrichs drew some blank bill forms out of his pocket, and the prisoner accepted one for 80,000 marks and requested von Dippe to do the same. Thereupon von Dippe wrote his acceptance on another of the blank bill forms. The bill form accepted by von Dippe when ultimately completed was as follows:—

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"First exchange accepted Eighty thousand marks v. Dippe.	" Berlin, the second June 1910 for 80,000 marks.	
	Pay at sight for this first of exchange to the order	
	of myself the sum of eighty thousand marks value	
	received and place it to account according to	
	advice.	
	Lieut. G. von Dippe.	
	No.	of Stendal
		H. v. Henrichs
	Payable at the Deutsche Bank,	
	Head Office, Berlin."	

Upon the back of the bill were the following stamps and indorsements:—

A German bill stamp 30.00 marks of more than 50,000 up to 60,000 marks.

the 2nd June, 1910.

A German bill stamp 10.00 marks of more than 19,000 up to 20,000 marks.

the 2nd June, 1910.

“ Payez a l'ordre de Monsieur R. v. Konig en compte

“ R. v. Henrichs.

“To the order of Mr. N. Newton.

“ Value received

“ R. v. Konig.”

Von Dippe wrote the words " Accepted eighty thousand marks v. Dippe " upon the bill, the rest of its contents being written by von Henrichs after it had been accepted by von Dippe, except the words " Payable at the Deutsche Bank, Head Office, Berlin." Those words were not on the bill when accepted by von Dippe.

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Nothing had been said about the bill being payable at the Deutsche Bank before von Dippe accepted it. At the time the bill was accepted it was not stamped. This bill was subsequently indorsed by von Henrichs to the prisoner, who purported to indorse it to one Noel Newton, and on September 2, 1910, wrote to von Dippe from Paris informing him that the bill had been so indorsed. Shortly afterwards Newton approached von Dippe, who was then at some military manœuvres, and asked him for payment of the bill, but von Dippe declined to pay the bill and communicated with his advocate in Berlin, as he considered that he had been cheated. The police at Berlin took the bill away from Newton.

The charge of forgery against the prisoner was based upon his having indorsed the bill "R. v. König" and placed on it the words as to the place of payment, and having afterwards caused the bill so indorsed to be produced to von Dippe in Germany by Newton for the purpose of obtaining payment.

Evidence was also given before the investigating magistrate at Berlin by an expert named Hans von Manteuffel, who was engaged in the special branch of the police at Berlin which deals with games of chance and cheating at play. He said that the prisoner had been known for years as an international gaming cheat. He described how the game of rouge et noir was played and how it was made use of for purposes of cheating. He stated that the colour of the cards drawn by the banker decided whether the person playing won or lost. The colour of the cards was recognizable by the cheat either by the design on the back or in some other way. He also gave his reasons for thinking that von Dippe had been cheated.

A warrant was issued in Germany for the arrest of the prisoner, which, so far as material, was as follows:—"The commercial assistant Rudolf Stallmann who calls himself Baron von König or Baron Korff von König, born on the 14th April, 1871, at Berlin, in the kingdom of Prussia, a Prussian subject . . . is to be arrested for examination on account of strong suspicion of fraud, and of aggravated forgery of documents."

A requisition having been made on October 25, 1910, by the German Government for the extradition of the prisoner, a

metropolitan magistrate, Mr. Curtis Bennett, sitting at Bow Street, on November 12, 1910, issued a warrant for the arrest of the applicant, which so far as material was as follows:—

“To all and each of the Constables of the Metropolitan Police Force.

“Whereas it has been shewn to the undersigned, one of the magistrates of the police courts of the metropolis sitting at the Bow Street Police Court, in the county of London, and within the Metropolitan Police district, that Rudolf Stallmann (hereinafter called the defendant) late of Berlin is suspected and accused of the commission of the crime of obtaining money and goods by false pretences within the jurisdiction of the German Government.

“This is therefore to command you in His Majesty's name forthwith to apprehend the said defendant and to bring him before me or some other magistrate sitting at this Court, to be further dealt with according to law, for which this shall be your warrant.”

Shortly after the commission of the alleged offence the prisoner left Berlin and proceeded, after having visited places upon the Continent of Europe, to India, and while the vessel in which he was was going up the river Hugli on her way to the port of Calcutta he was, upon April 26, 1911, arrested upon a warrant issued by a magistrate of Alipore upon a requisition made by the German Government on or about November 12, 1910, claiming an order for his extradition for that he was suspected and accused of the commission of the crime of obtaining money and goods by false pretences.

The warrant (so far as material) was as follows:—

“To Superintendent Ellis, Calcutta Police.

“Whereas, Rudolf Stallmann of the s.s. *Caspian* River Hugli, Diamond Harbour, stands charged with the offence of obtaining money under false pretences at Berlin, Germany, and information has been laid before me justifying his arrest. You are hereby directed to arrest the said Rudolf Stallmann”

He was taken before the magistrate at Alipore. Before the magistrate the prisoner, by his advocate, at the close of the case for the prosecution on May 24, 1911, applied for an adjournment

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for a fortnight in order that evidence which had been sent for to England but which had not arrived might be presented by him to the magistrate by way of defence. The magistrate, however, declined to grant any adjournment. He concluded the inquiry and found that a *prima facie* case had been made out against the prisoner, and he made a report to that effect to the Government of India in accordance with the provision of s. 3, sub-s. 6, of the Indian Extradition Act, 1903. The Government of India, acting upon that report, issued a warrant on August 1, 1911, for the custody and removal of the prisoner under s. 3, sub-s. 8, of that Act for the purpose of being extradited to Germany.

While he was so in prison the prisoner moved the High Court of Calcutta and obtained a rule ordering his body to be produced in Court. On August 11, 1911, the rule came on for argument, and in the result (the arguments having lasted six days) the Court on August 21, 1911, gave judgment discharging the order of the magistrate and giving the prisoner his liberty under s. 491, sub-s. 1 (b), of the Indian Code of Criminal Procedure, 1898. (1)

The High Court of Calcutta decided that there was a *prima facie* case established against the prisoner, but that, inasmuch as the magistrate had declined to give him a fair and reasonable opportunity of obtaining his evidence from England in order to present to the magistrate an answer to the *prima facie* case against him, the magistrate's order could not be sustained, and they therefore quashed that order and discharged the prisoner. In giving judgment Woodroffe J. said (2): "The Act" (i.e., the Indian Extradition Act, 1903 (3)) "requires that during such

(1) Indian Code of Criminal Procedure, 1898 (Act V. of 1898), s. 491, sub-s. 1:

Power to
 issue direc-
 tions of the
 nature of a
 habeas
 corpus.

"Any of the High Courts of Judicature at Fort William, Madras and Bombay may, whenever it thinks fit, direct—

or private custody within such limits be set at liberty."

(2) Vide *In re Rudolf Stallmann* (1911) I. L. R. 39 Calc. 164, at pp. 195, 196.

(3) Indian Extradition Act, 1903 (XV. of 1903), s. 3, sub-s. 3: "When such criminal appears or is brought before the magistrate, the magistrate shall inquire into the case in the same manner

"(b) that a person illegally or improperly detained in public

inquiry evidence which may be produced on behalf of the fugitive criminal shall be received. This, as I have held, involves that a reasonable opportunity should be given in the judicial discretion of the magistrate. In the present case the magistrate refused such an opportunity for reasons which I hold are untenable. The result, therefore, is that the inquiry was not according to law and the issue of the warrant upon such an inquiry was itself invalid I must therefore hold that the extradition warrant is invalid because, though there is evidence of an offence, the applicant was given no opportunity of defence. I hold that the applicant has been illegally detained thereunder and direct that he be set at liberty."

The following is a copy (so far as material) of the order made by the Court:—"Upon reading a petition of Rudolf Stallmann and a writ of warrant in the nature of a habeas corpus issued by this Court it is declared that the extradition warrant in the said petition mentioned is invalid and it is ordered that the said Rudolf Stallmann be and is hereby set at liberty."

The result, therefore, was that the German Government failed before the High Court of Justice in Calcutta. About a fortnight after that judgment had been given the prisoner left India,, travelled back to Europe, visited Berlin for a short time, and subsequently came back to England, where he arrived in October, 1911. He remained in the metropolis, and on or about March 29, 1912, he was arrested by a detective under the warrant that had been granted at Bow Street on November 12, 1910. In those circumstances he was brought up at Bow Street Police Court before the magistrate, Mr. Curtis Bennett, and the identical charge upon the identical evidence which had before been submitted to the magistrate in Calcutta was submitted to the magistrate at Bow

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and have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by the Court of Session or High Court, and shall take such evidence as may be produced in support of the requisition and on behalf of the

fugitive criminal, including any evidence to show that the crime of which such criminal is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime."

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Street in support of the application of the German Government for a warrant for his extradition to that country.

It was submitted to the magistrate upon the prisoner's behalf that he could not be again charged upon precisely the same evidence (the evidence in support of the charge was by deposition, namely, the same depositions as those adduced before the magistrate in India) in relation to precisely the same offence, he having been discharged by the High Court of Justice in Calcutta, as it would be contrary to s. 6 of the Habeas Corpus Act, 1679. (1)

The magistrate overruled the objection and decided that as regarded the charge of forgery in von Dippe's case no *prima facie* case had been made out, but that with regard to the charge of obtaining money and goods from him by false pretences a *prima facie* case had been made out, and he accordingly committed the prisoner for extradition to Germany upon that charge. The following is a copy (so far as material) of the warrant of committal for extradition:—

'Be it remembered, that on this first day of July in the year of our Lord one thousand nine hundred and twelve Rudolf Stallmann (hereinafter called the defendant) is brought before me, one of the magistrates of the metropolitan police courts, sitting at the police court in Bow Street, within the Metropolitan Police district, to show cause why he should not be surrendered in pursuance of 'The Extradition Act' on the ground of his being accused of the commission of the crime of

(1) Habeas Corpus Act, 1679 (31 Car. 2, c. 2), s. 6: "And for the prevention of unjust vexation by reiterated commitments for the same offence; be it enacted by the authority aforesaid, that no person or persons which shall be delivered or set at large upon any habeas corpus, shall at any time hereafter be again imprisoned or committed for the same offence by any person or persons whatsoever, other than by the legal order and process of such Court wherein he or they shall be bound by recognizance to appear, or other Court having jurisdiction of

the cause; and if any other person or persons shall knowingly contrary to this Act recommit or imprison, or knowingly procure or cause to be recommitted or imprisoned for the same offence or pretended offence, any person or persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner or party grieved the sum of five hundred pounds; any colourable pretence or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid."

obtaining a valuable security by false pretences (Erlangung von Geld oder anderen Sachen durch falsche Vorspiegelungen) within the jurisdiction of the German Government and forasmuch as no sufficient cause has been shown to me why he should not be surrendered in pursuance of the said Act

"This is therefore to command you the said constable, in His Majesty's name, forthwith to convey and deliver the body of the said defendant into the custody of the said keeper of His Majesty's prison at Brixton, and you the said keeper to receive the said defendant into your custody, and him there safely to keep until he is thence delivered pursuant to the provisions of the said Extradition Act, for which this shall be your warrant."

The rule was then obtained at the instance of the prisoner upon the grounds that the prisoner "was arrested for the same offence that he was discharged on habeas corpus in Calcutta; autrefois acquit; article IV. and article XV. of the German Treaty, 1872; no prima facie case; and that the evidence of Manteuffel and von Dippe was inadmissible."

Sir Rufus D. Isaacs, A.-G., Sir John Simon, S.-G., Bodkin, and Rowlatt shewed cause. The ground mentioned in the rule nisi that the prisoner has been autrefois acquit does not apply. Article IV. of the Treaty between the United Kingdom and Germany (1) does not apply because the prisoner has not

(1) Extradition Treaty with Germany, 1872 (entitled "Treaty between Her Majesty and the Emperor of Germany for the Mutual Surrender of Fugitive Criminals.") :—

ARTICLE II.

The crimes for which the extradition is to be granted are the following :—

(6.) Obtaining money or goods by false pretences.

ARTIKEL II.

Die strafbaren Handlungen, wegen deren die Auslieferung zu gewähren ist, sind folgende.

(6.) Erlangung von Geld oder anderen Sachen durch falsche Vorspiegelungen.

ARTICLE IV.

The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person

ARTIKEL IV.

Die Auslieferung soll nicht stattfinden, wenn die von einer Regierung des Deutschen Reichs verfolgte Person im Vereinigten

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been "tried and discharged or punished." Article XV. of the treaty so far as it bears on the present case does not affect the question, as it merely applies the stipulations of the treaty to the British Colonies and foreign possessions. As to the evidence of Manteuffel it is not relied upon on behalf of the respondent. Upon the facts there is a *prima facie* case against the prisoner, and among the crimes for which extradition is to be granted under the treaty of 1872 is "obtaining money or goods by false pretences," which is mentioned in article II., clause 6, of the treaty. The German words of the treaty quite clearly cover a bill of exchange. The proceedings in India upon which the prisoner was released were not strictly an application for a writ of habeas corpus, although they were in the nature of habeas corpus, but it is admitted that this Court must treat them as very analogous to proceedings upon an application for a writ of habeas corpus. They were taken under s. 491, sub-s. 1 (b), of the Indian Code of Criminal Procedure, 1898 (Act V. of 1898), which enacts that any of the High Courts of Judicature at Fort William, Madras, and Bombay may, whenever it thinks fit, direct that a person illegally or improperly detained in public or private custody within the limits of its ordinary civil jurisdiction be set at liberty. Sect. 6 of the Habeas Corpus Act,

claimed on the part of any of the Governments of the German Empire, has already been tried and discharged or punished, or is still under trial, in one of the States of the German Empire, or in the United Kingdom respectively, for the crime for which his extradition is demanded.

Königreich, oder die Seitens der Regierung des Vereinigten Königreichs verfolgte Person in einem der Staaten des Deutschen Reichs wegen derselben strafbaren Handlung, wegen deren die Auslieferung beantragt wird, in Untersuchung gewesen und ausser Verfolgung gesetzt worden, oder sich noch in Untersuchung befindet, oder bereits bestraft worden ist.

ARTICLE XV.

The stipulations of the present treaty shall be applicable to the Colonies and foreign possessions of Her Britannic Majesty.

ARTIKEL XV.

Die Bestimmungen des gegenwärtigen Vertrages sollen auf die Colonien und auswärtigen Besitzungen Ihrer Grossbritannischen Majestät Anwendung finden.

1679, has a limited application to extradition proceedings : *Attorney-General for Hong Kong v. Kwok-a-Sing*. (1) The prisoner was in no sense being tried in India. It is considered in the British Empire as well as in other countries that there should be some inquiry as to whether there is a *prima facie* case against a prisoner before he is delivered up in extradition proceedings, and that is all that took place in India with regard to the prisoner : *Rex v. Governor of Brixton Prison, Ex parte Percival*. (2) Committal for extradition falls far short of committal for trial : *Reg. v. Spilsbury*. (3) A person is not imprisoned within the meaning of s. 6 of the Habeas Corpus Act, 1679, who is merely detained in extradition proceedings. The prisoner will not necessarily be committed for trial in Germany.

Danckwerts, K.C., George Elliott, K.C., Curtis Bennett, and St. John Hutchinson, in support of the rule. The decision in *Rex v. Governor of Brixton Prison, Ex parte Percival* (2) has no application to the present case. The writ of habeas corpus is a common law writ and the right to it does not depend in any way upon extradition treaties : *Ex parte Besset*. (4) In *Rex v. Governor of Holloway Prison, Ex parte Silletti* (5) there was a decision to the same effect. The question in the present case is whether the magistrate at Bow Street had upon the materials before him any jurisdiction to commit for extradition. The High Court in India decided that the magistrate had no jurisdiction to commit the prisoner for extradition without complying with the conditions of the Indian Extradition Act, 1903 (XV. of 1903), and that immediately he committed the prisoner for extradition he was *functus officio*. The present proceedings raise the same question as that which arose in India, namely, whether there is any *prima facie* case against the prisoner. The principle upon which the Habeas Corpus Act, 1679, is based is that no person shall be vexed again for the same cause.

The meaning of article IV. of the Extradition Treaty with Germany, 1872, is that a prisoner is not to be extradited

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(1) (1873) L. R. 5 P. C. 179.

(3) [1898] 2 Q. B. 615.

(2) [1907] 1 K. B. 696.

(4) (1844) 6 Q. B. 481.

(5) (1902) 87 L. T. 332.

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from Germany if there has previously been an inquiry into the same transaction in one of the States of the German Empire, and that the same rule is to apply where extradition from England is asked for and there has already been an inquiry in another part of the dominions of the British Crown. A very wide meaning must be given to the words "tried and discharged" in article IV. of the treaty, which must be read with article XV. It is not necessary that there should have been a trial in which the prisoner could be punished or acquitted. It is sufficient if there are proceedings in which the prisoner could be discharged. In the interest of the subject a wide meaning ought to be given to the words "tried and discharged." If the Court desires it, the evidence of German lawyers can be given to prove that that is the meaning of the article as it stands in the German language.

There is no evidence of any extraditable crime. The crime in order to be extraditable must be within the treaty of 1872 and within the Extradition Act, 1870. In *In re Arton* (No. 2) (1) Lord Russell of Killowen C.J. in delivering the judgment of the Court said: "The conditions of extradition, the fulfilment of which we have in this case to consider, are the following: (1.) the imputed crime must be within the treaty; (2.) it must be a crime against the law of the country demanding extradition; (3.) it must be a crime within the English Extradition Acts, 1870 and 1873; and (4.) there must be such evidence before the committing magistrate as would warrant him in sending the case for trial, if it were an ordinary case in this country." Those conditions apply to the present case, but they are not satisfied inasmuch as there is no evidence against the prisoner of any crime which is extraditable under the treaty of 1872. The Extradition Act, 1870, was applied in the case of Germany by Order in Council dated June, 1872. The warrant of November 12, 1910, upon which the prisoner was arrested in England charged him with having obtained money and goods by false pretences, and he was committed for extradition by the London magistrate upon the charge of obtaining a valuable security by false pretences. There is no evidence

(1) [1896] 1 Q. B. 509.

that money, goods, or a valuable security were obtained by false pretences, and the German Treaty, 1872, does not include the crime of obtaining a valuable security by false pretences. Nor is it included in the list of crimes in the Extradition Act, 1870 (1), for which extradition could be granted. In the Extradition Act, 1873 (2), a new list of extraditable crimes was introduced, including any indictable offence under the Larceny Act,

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(1) Extradition Act, 1870 (33 & 34 Vict. c. 52), s. 2: "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 this Act shall apply in the case of such foreign State. . . ."

Sect. 10: "In the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorising 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.

"If he commits such criminal to prison, he shall commit him to the Middlesex House of Detention, or to some other prison in Middlesex, there to await the warrant of a Secretary of State for his surrender, and shall forthwith send to a Secretary of State a certificate of the committal, and such report upon the case as he may think fit."

Sect. 26: "In this Act, unless the context otherwise requires,—

"The term 'extradition crime' means a crime which, if com-

mitted in England or within English jurisdiction, would be one of the crimes described in the First Schedule to this Act."

"FIRST SCHEDULE.

"LIST OF CRIMES.

"The following list of crimes is to be construed according to the law existing in England, or in a British possession, (as the case may be,) at the date of the alleged crime, whether by common law or by statute made before or after the passing of this Act :

"Obtaining money or goods by false pretences."

(2) Extradition Act, 1873 (36 & 37 Vict. c. 60), s. 8: "The principal Act shall be construed as if there were included in the First Schedule to that Act the list of crimes contained in the schedule to this Act."

"SCHEDULE.

"LIST OF CRIMES.

"The following list of crimes is to be construed according to the law existing in England or in a British possession (as the case may be) at the date of the alleged crime, whether by common law or by statute made before or after the passing of this Act :

"Any indictable offence under the Larceny Act, 1861, or any Act amending or substituted for the

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1861 (1), not included in the Act of 1870, and amongst those offences is the misdemeanour of obtaining a valuable security by false pretences, mentioned in s. 88 of the Act of 1861. That section was a re-enactment of s. 53 of 7 & 8 Geo. 4, c. 29. Sect. 90 of the Act of 1861 is an amendment of 21 & 22 Vict. c. 47, which made it a misdemeanour to obtain by any false pretence the signature of any person to a valuable security with intent to defraud. In *Reg. v. Danger* (2) it was held that the prisoner could not be convicted under s. 53 of 7 & 8 Geo. 4, c. 29 (3), of obtaining a valuable security by false pretences because the bill whilst in the hands of the prosecutor was of no value to him nor to any one else, unless to the prisoner, and the prosecutor had no property in the bill as a security, or even in the paper on which it was written. That decision applies to the present case, where the charge is under s. 88 of the Larceny Act, 1861, which corresponds to s. 53 of 7 & 8 Geo. 4, c. 29. The statute 21 & 22 Vict. c. 47 was passed in consequence of the decision in *Reg. v. Danger* (2), and that statute was repealed and amended by s. 90 of the Larceny Act, 1861: *Reg. v. Gordon*. (4) The only charge of which it could be reasonably contended there is evidence in the present case would

same, which is not included in the First Schedule to the principal Act. . . ."

(1) Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 88: "Whosoever shall by any false pretence obtain from any other person any chattel, money, or valuable security, with intent to defraud, shall be guilty of a misdemeanour . . ."

Sect. 90: "Whosoever, with intent to defraud or injure any other person, shall by any false pretence fraudulently cause or induce any other person to execute, make, accept, endorse, or destroy the whole or any part of any valuable security, or to write, impress, or affix his name, or the name of any other person, or of

any company, firm, or co-partnership, or the seal of any body corporate, company, or society, upon any paper or parchment, in order that the same may be afterwards made or converted into or used or dealt with as a valuable security, shall be guilty of a misdemeanour . . ."

(2) 1 Dears. & B. C. C. 307.

(3) 7 & 8 Geo. 4, c. 29, s. 53: "If any person shall by any false pretence obtain from any other person any chattel, money, or valuable security, with intent to cheat or defraud any person of the same, every such offender shall be guilty of a misdemeanour . . ."

(4) (1889) 23 Q. B. D. 354.

be one under s. 90 of the Larceny Act, 1861. But that offence is not extraditable under the treaty of 1872, and the treaty ought to have been amended if it had been desired to bring an offence under s. 90 of the Act of 1861 within it. The operation of the Extradition Acts is limited by the treaty, and the Order in Council simply gives effect to the treaty. [Greaves on the Criminal Law Consolidation and Amendment Acts, p. 136, and ss. 10 and 26 of the Extradition Act, 1870, were also referred to.]

Sir Rufus D. Isaacs, A.-G., in reply. The decision in *Reg. v. Danger* (1) turned upon the point that on the facts in that case there was no property in the prosecutor either in the bill of exchange or the piece of paper on which it was written. But in the present case there was a gift of the piece of paper to the prosecutor, and from the moment he filled it up it became a valuable security. If the prosecutor had destroyed the piece of paper after it was given to him no action would have lain against him. There is therefore evidence of an offence under s. 88 of the Larceny Act, 1861, and it is not necessary to rely on s. 90 of that Act.

Further, at the time the Extradition Treaty of 1872 was entered into the Gaming Act, 1845 (2), was in force, and by s. 17 of that Act any person who by any fraud in playing with cards wins from any other person any sum of money or valuable thing shall be deemed guilty of obtaining such money or valuable thing by a false pretence. There is therefore evidence of an offence under s. 88 of the Larceny Act, 1861.

Danckwerts, K.C. (by leave of the Court). As to the Gaming Act, 1845, the words "shall be deemed" in s. 17 do not mean that a person cheating at cards commits the offence of obtaining

(1) 1 Dears. & B. C. C. 307.

(2) Gaming Act, 1845 (8 & 9 Vict. c. 109) s. 17: "Every person who shall, by any fraud or unlawful device or ill practice in playing at or with cards, . . . or in bearing a part in the stakes, wagers, or adventures . . . of them that do play, . . . win from any other person to

himself, or any other or others, any sum of money or valuable thing, shall be deemed guilty of obtaining such money or valuable thing from such other person by a false pretence, with intent to cheat or defraud such person of the same, and being convicted thereof shall be punished accordingly."

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money by false pretences. They only mean that he is to be punished as if he had obtained the money or valuable thing by false pretences.

Assuming that the prisoner and von Henrichs were acting in concert, they did not win the bill of exchange from von Dippe. The bill was merely given by von Dippe in payment of the 4000*l.* which had been won from him. There was no arrangement that he should accept the bill until after the play was over.

LORD ALVERSTONE C.J. In this case the arguments have ranged over very important points, and I should have been glad, if time had permitted, to put my judgment into writing, but it is quite impossible, having regard to the work we have to do, and to the importance of this matter being speedily dealt with. A rule nisi for a writ of habeas corpus was obtained on behalf of the applicant Rudolf Stallmann calling upon the governor of Brixton Prison to shew cause why he should not be discharged from the warrant under which he was committed to prison to be extradited. The grounds upon which the rule was obtained were, that the applicant had been arrested for the same offence, that he had been discharged on habeas corpus in Calcutta, that article IV. and article XV. of the Extradition Treaty with Germany of 1872 barred the extradition proceedings, that there was no *prima facie* case, and that the evidence of Manteuffel and von Dippe was inadmissible.

I rather deprecate the practice, when an important point is going to be raised upon a rule, of not stating it specifically but including it generally among other grounds which may involve matters of difficulty ; but no doubt counsel for the applicant was entitled to raise the point under the words "no *prima facie* case."

I will endeavour, briefly and without attempting to state the details at length, to deal with all the points which arise in their order. On October 25, 1910, a requisition was made on behalf of the German Government for the extradition of the applicant from this country to Germany. Between October 25, 1910, and March, 1912, Stallmann, otherwise von Konig, was in India, and a

requisition was made by the German Government for his extradition to England. An application for that purpose was accordingly made to the magistrate in India, who made a report to the Government of India, and, acting upon that report, the Indian Government issued a warrant for his custody with a view to his extradition to Germany. Proceedings in the nature of habeas corpus took place in India, and I desire to say that I do not draw any distinction between habeas corpus proceedings in England and those in the form in which they took place in India. I think in all probability the same law is applicable to them as to habeas corpus, at any rate so far as relates to any point we have to consider; but in the view I take of the effect of those proceedings, and of the law, it is not material to consider at length whether there is or is not any distinction between them and proceedings in habeas corpus.

It appears that under the procedure in India the prisoner was entitled to give evidence in order that there might be a consideration of the facts upon which he could be surrendered; and it was said that the magistrate in India had not given him that opportunity. Upon that ground he took steps to set aside the extradition proceedings, and he raised several points, and, amongst others, the question as to whether there was any evidence against him, and he also raised the point that he had not had an opportunity of giving evidence which he was entitled to give. The High Court of Justice in India decided against him upon the merits and held that there was a *prima facie* case for him to answer, but that although he had evidence for the defence he was given no opportunity of presenting that evidence, and that he was illegally detained, and directed that he should be released. Therefore, in proceedings analogous to an application for a writ of habeas corpus, the result was that the Indian Court dismissed the application for extradition.

Upon proceedings being taken in England before the magistrate in the early part of 1912 on the warrant which had been issued in England in November, 1910, the point was taken that the prisoner had been discharged from the proceedings in India, and that he could not be re-arrested in respect of the same charge. That contention was based on two main considerations. Reliance was

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placed on the language of s. 6 of the Habeas Corpus Act, 1679. It is quite unnecessary and impossible to deal with all the questions that might arise as to what is covered by that section, but it seems to me that upon the language of that section itself it was never intended to enact that the Court had not the power to make an order which would lead to a person being subsequently committed. In my judgment the section contemplated and intended the preservation of the right of the Court over persons who might be amenable to its jurisdiction, and intended to repress and stop imprisonment which at that time was very commonly without jurisdiction. When one considers that the section imposes a penalty, and enables a person to apply to the Court by a legal process which must appear to that Court to be for good cause, it is impossible to seriously suggest that, as the section contemplates a release from an ordinary commitment, therefore in the present case, because there was some error of procedure which placed the prisoner outside its jurisdiction, he ought to be released now.

It is contended on his behalf that the contrary is assumed in the language of Mellish L.J. in *Attorney-General for Hong Kong v. Kwok-a-Sing*. (1) No point of the kind was then before the Court, and I therefore propose to consider whether the judgment of the Court which was delivered by Mellish L.J. went as far as is contended by counsel for the applicant, and whether it really did lay down any such broad proposition. It refers to the fact that there had been a commitment of Kwok-a-Sing for an alleged offence, that he had been in custody and discharged upon a writ of habeas corpus, that he was again arrested in respect of another offence, namely, piracy, and that he was committed to be tried for that second offence but again discharged upon a writ of habeas corpus, and ultimately decides that he must be surrendered for that second offence. Towards the end of the judgment (2) Mellish L.J. said: "The principal object of the section" (i.e., s. 6 of the Habeas Corpus Act, 1679) "seems to have been to prevent persons who had been brought up on a writ of habeas corpus, and discharged on giving bail and entering into their own recognizance, from being again arrested for

(1) L. R. 5 P. C. 179.

(2) L. R. 5 P. C. at pp. 201, 202.

the same offence, and obliged to sue out a second writ of habeas corpus. This appears from the provision by which the person discharged may be again arrested by the order of the Court, wherein he shall be bound by recognizance to appear, or other Court having jurisdiction of the cause. The words 'other Court having jurisdiction of the cause' were probably added to meet the case of an indictment having been moved by certiorari from one Court to another. They" (i.e., their Lordships) "do not say, however, that the section may not also apply to cases where a prisoner is discharged unconditionally upon the ground that the warrant on which he is detained shews no valid cause for his detention. They think, however, it can only apply when the second arrest is substantially for the same cause as the first, so that the return to the second writ of habeas corpus raises for the opinion of the Court the same question with reference to the validity of the grounds of detention as the first." A case within those words would be where on the merits with regard to the particular charge the first Court had decided that there was no evidence, and therefore discharged the prisoner. Undoubtedly in that case it was not intended that there should be a second attempt to charge the person with that offence, and the words which Mellish L.J. uses, "so that the return to the second writ of habeas corpus raises for the opinion of the Court the same question with reference to the validity of the grounds of detention as the first," seem to me to shew that he is pointing to a decision upon the merits in respect of the matter upon which the person was sought to be arrested. Mellish L.J. continues: "In the present case the second warrant is a warrant by which Kwok-a-Sing was committed to take his trial at Hong Kong for piracy *jure gentium* and was, in their opinion, a valid warrant. They think he ought not to have been discharged from his custody under that valid warrant because he had been previously discharged from an unlawful imprisonment." Therefore we have to consider the ground upon which the applicant was sought to be detained, and upon the ground that this Court has jurisdiction and power to deal with him notwithstanding the fact that he succeeded in shewing that the procedure in India was such that he could no longer be detained there, I am clearly of opinion that the

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1912 objection taken that there has been a previous decision in India
 REX is no answer to these proceedings.
 v. With regard to the Extradition Treaty with Germany of 1872, in
 GOVERNOR my judgment the applicant has not been "tried," and there-
 OF BRIXTON fore he cannot set up article IV. of the treaty as a bar to the
 PRISON. extradition proceedings. On his behalf Mr. Danckwerts has
 STALLMANN, *Ex parte.* upon that point very strenuously relied on articles IV. and XV.
 Lord Alverstone C.J. of the treaty, but it is only necessary to deal with article IV. I
 am unable to assent to the construction which Mr. Danckwerts
 contended ought to be given to article IV.—either in the English
 or German version—and I really cannot decide the question as
 to the accurate phraseology of the English translation, because
 that is a question which I am not competent to deal with. (1)
 But on the question as to the broad view which is to be applied,
 the English version of article IV. says in terms (and Mr. Danckwerts
 admits that it is against him in one sense) that the extradition
 shall not take place if the person claimed has already been
 "tried and discharged or punished, or is still under trial, in
 one of the States of the German Empire, or in the United
 Kingdom." In my judgment the applicant has not been "tried
 and discharged or punished." It seems to me that those words
 mean what they say, namely, that there shall be a trial and
 an acquittal or punishment. Mr. Danckwerts said that the
 German word "Untersuchung" means that there had been a
 preliminary inquiry. I do not think the article can be
 construed as meaning that a preliminary investigation as
 to whether there is sufficient evidence for extradition is a
 proceeding in which a person is "tried and discharged or
 punished." In my judgment it would defeat the whole object of
 the treaty if an untried criminal—i.e., untried in the strict sense
 of the word—could be allowed to be acquitted or discharged
 because there had been some prior discharge without the case
 having been dealt with finally.

The point as to the inadmissibility of certain evidence is not
 serious. If it had been necessary to rely upon Manteuffel's
 evidence it would have been necessary to consider how far

(1) [The words "ausser Verfolgung gesetzt" appear, in their natural meaning, to point to some kind of final determination.—F. P.]

hearsay evidence, or evidence of character, was admissible. In extradition cases matters constantly appear in the depositions which are not evidence according to our law; and if it had been necessary to rely upon matters of that nature in the present case the question might have arisen, but apart from them the evidence satisfies me that the prisoner played rouge et noir, and Manteuffel's evidence is not material.

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As to the point upon which we have heard a very important argument with regard to there being no *prima facie* case, I accept and agree with the enunciation by Lord Russell of Killowen C.J. of the conditions of extradition in *In re Arton* (No. 2). (1) I agree that in order that the applicant can be extradited there must be evidence of the offence of obtaining money or goods by false pretences.

I am by no means clear with regard to the point as to the piece of paper being obtained from von Dippe. I do not wish to be thought to express an opinion that extradition could not be granted on the ground that what the applicant acting in concert with von Henrichs did was to obtain the piece of paper from the prosecutor von Dippe. But for reasons which I will advert to the point is immaterial. If there was a swindle (I do not wish to be thought to express any opinion on the point) the applicant was taking an active part in it.

Upon his behalf Mr. Danckwerts has strenuously contended that *Reg. v. Danger* (2) shews that there could be no indictment under s. 88 of the Larceny Act, 1861. For the moment I will assent to that; but I am not altogether satisfied with *Danger's Case*. (2) I think that the judgments in *Reg. v. Gordon* (3) shew that in that case *Reg. v. Danger* (2) did not receive entire approval, but it would be difficult for us to disregard *Reg. v. Danger* (2), if the facts in the present case brought it within the grounds of that decision. But in my judgment there is evidence upon which the applicant could be indicted for obtaining money or goods by false pretences. In *Danger's Case* (2) the Gaming Act, 1845, had no application. That statute was in force at the time the Treaty with Germany of 1872 and the Extradition

(1) [1896] 1 Q. B. 509.

(2) 1 Dears. & B. C. C. 307.

(3) 23 Q. B. D. 354.

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Act, 1870, were respectively made and passed, and by s. 17 of the Act of 1845 it is enacted that "Every person who shall, by any fraud or unlawful device or ill practice in playing at or with cards, . . . or in bearing a part in the stakes . . . win from any other person to himself, or any other or others, any sum of money or valuable thing, shall be deemed guilty of obtaining such money or valuable thing from such other person by a false pretence, with intent to cheat or defraud such person of the same, and being convicted thereof shall be punished accordingly." In my judgment the applicant could upon the evidence be indicted under that section for obtaining money by false pretences. I propose to deal with the substance of this matter. I agree with the contention of Mr. Danckwerts that the applicant did not win the piece of paper in the ordinary sense of the word "win." But the substance of the offence with which he is charged is that by cheating he obtained a right to claim 80,000 marks (4000*l.*) from von Dippe. What the depositions do is to disclose the way in which the offence was carried finally into effect. In my judgment the applicant could be indicted for winning the 80,000 marks from von Dippe if they came directly out of von Dippe's pocket and the applicant took possession of them, or if he had taken an I O U from von Dippe or anything which assisted him to obtain the money, and in the circumstances disclosed by the depositions he could be indicted for obtaining that money by false pretences. In my judgment it would be lamentable if we were compelled to hold—that being the real offence for which he was to be tried—that he must be allowed to escape trial because it might be said that he did not win the piece of paper at the time. The charge against the prisoner is that he obtained the money by false pretences within the meaning of the Gaming Act, 1845, the Extradition Act, 1870, and the Extradition Treaty with Germany of 1872, and in my judgment, as a person could be indicted for that offence at the time the treaty was made, on the words contained in the treaty, it is quite impossible to say that he is not charged with an extraditable offence. If it had been necessary to rely upon s. 90 of the Larceny Act, 1861, in order to formulate a charge against the applicant, I should have agreed with the

contention of Mr. Danckwerts upon his behalf. I should have held that an offence under that section is not extraditable and that in order to bring it within the treaty of 1872 there would require to be an amendment of the treaty. But although this point has required careful consideration, in my judgment Mr. Danckwerts' argument fails because in 1872 a person who cheated at cards could be indicted for obtaining money by false pretences. I note that the German warrant is for obtaining a valuable security by false pretences, and I think the German words are right.

In my opinion, therefore, the rule should be discharged.

DARLING J. I am of the same opinion, and I think it only necessary to say a few words upon the last point dealt with by my Lord. I myself think that the decision at which we have arrived can be supported on the ground that the circumstances in which this piece of paper was handed to von Dippe are not in the least analogous to those in which the document was handed to the prosecutor in *Danger's Case*. (1) It was handed to von Dippe in such circumstances that no action could be maintained to recover it back again from him if he had chosen to keep it. The present case is analogous to that where a person not having a cheque-book with him borrows a cheque from another person who happens to have an account at the same bank, and a cheque is handed over, and the piece of paper becomes the property of the person drawing the cheque.

But I think also that s. 17 of the Gaming Act, 1845, is applicable to this case. It is plain from the report of *Reg. v. Moss* (2) that in that case the prisoner was, to use the words of the Gaming Act, 1845, indicted for winning a "sum of money or valuable thing"; and I think that in the present case the applicant could be properly indicted for winning this very piece of paper and might be convicted. In giving judgment in *Reg. v. Moss* (2) Pollock C.B. said: "Whether the word 'winning' is used in this statute in the limited sense in which 'winning' is used in the mining districts, and means actually getting and obtaining the money, or

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(1) 1 Dears. & B. C. C. 307.

(2) (1856) 1 Dears. & B. C. C. 104.

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PHILLIMORE J. I am of the same opinion, and as to the greater part of the case I have nothing to add to what my Lord and my brother have said. There are two matters only with respect to which I should like to add a few words.

The first is the point which arises under the Habeas Corpus Act, 1679. I think the true interpretation of s. 6 of that statute was given by Mellish L.J. in *Attorney-General for Hong Kong v. Kwok-a-Sing* (1), and some reference to history is necessary in order to arrive at that interpretation. The section was directed against reiterated commitments, as it says, for the same offence. Persons were committed; they were enlarged upon bail or their recognizances to appear. In those days it was frequently a very lengthy process to persuade the Court to go as far as that; and in addition there was the danger that a fresh warrant would be issued, and that the person again arrested upon it would be compelled to sue

(1) L. R. 5 P. C. 179.

out a second writ of habeas corpus, remaining in custody meanwhile; and it was intended by that section to enact that as long as he had done nothing to forfeit his recognizance, or which justified the Court in calling upon his sureties to shew cause why their bail should not be estreated, he should not be recommitted upon the same charge, power being given to the Court before which the recognizance to appear was given to determine judicially, if it thought fit, that circumstances existed in which the person must be committed to prison, notwithstanding that at one time he was released upon bail, the like power being given also to any other Court having jurisdiction over the cause by reason of a transfer to it having taken place either, as Mellish L.J. suggested, by certiorari or otherwise.

I doubt if the section was intended to go any further, but Mellish L.J. suggests—and it may be so—that a case would come within the mischief of the statute if, with a colourable variation, the man was re-arrested substantially for the same cause. Mellish L.J. guards his sentence in this manner: “They think, however, it can only apply when the second arrest is substantially for the same cause as the first, so that the return to the second writ of habeas corpus raises for the opinion of the Court the same question with reference to the validity of the grounds of detention as the first.” But though the second arrest is for the same cause, if the prisoner’s discharge was because the warrant or the return to the writ of habeas corpus was bad, then it would be lawful to re-arrest for the same offence with a proper warrant, upon which a different return would be made. Therefore the fact that in the present case the applicant was discharged—not because he could not be committed for this crime, not because it was not an extraditable crime, nor for any such reason, but because a full inquiry had not been granted to him by the magistrate—cannot be a reason why he should not be re-arrested and the case fully investigated before his committal.

The other matter arises upon *Danger’s Case* (1), and I must say I appreciate and admire the learning and ability which discovered and applied *Danger’s Case* (1) to the present one. *Danger’s Case* (1) is one which requires a good deal of consideration.

(1) 1 Dears. & B. C. C. 307.

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It must be remembered that in that case the whole of the facts were reserved for the Court of Crown Cases Reserved. The Recorder set out the evidence and said: "At the close of the case for the prosecution, it was objected by the prisoner's counsel that there was no evidence that the prisoner had obtained from Richard Latham a valuable security within the meaning of the statute 7 & 8 Geo. 4, c. 29, s. 53, so as to sustain either count of the indictment, on the ground that the evidence shewed that the prisoner had obtained from Richard Latham either an acceptance only or an instrument which was not an available security or of any value to Richard Latham. I refused, on this objection, to direct an acquittal, but left the case to the jury, who found the prisoner guilty; but I reserved the question for the opinion of the Court of Criminal Appeal whether there was evidence that the prisoner obtained from Richard Latham a valuable security so as to sustain either count of the indictment." Then the grounds of objection, in arrest of judgment, are given. "After the verdict it was objected, in arrest of judgment, that each count of the indictment was bad for not alleging that the valuable security obtained by John Danger was the property of Richard Latham; and the case of *Regina v. Sill* (1) was cited. I also reserved that question; and I have to request the opinion of the Court of Criminal Appeal upon the above matters."

The Court of Crown Cases Reserved, drawing inferences of fact and law from the evidence before it, and having the salient and remarkable fact that the indictment did not allege that the piece of paper obtained by the prisoner had ever been the prosecutor's property, came to the conclusion that it never was the prosecutor's property, and, that being so, the Court held that s. 53 of 7 & 8 Geo. 4, c. 29, did not apply. It is enough here to say that in the present case there is evidence upon which the foreign tribunal may find that the bill of exchange was at one time the prosecutor's property—it is not necessary to go further than that—and the distinction between the facts relating to the piece of paper in the present case and those with regard to the piece of paper in *Danger's Case* (2) is great; or rather I should say there are several distinctions. In *Danger's Case* (2) the real mischief lay in inducing

(1) (1852) 1 Dears. C. C. 10.

(2) 1 Dears. & B. C. C. 307.

the prosecutor to enter into the previous agreement to give money for leather which the prisoner alleged was in course of delivery to him. The piece of paper was obtained, made good, completed and passed in order to carry out that agreement into which the prosecutor was tricked. It was when it passed from the hands of the prisoner to the prosecutor already a piece of paper of considerable value. It had a bill stamp upon it and the drawer's name as the drawer. In those circumstances it might well be held by the Court,—that is all I need say—drawing inferences of fact, that there had been no gift to the prosecutor, and that the piece of paper never was the prosecutor's property; and, if that be so, it was never obtained from him. I agree that the Court also took the point that it was not a valuable security till it left the prosecutor's hands. Upon that I should like to express a pious opinion that they went too far; but the other ground of distinction is quite enough to support our judgment.

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The facts in the present case are quite different from those in *Danger's Case*. (1) The piece of paper was a mere form, only valuable from the fact that it had a few words, making it a bill of exchange, printed or lithographed or written upon it. There is no reason why the German Court should not find that von Henrichs gave it to the prosecutor. If so, it was then his property, and he was induced to part with it by the false representations of the prisoner, the Gaming Act, 1845, having enacted that winning by cheating at play amounts to obtaining money by false pretences.

I do not think it is necessary to go further into the case, but I would add that upon the merits we are all clearly of opinion that there is, apart from the technical ground, ample *prima facie* evidence to justify the prisoner's committal for extradition.

Rule discharged.

Solicitor for applicant: *C. F. Appleton.*

Solicitor for respondent: *The Director of Public Prosecutions.*

(1) 1 Dears. & B. C. C. 307.