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*June 26.
*June 27.

JOHN FRANCIS GAYNOR AND BENJAMIN D. GREEN (PETITIONERS) .... } APPELLANTS.

AND

ULRIC LAFONTAINE (EXTRADITION COMMISSIONER),

AND

THE UNITED STATES OF AMERICA (APPLICANT FOR EXTRADITION) ..... } RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL, SIDE, PROVINCE OF QUEBEC.

Extradition—Prohibition—Appeal—Jurisdiction—Supreme Court Act, sec. 24 (g)—54 & 55 V. c. 25, s. 2—Construction of statute—Public policy—Criminal proceedings.

A motion for a writ of prohibition to restrain an extradition commissioner from investigating a charge of a criminal nature upon which an application for extradition has been made is a proceeding arising out of a criminal charge within the meaning of sec. 24 (*g*) of the Supreme Court Act, as amended by 54 & 55 Vict. ch. 25, sec. 2, and, in such a case, no appeal lies to the Supreme Court of Canada. *In re Woodhall* (20 Q. B. D. 832) and *Hunt* v. *The United States* (16 U. S. R. 424) referred to.

MOTION to quash an appeal from the judgment of the Court of King's Bench, appeal side, affirming the judgment of M. Justice Davidson in the Superior Court, District of Montreal, by which the appellants petition for a writ of prohibition was dismissed with costs.

The case is stated in the judgment of the court delivered by His Lordship M. Justice Sedgewick.

Macmaster K. C. and *Stuart K. C.* for the motion.

*PRESENT:—Sedgewick, Girouard, Davies, Nesbitt and Indigton JJ.

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T. Chase Casgrain K. C. and *Alexander Tascherean K. C.* contra.

The judgment of the court was delivered by

SEDGEWICK J.—The fact so far as they relate to the present application are shortly as follows:

The appellants are alleged to be fugitives from the justice of the United States of America and having come to Canada a warrant was issued for their arrest by Mr. Ulric Lafontaine, an Extradition Commissioner appointed under the Extradition Act of Canada, who thereupon began proceedings for the purpose of ascertaining whether a *primâ facie* case would be made out as to the commission of an extraditable offence by them.

During the pendency of these proceedings application was made to the Hon. Mr. Justice Davidson, a Judge of the Superior Court of the Province of Quebec, for a writ prohibiting the Extradition Commissioner from proceeding with the investigation. That learned judge refused the application and from his judgment there was an appeal to the Court of King's Bench resulting in the confirmation of Mr. Justice Davidson's judgment.

An appeal having been asserted to this court from the judgment of the appellate tribunal the respondents have made a motion to quash that appeal upon the ground that this court has no jurisdiction to entertain it. Whether it lies within our province to hear the appeal on its merits depends upon the construction to be given to sec. 24 (*g*) of the Supreme & Exchequer Courts Act as amended by 54 & 55 Vict. ch. 25 sec. 2. The amended section is as follows:

> An appeal shall lie to the Supreme Court * * * * from the judgment in any case of proceedings for or upon a writ of *habeas corpus*, certiorari or prohibition not arising out of a criminal charge.

And in aid to its proper construction sec. 31 of the Act may be quoted :

> No appeal shall be allowed in any proceeding for or upon a writ of *habeas corpus* arising out of any claim for extradition made under any treaty.

We are all of opinion that we have no jurisdiction inasmuch as, in our view, the proceedings and judgment which are now sought to be brought before this court for the purposes of appeal do arise out of a criminal charge, and therefore the judgment complained of is not a judgment appealable to this court.

One or two considerations lead, we think, inevitably to this conclusion. It would appear from the perusal of the criminal law of Canada and of cognate legislation that the whole policy of Parliament has been to prevent prolonged litigation particularly in matters of a criminal nature. For example, the Parliament of Canada after much controversy and discussion with the imperial authority passed an Act abolishing appeals in criminal matters to the Judicial Committee of the Privy Council. Subsection (*g*), above cited, gives evidence of the same policy by preventing an appeal in certain specified cases which arise out of a criminal charge ; and sec. 31, above quoted, makes it clear that in extradition matters there should be no appeal to this court upon a writ of *habeas corpus* arising out of any claim for extradition made under any treaty. These considerations afford ground for the contention that, apart altogether from the express words of sec. 24 (*g*), it was certainly the intention of Parliament to limit in every possible way appeals of the character now before us. But looking more particularly at section 24 (*g*), it assumes that proceedings for a writ of prohibition may arise either out of a civil matter or out of a criminal charge. If the meaning contended for by the appellants is the true one then those words "*certiorari* and

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prohibition" added by the Act, 54 & 55 Vict. c. 25, sec. 2, are absolutely meaningless.

If these proceedings now before us are civil proceedings within the meaning of sec. 24 (*g*), then it is impossible to conceive of a writ of prohibition which can arise out of a criminal charge. This, it seems to us, demonstrates the fallacy of the appellants' contention. But apart from that it is indisputable that the charge made before the Extradition Commissioner was a criminal charge. So too, the warrant issued was a proceeding arising out of that charge. A motion made in court to prevent a magistrate from proceeding to investigate that charge is a motion to stop the further proceedings of the investigation of that criminal charge and it, therefore, necessarily follows, in construing the statute according to the canons requiring a literal construction, that the case before us is a case arising out of a criminal charge. Reference may be had to the following cases in support of this opinion ; *Ex parte Woodhall* (1) ; *Hunt* v. *United States* (2).

The appeal is quashed with costs.

*Appeal quashed with costs.**

Solicitor for the appellants : *Fitzpatrick, Parent, Taschereau, Roy & Cannon.*

Solicitor for the respondent : *Macmaster & Hickson.*

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* Petition for leave to appeal to the Privy Council abandoned and petition dismissed, 26th July, 1905.

(1) 20 Q. B. D. 832.

(2) 166 U. S. R. 424.