Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The United States of America v. *Gaynor and another, from the Superior Court for Lower Canada; delivered the 8th February* 1905.

Present at the Hearing:

THE LORD CHANCELLOR.
LORD MACNAGHTEN.
LORD ROBERTSON.
LORD LINDLEY.
SIR FORD NORTH.
SIR ARTHUR WILSON.

[*Delivered by the Lord Chancellor.*]

This is an Appeal from Judgments of Mr. Justice Caron, one of the Judges of the Superior Court for Lower Canada, dated the 13th August 1902, dismissing motions made on behalf of the United States of America, on the 9th July 1902, to quash writs of *habeas corpus* granted by the said learned Judge to the Respondents on the 21st June 1902, and ordering their liberation. The facts, which are not really in dispute, appear to be that the two Respondents, Gaynor and Greene, had been in the employment of the Government of the United States of America, and have been charged with certain criminal offences in respect of certain transactions in the State of Georgia. While they were in Quebec application was made to an officer called an Extradition Commissioner for their arrest in pursuance of the international extradition arrangements between Canada and the United States of America.

The application was made upon an information which (among other things) alleged that the Respondents had been guilty of theft,

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and the Commissioner, Mr. Ulric Lafontaine, duly issued his warrant for the arrest of the alleged criminals. They were accordingly arrested, and upon their arrest they applied to a learned Judge, Mr. Justice Andrews, for a writ of *habeas corpus*.

Now the only question which the learned Judge had to determine was whether the accused were at the time of the issue of the writ in question in lawful custody. If they were, he had no jurisdiction to release them, but was bound to remand them to custody, and, up to this point, it is difficult to see what ground could be even suggested for their release.

The offence of theft was an offence which made the offender liable to extradition.

The Commissioner was invested by the Extradition Act with all the powers of a Judge in that behalf, and under the Commissioner's warrant the officer having the custody of the accused was to receive and keep them till a particular date (the 27th of May 1902) and then bring them before the Commissioner to be further dealt with according to law. Revised Stat. Can., c. 142.

It is difficult to understand what is the supposed unlawfulness of the custody, and it is only upon the supposed unlawfulness of the custody that any application for discharge could be founded.

It was probably owing to some mistake as to the jurisdiction of the Commissioner that any writ was issued. At all events, when the facts were placed before Mr. Justice Andrews, and the prisoners were brought before him under his order, the learned Judge did what was obviously right. He remanded them to their lawful custody from which they never ought to have been removed and expressed himself thus:

"I consider that I am in possession of these accused in "virtue of my order, having taken them from the gaoler in

" the District of Montreal, in whose lawful custody I now " return them. I consider I have no right whatsoever to do " anything which might in the most remote degree defeat the " obligation under which I feel I am, and I may say and I do " say that I feel the Province is under, that these men should " go back to the place from which I took them. If I took " them by mistake from there, if I took them without juris- " diction, that is no reason why they should escape here, and " it seems to me that it was not for the persons who induced " me to commit this act to now endeavour to avail themselves " of it in order to effect their escape. I consider it my duty " to say this, and I now say that, sitting as a Judge having " issued a writ of *habeas corpus*, I do not recognise, but I " distinctly deny, the right of any other Judge to interfere in " the matter until the men have passed from my hands. " When I have given my order in the premises I have washed " my hands of responsibility in the matter, and then, and not " till then, it is my firm conviction that no other Judge has " the power to interfere with them.

" I say this, of course, not because I desire to say it in " respect of any other Judge, but I think I am bound to say " it to the Sheriff who is now present.

" So that there may be no mistake in the matter, I have " drawn up my Judgment in writing, and it is this :—

" I, the undersigned Judge, having heard the Petitioner by " his Counsel, he, the said Petitioner, being now present " before me, in the custody of the Sheriff of this District, " also present before me, I do hereby order the said Sheriff " forthwith to convey the said Petitioner, John Francis Gaynor, " to the common gaol of the District of Montreal, and there " to deliver the said John Francis Gaynor into the custody " of the keeper of the said common gaol in Montreal, who is " hereby ordered to receive the said John Francis Gaynor " into his custody, and to safely keep him until duly discharged " in due course of law, according to the terms and exigencies " of the warrant under which the said gaoler has returned on " the writ of *habeas corpus* to him directed by me, that he " detains him, to wit: the warrant under the hand and seal of " Ulric Lafontaine, Esquire, Extradition Commissioner, issued " and dated at the said City of Montreal, on the nineteenth day " of May, in the second year of His Majesty's reign, and in " the year of Our Lord one thousand nine hundred and two.

" Thus adjudged and ordered by me at the City of Quebec, " the twenty-first day of June, in the said year one thousand " nine hundred and two.

" FREDERICK W. ANDREWS,
" Judge Superior Court, Quebec."

Their Lordships are of opinion that Mr. Justice Andrews was quite accurate in what he then did. There had been a regular and proper

application to the Extradition Commissioner, who, after receiving evidence to identify the persons charged, had appointed a day for the regular procedure in extradition and had in the meantime committed the accused to the proper custody by way of remand.

Mr. Justice Andrews was apparently not informed of this, and he issued the writ of *habeas corpus*, but (as will be pointed out hereafter) the writ if issued could have no other return than that the cause of detention was a lawful remand by a Commissioner having jurisdiction over the subject-matter of the inquiry.

When the learned Judge found out the mistake that had been made, he at once proceeded to put it right, and then the somewhat extraordinary intervention of Mr. Justice Caron took place which has given rise to this Appeal. Notwithstanding the Judgment of Mr. Justice Andrews before him, who had justly pointed out that the matter stood for adjudication before him, the learned Judge issued a writ of *habeas corpus* returnable before himself, and ultimately discharged the accused from custody upon grounds which their Lordships have some difficulty in following.

Mr. Justice Caron first gets rid of the adjudication by Mr. Justice Andrews by a singular misapprehension of that learned Judge's language. Mr. Justice Andrews undoubtedly did decide the question before him, which was whether Mr. Commissioner Lafontaine's order showed a sufficient cause of detention, and he decided that it did.

Mr. Justice Andrews gave his reasons, and these Mr. Justice Caron confuses with the adjudication. The adjudication was (*a*) the determination that the imprisonment was lawful and (*b*) the endorsement on the writs that they were quashed. That is, in point of law, the judgment, and though it

is common enough to speak of a learned Judge's judgment in referring to the reasons by which that judgment is supported, it is somewhat singular to find a learned Judge himself confusing the two things.

The substance of Mr. Justice Caron's determination appears to have been that no offence within the meaning of the Extradition Act was shown upon the document that had been brought before him by a writ of *certiorari*. Their Lordships are wholly unable to agree with him. There was an accusation of theft, which is an offence in both countries, but the learned Judge does not appear to have apprehended that an accusation, on information, of theft was enough for the claim to arrest and detain. Whether the accusation was well founded, or whether there was enough to justify the Extradition Commissioner in committing for surrender, was a question which would have been regularly brought before him and determined at the proper time if the due course of justice had not been interfered with by the interposition of the learned Judge. The learned Judge accurately points out that a conspiracy is not an offence within the Treaty, and because an indictment for conspiracy has been framed in which acts of larceny are charged as overt acts of the conspiracy, the learned Judge seems to think that the United States Government are estopped from treating them as distinct and independent acts of larceny. The whole matter, and *inter alia* how much evidence there was of larceny, would have been duly and properly investigated if the case had been allowed to take its proper course. Their Lordships do not mean to suggest that the writ of *habeas corpus* is not applicable when there is a preliminary proceeding. Each case must depend upon its own merits. But where a prisoner is brought before a competent tribunal, and is charged with

an extradition offence and remanded for the express purpose of affording the prosecution the opportunity of bringing forward the evidence by which that accusation is to be supported; if, in such a case, upon a writ of *habeas corpus*, a learned Judge treats the remand warrant as a nullity, and proceeds to adjudicate upon the case as though the whole evidence were before him, it would paralyze the administration of justice and render it impossible for the proceedings in extradition to be effective.

The proceedings are very simple: information and arrest; then—either at once or on remand—the Judge investigates the case, and either discharges or makes up his mind to commit for extradition, and, if he does the latter, he has to inform the accused person that he will not be surrendered for fifteen days, in order to afford him an opportunity of bringing the legality of his surrender before a Court of Justice.

The same facts and the same observations apply to the case of the other Respondent, Greene.

Their Lordships will accordingly humbly advise His Majesty that the two Judgments of Mr. Justice Caron of the 13th August 1902 ought to be reversed.

The Respondents must pay the costs of this Appeal.