

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
BEFORE THE HON. THE CHIEF JUSTICE
ON THE 10TH, 11TH, 12TH AND 13TH JANUARY, 1989

CAUSE NO. 344 OF 1988
SUMMARY COURT CASE NO. 4494 OF 1987

In the Matter of an Application by the
United States Government for the
Extradition of Edward Cardinal Rodden

and

In the Matter of the Extradition Acts 1870
- 1935 and the United States of America
Extradition Order in Council 1976

and

In the Matter of an Order dated the 16th
day of December, 1988 made by the
Honourable Mr. Justice R. D. C. White,
Q.C., in the Summary Court of the Cayman
Islands regarding the United States
Government v Edward Cardinal Rodden

and

In the Matter of Application by
Edward Cardinal Rodden for an Order of
Certiorari

BETWEEN EDWARD CARDINAL RODDEN APPLICANT
AND SUMMARY COURT OF THE FIRST RESPONDENT
CAYMAN ISLANDS
AND THE GOVERNMENT OF THE SECOND RESPONDENT
UNITED STATES OF AMERICA

Ramon Albergas Q.C. and Charles Quinn for the Applicant
Anthony Smellie (Senior Crown Counsel) for the Respondents

COLLETT C.J. JUDGEMENT

In view of the urgency of the matter I now declare
the decision of the Court with brief reasons for that decision.
Amplified reasons will be delivered later.

Two broad submissions have been urged upon the Court in support of this application for an order of certiorari directed to the Acting Magistrate and to the United States Government.

Firstly, it is said that the Governor cannot legally issue a second order to proceed with extradition proceedings under Section 7 of the Extradition Act 1870 once proceedings initiated by an earlier order of his pursuant to a request from the foreign government concerned have run their course and been terminated, unless a further request has been received from that government. After a full consideration of the decision of the House of Lords in *Rees v Secretary of State for the Home Department and Another* (1986) 2 A.E.R 321 I conclude that this submission is not in accordance with the interpretation of that section declared in that decision. A decision of the House of Lords as to the proper interpretation of an Act of United Kingdom Parliament is binding on this Court. The Senior Magistrate no doubt became functus officio once he had made his order committing the Applicant to prison to await extradition to the United States of America, but there is no reason to hold that the governor, not having been rendered functus officio by his issue of the first order to proceed ever became so as a result of the making of that order of the Magistrate or indeed as a result of the subsequent order of this Court which quashed it.

Secondly, it is said that the decision of this Court on 22nd July 1988 that a writ of habeas corpus should go to release the Applicant unconditionally from custody on that commitment is an absolute bar to any further proceedings to secure his extradition on identical charges. Reliance is placed upon S.5 of the Habeas Corpus Act 1679. If that were a modern statute standing free of judicial interpretation there might well be merit in this submission but it is not. The decision of the Judicial Committee of the Privy Council in Attorney General for Hong Kong v Kwok-A-Sing (1874) L.R. 5 P.C. 178 declares an interpretation of its provisions which has been since accepted as correct in England in *R v Governor of Brixton Prison ex parte Stallman* (1912) 3 K.B. 424 and *R. v Secretary of State for Home*

Affairs ex parte Budd (1942) 2 K.B. 14 as well as in the Australian case of Wall v R (No.2)(1927) C.L.R. 266. The Privy Council decision is binding upon me also and I am obliged to follow it.

The question which the Court has had to ask itself, therefore, is whether or not the second arrest of the Applicant was substantially for the same cause as the first so that the return to a further or second writ of habeas corpus would raise for its opinion the same question with regard to the validity of the grounds of detention as the first. Since these are proceedings for certiorari and not habeas corpus we do not have the advantage of being able to compare the two returns to the writ as was possible in Kwok-A-Sing, but for the purposes of these proceedings it is legitimate to assume that the same procedural error which led to the quashing of the Applicant's commitment on 22nd July 1988 would not be repeated. The judgement of this Court delivered on that date discloses the nature of that error and also shows that there was no determination of the merits of the extradition application, that is to say, of the amenability of the Applicant to process under the Extradition Act 1870 and the relevant Treaty or of the sufficiency of the evidence to support the charges for which rendition is sought.

I therefore conclude that in fresh habeas corpus proceedings, such as might follow if the Acting Magistrate, Mr. White, were to find it proper to commit the Applicant after hearing the evidence produced by the United States Government, the same question as to the validity of the grounds of his detention would not arise as arose for this Courts determination in the earlier habeas corpus proceedings. The same conclusion was reached by Mr. White in a careful and considered judgement reached after hearing the same submissions on either side as have been now addressed to me. I need only add that after a close consideration of his judgement in the matter I find myself in complete agreement with his assessment of the authorities cited to him, with his approach to the questions at issue and with his

eventual conclusion on this point.

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It follows therefore that no good grounds have been disclosed for issue on an order of certiorari in this case. The present application is accordingly dismissed.

Dated 13th January, 1989.

CHIEF JUSTICE.