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May 5.

DR. BABU RAM SAKSENA

v.

THE STATE

[SHRI HARILAL KANIA C. J., SAIYID FAZL ALI, PATANJALI SASTRI, MEHR CHAND MAHAJAN, MUKHERJEA and DAS JJ.]

Constitution of India—Merger of States—Effect—Treaty of Extradition between British Government and Indian State—Whether subsists after merger—Extradition Act 1903, *ss.* 7, 18—*Provision in Act for extradition for additional offences—Whether "derogates" from Treaty—Extradition warrant for additional offences—Legality.*

In 1869 the British Government and the State of Tonk entered into treaty which provided for the extradition of offenders in respect of certain offences specified therein called "heinous offences," which did not include the offences of cheating and extortion. In 1903 the Indian Extradition Act was passed which provided for extradition in respect of cheating and extortion also, but s. 18 of the Act provided that nothing contained in the Act "shall derogate from the provisions of any treaty for the extradition of offenders." Under the Independence of India Act, 1947, the suzerainty of His Majesty over the Indian States lapsed and with it all treaties and agreements in force; but under a "standstill agreement," between the Indian Dominion and the States (including Tonk) all agreements between His Majesty and the States were continued, including agreements in respect of extradition. Tonk acceded to the Dominion of India in 1947 and became a member State of the United State of Rajasthan. The appellant was a member of the Uttar Pradesh Civil Service and his services were lent to the State of Tonk in 1948. After he had reverted to the Uttar Pradesh he was charged with the offences of cheating and extortion alleged to have been committed while he was in Tonk and was arrested under an extradition warrant issued under s. 7 of the Extradition Act, 1903. He applied under ss. 491 and 561-A of the Code of Criminal Procedure for his release, contending that in view of the provisions of s. 18 of the Extradition Act and the Treaty of Extradition of 1869, his arrest was illegal:

Held per KANIA C. J. and PATANJALI SASTRI J. (FAZL ALI J. concurring).—Even assuming that the Extradition Treaty of 1869 subsisted after the merger of the Tonk State, by providing for extradition for additional offences the Extradition Act of 1903 did not derogate from the provisions of the Treaty of 1869 or the rights of Indian citizens thereunder, and the arrest and surrender of the appellant under s. 7 of the Act was not, therefore, rendered unlawful by anything contained in the said Treaty.

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Per MUKHERJEA J. (FAZL ALI, MAHAJAN and DAS JJ. concurring).—The Extradition Treaty of 1869 was not capable of being given effect to in view of the merger of the Tonk State in the United State of Rajasthan, and, as no enforceable treaty right existed, s. 18 of the Extradition Act of 1903 had no application; and inasmuch as the conditions of s. 7 of the said Act had been complied with, the warrant of arrest issued under s. 7 of the Act was not illegal.

APPELLATE JURISDICTION: Criminal Appeal No. II of 1949.

Appeal by special leave from the judgment of the Allahabad High Court (Harish Chandra J.) dated 11th November, 1949, in Criminal Miscellaneous Case No. 960 of 1949. The facts of the case and the arguments of counsel are set out fully in the judgment.

Alladi, Krishnaswami Iyear (*Alladi Kuppuswami* with him) for the appellant.

M. C. Setalvad, Attorney-General for India (*V. N. Sethi,* with him) for the respondent.

1950. May 5. The judgment of Kania C.J. and Patanjali Sastri J. was delivered by

Patanjali Sastri J.

PATANJALI SASTRI J.—This is an appeal by special leave from an order of the High Court at Allahabad dismissing an application under sections 491 and 561-A of the Code of Criminal Procedure for release of the appellant who was arrested in pursuance of an extradition warrant issued by the Regional Commissioner of the United State of Rajasthan who is the principal officer representing the Crown in the territory of that State.

The appellant who is a member of the Uttar Pradesh Civil Service was appointed in 1948 to serve what was then known as the Tonk State in various capacities, and during such service he is alleged to have helped the Nawab in obtaining the sanction of the Government of India to the payment of Rs. 14 lakhs to the Nawab out of the State Treasury for the discharge of his debts, and to have induced the Nawab by threats and deception to pay the appellant, in return for such help, sums totalling Rs. 3 lakhs on various dates. On these allegations the appellant is charged with having committed offences under section 383 (Extortion) and

section 420 (Cheating) of the Indian Penal Code which are extraditable offences under the Indian Extradition Act, 1903 (hereinafter referred to as "the Act"). The warrant was issued under section 7 of the Act to the District Magistrate, Nainital, where the appellant was residing after reverting to the service of the Uttar Pradesh Government, to arrest and deliver him up to the District Magistrate of Tonk.

The appellant's case is that the sum of Rs. 3 lakhs was paid to him by the Nawab to be kept in safe deposit in a bank for the Nawab's use in Delhi, that no offence was committed and that the amount was returned when demanded by the authorities of the Tonk State. The warrant was issued *mala fide* on account of enmity. Various technical objections were also raised to the validity of the warrant and to the jurisdiction of the Magistrate at Nainital to take cognisance of the matter and arrest the appellant. The High Court overruled all the objections and dismissed the application for the release of the appellant.

On behalf of the appellant Mr. Alladi Krishnaswami Aiyar contended that section 7 of the Act under which the warrant purports to have been issued had no application to the case and that the entire proceedings before the Magistrate were illegal and without jurisdiction and should be quashed. Learned counsel, relying on section 18 of the Act which provides that nothing in Chapter III (which contains section 7) shall "derogate from the provisions of any treaty for the extradition of offenders," submitted that the treaty entered into between the British Government and the Tonk State on the 28th January, 1869, although declared by section 7 of the Indian Independence Act, 1947, to have lapsed as from the 15th August, 1947, was continued in force by the "Standstill Agreement" entered into on the 8th August, 1947, that that treaty exclusively governed all matters relating to extradition between the two States, and that, inasmuch as it did not cover the offences now charged against the appellant, no extradition of the appellant could be demanded or ordered.

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The Attorney-General appearing for the Government advanced three lines of argument in answer to that contention. In the first place, the standstill agreement entered into with the various Indian States were purely temporary arrangements designed to maintain the *status quo ante* in respect of certain administrative matters of common concern pending the accession of those States to the Dominion of India, and they were superseded by the Instruments of Accession executed by the Rulers of those States. Tonk having acceded to the Dominion on the 16th August, 1947, the standstill agreement relied on by the appellant must be taken to have lapsed as from that date. Secondly, the treaty was no longer subsisting and its execution became impossible, as the Tonk State ceased to exist politically and such sovereignty as it possessed was extinguished, when it covenanted with certain other States, with the concurrence of the Indian Government "to unite and integrate their territories in one State, with a common executive, legislature and judiciary, by the name of the United State of Rajasthan," the last of such covenants, which superseded the earlier ones, having been entered into on the 30th March, 1949. Lastly, even assuming that the treaty was still in operation as a binding executory contract, its provisions were in no way derogated from by the application of section 7 of the Act to the present case, and the extradition warrant issued under that section and the arrest made in pursuance thereof were legal and valid and could not be called in question under section 491 of the Criminal Procedure Code. As we are clearly of opinion that the appellant's contention must fail on this last ground, we consider it unnecessary to pronounce on the other points raised by the Attorney-General especially as the issues involved are not purely legal but partake also of a political character, and we have not had the views of the Governments concerned on those points.

It was not disputed before us that the present case would fall within section 7 of the Act, all the requirements thereof being satisfied, if only the applicability of

the section was not excluded, under section 18, by reason of the Extradition Treaty of 1869, assuming that it still subsists. The question accordingly arises whether extradition under section 7 for an offence which is not extraditable under the treaty is, in any sense, a derogation from the provisions of the treaty, which provides for the extradition of offenders for certain specified offences therein called "heinous offences," committed in the respective territories of the high contracting parties. Under article 1 the Government of the Tonk State undertakes to extradite any person, whether a British or a foreign subject, who commits a heinous offence in British territory. A reciprocal obligation is cast by article 2 on the British Government to extradite a subject of Tonk committing such an offence within the limits of that State. Article 3 provides, *inter alia,* that any person other than a Tonk subject committing a heinous offence within the limits of the Tonk State and seeking asylum in British territory shall be apprehended and the case investigated by such Court as the British Government may direct. Article 4 prescribes the procedure to be adopted and the conditions to be fulfilled before extradition could be had, and article 5 enumerates the offences which are "to be deemed as coming within the category of heinous offences" which, however, do not include the offences charged against the appellant.

The argument on behalf of appellant was put thus: The maxim *expressio unius est exclusio alterius* is applicable, as pointed out by *McNair on The Law of Treaties,* (1938—pp. 203, 204), to the interpretation of treaties. According to that rule the treaty in question should be read as allowing extradition only for the specified offences and for no others, that is to say, as implying a *prohibition* of extradition by either State for any other offence than those enumerated in article 5. Further, while the treaty entitled each of the high contracting parties to demand extradition on a reciprocal basis; an unilateral undertaking by the Indian Government to grant extradition for an offence for which it could not claim extradition under the treaty

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violates the principal of reciprocity which is the recognised basis of all international compacts for extradition. Such an arrangement places the State of Tonk in a more advantageous position which was not contemplated by the framers of the treaty. And where, as here, the person whose surrender is demanded is an Indian subject who is not liable to be extradited under the treaty, his surrender under section 7 trenches upon the liberty of the subject. In so far, therefore, as that section authorises extradition of a person, especially when he is an Indian subject, for an offence which is not extraditable under the treaty, it derogates from the provisions of the treaty within the meaning of section 18, and its application to the present case is thereby excluded. The argument proceeds on a misconception and cannot be accepted.

No doubt the enumeration of "heinous offences" in article 5 of the treaty is exhaustive in the sense that the high contracting parties are not entitled, under the treaty, to claim extradition of criminals in respect of other offences. But we cannot agree that such enumeration implies a *prohibition* against either of those parties providing by its own municipal laws for the surrender of criminals for other offences not covered by the treaty. It is difficult to imagine why the contracting States should place such a fetter on their respective legislatures in advance not only in regard to their subjects but also in regard to alien offenders, for, if such prohibition is at all to be implied, it should cover both. As pointed out in *Wheaton's International Law,* there is no universally recognised practice that there can be no extradition except under a treaty, for some countries grant extradition without a treaty: (Fourth Edition, sections 116 (a) to (d), pp. 186-189). No doubt the constitutional doctrine in England is that the Crown makes treaties with foreign States for extradition of criminals but those treaties can only be carried into effect by Act of Parliament: (*Ibid*—section 116 (b), p. 187). Accordingly, the extradition Acts are made applicable by an Order in Council in the case of each State which enters into an extradition treaty

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with the Crown, and they are made applicable only so far as they can be applied consistently with the terms and conditions contained in the treaty. Under such a system where the high contracting parties expressly provide that their own subjects shall not be delivered up, as in the case of the treaty between England and Switzerland, the power to arrest and surrender does not exist: *Regina* v. *Wilson*(1). This it was observed by Cockburn C.J. in that case, was a "serious blot" on the British system of extradition, and the Royal Commission on Extradition, of which he was the chairman, recommended in their report that "reciprocity in this matter should no longer be insisted upon whether the criminal be a British subject or not. If he has broken the laws of a foreign country his liability to be tried by them ought not to depend upon his nationality.....The convenience of trying crimes in the country where they were committed is obvious. It is very much easier to transport the criminal to the place of his offence than to carry all the witnesses and proofs to some other country where the trial is to be held :" (*Wheaton*, section 120 (a), pp. 197, 198). Evidently, similar considerations led to the passing of the Act by the Indian Legislature providing for the surrender of criminals, including Indian subjects, for a wide variety of offences, with power to the Governor-General in Council to add to the list by notification in the Gazette generally for all States or specially for any one or more States. This statutory authority to surrender cannot of course enlarge the obligation of the other party where an extradition treaty has been entered into, and this is made clear by section 18. But it is equally clear that the Act does not derogate from any such treaty when it authorises the Indian Government to grant extradition for some additional offences, thereby enlarging, not curtailing, the power of the other party to claim surrender of criminals. Nor does the Act derogate, in the true sense of the term, from the position of an Indian subject under the treaty of 1869. That treaty created no right in the subjects of either

(1) 3 Q. B. D. 42.

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State any more than in fugitive aliens not to be extradited for other than "heinous offences". It is noteworthy that even in *Wilson's* case, (*ubi supra*) where there was an exception in the treaty in favour of the subjects of the contracting States, the decision was based not on the ground that the treaty by itself conferred any right or privilege on English subjects not to be surrendered but on the ground that the Order in Council applying the Extradition Act, 1870, to Switzerland limited its operation, consistently with the terms of the treaty, to persons other than English subjects. It is, therefore, not correct to say that, by providing for extradition for additional offences, the Act derogates from the rights of Indian citizens under the treaty or from the provisions of the treaty. We are accordingly of opinion that the arrest and surrender of the appellant under section 7 of the Act is not rendered unlawful by anything contained in the treaty of 1869, assuming that it still subsists.

The appeal fails and is dismissed.

Fazl Ali J.

FAZL ALI J.—I have had the advantage of reading the judgments prepared by my brothers, Sastri and Mukherjea, who have given different reasons for arriving at the same conclusion. As I am inclined to agree with the line of reasoning in both the judgments, I concur in the order that this appeal should be dismissed.

Mahajan J.

MAHAJAN J.—I agree with the judgment going to be delivered by my brother Mukherjea. For the reasons given therein this appeal should be dismissed.

Mukherjea J.

MUKHERJEA J.—This appeal, which has come up before us on special leave granted by this Court, is directed against a judgment of Harish Chandra J. of the Allahabad High Court dated 11th of November, 1949, by which the learned Judge dismissed an application of the appellant under sections 491 and 561-A of the Criminal Procedure Code.

The facts which are material for purposes of this appeal are not in controversy and may be shortly stated as follows: The appellant Dr. Babu Ram

Saksena, who is a resident of the United Provinces, was a member of the Executive Civil Service in that province, and during his official career, extending over 30 years, held various important posts, both in and outside that province. In January, 1948, he was appointed Administrator of the Tonk State, where a dispute was going on at that time regarding succession to the rulership of the State between two rival claimants. On 11th of February, 1948, the dispute was settled and Ismail Ali Khan was recognised as the Nawab or the Ruling Prince of the State and appellant was then appointed Dewan and Vice-President of the State Council, of which the Nawab was the President. In April, 1948, the Tonk State, together with several other States in Rajputana, integrated and formed together the United State of Rajasthan and the appellant thereupon became the Chief Executive Officer of the Rajasthan Government. Towards the end of July, 1948, he got another special post under the Rajasthan Government, but soon afterwards, he took leave and proceeded to Naini Tal, where he has been residing since then. On 23rd May, 1949, he was arrested at Naini Tal on the strength of a warrant issued under section 7 of the Indian Extradition Act, 1903, by Shri V. K. B. Pillai, Regional Commissioner and Political Agent of the United State of Rajasthan. The warrant, which is dated the 8th of May, 1949, was addressed to the District Magistrate of Naini Tal and directed to the arrest of Dr. Saksena and his removal to Rajasthan, to be delivered to the District Magistrate of Tonk for enquiry into certain offences against the laws of that State which he was alleged to have committed. After his arrest, the appellant was released on bail in terms of the warrant itself and was directed to be present before the District Magistrate of Tonk on the 7th of June, 1949. The allegations against the appellant in substance are, that while he was the Dewan of the Tonk State and Vice-President of the State Council, the Nawab, being in urgent need of money to meet his personal demands, requested Dr. Saksena to help him in obtaining for his own use

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a sum of Rs. 14 lakhs from the State Treasury. Dr. Saksena promised his assistance on condition that the Nawab would give him a sum of Rs. 3 lakhs out of this amount as his share. By dint of his efforts, the appellant succeeded in inducing the State Ministry to pay the full amount of Rs. 14 lakhs to the Nawab in different instalments. The first instalment, amounting to over Rs. 2½ lakhs was paid on 31st March, 1948, and a further sum of Rs. 5 lakhs was paid on 21st of April following. On that date, it is said, the Nawab paid to Dr. Saksena a sum of Rs. 1,50,000 which was only half of the promised amount. A few days later, Dr. Saksena pressed for payment of the balance and held out threats to the Nawab that in case the money was not paid, the latter would find himself in serious difficulties as his position as a Ruling Prince of the State was not at all secure and there were grave charges against him. As a result of these threats and misrepresentations, the Nawab was induced to pay to the appellant the balance of Rs. 1,50,000 in two instalments. The matter became known to the Regional Commissioner some time in November 1948 and he called Dr. Saksena for an interview and succeeded in getting back from him the entire sum of Rs. 3 lakhs which the Nawab had paid. On the basis of these facts, Dr. Saksena has been accused of having committed offences under sections 383 and 420 of the Indian Penal Code.

On 3rd June, 1949, Dr. Saksena filed an application in the High Court of Allahabad under sections 491 and 561-A of the Criminal Procedure Code, complaining of illegal and unauthorised detention under the warrant of the Regional Commissioner of Rajputana dated the 8th of May, 1949. The legality of the warrant and of arrest thereunder was attacked on a number of grounds. It was contended, first of all, that the applicant was falsely implicated by the Nawab on account of enmity which grew up between them for various reasons and the allegations made were totally false. It was next said that the District Magistrate of Naini Tal could not take cognizance of the matter without the previous

sanction of the U. P. Government under section 197 of the Criminal Procedure Code and that the sanction of the Rajpramukh of the United State of Rajasthan was also necessary before any proceeding could be initiated. The third and the main contention was that the alleged offences being said to have been committed in the State of Tonk, the case would be governed by the provisions of the Extradition Treaty entered into between the British Government and the Tonk State on 28th of January, 1869, and as neither "extortion" nor "cheating" was mentioned in the list of offences for which extradition was permissible under that Treaty, the warrant of arrest issued under section 7 of the Extradition Act was wholly illegal and unauthorised. It is admitted that these offences are specified in the Schedule to the Indan Extradition Act of 1903, but it was said that section 18 of the Extradition Act expressly made the Act inapplicable when its provisions "derogated" from those of a Treaty. Lastly, it was urged that the extradition warrant was a *mala fide* step taken by the Nawab of Tonk with the help of his friend the Regional Commissioner of Rajasthan for ulterior purposes and that it constituted a fraud upon the Statute and an abuse of the processes of law.

The application was heard by Harish Chandra, J. sitting singly, and by a judgment dated 11th of November, 1949, which fully and elaborately discussed the different points raised in the case, the learned Judge rejected the application of the petitioner. No certificate was given by the High Court under section 205(1) of the Government of India Act, 1935, and the present appeal has been brought to this Court on the strength of special leave granted by it.

Sir Alladi Krishnaswami Aiyar, who appeared in support of the appeal, has very properly not pressed before us all the points that were canvassed on behalf of his client in the Court below. His contention, in substance, is that the rights of extradition in the present case should be regulated exclusively by the provisions of the Extradition Treaty that was entered into between the Tonk State and the British Government

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on 28th of January, 1869, and was subsequently modified by a supplementary Treaty in the year 1887. This Treaty, it is argued, has not been abrogated or rendered ineffective in any way by reason of the merger of the Tonk State in the United State of Rajasthan, and the decision of the High Court on this point is erroneous. According to the provisions of this Treaty, no extradition is permissible in respect to offences of "extortion" and "cheating" with which the appellant is charged and the warrant of arrest issued by the Political Agent is consequently illegal and *ultra vires*. It is conceded by Sir Alladi that if section 7 of the Indian Extradition Act, 1903, is held to be applicable to the facts of the present case, the warrant of arrest issued by the Political Agent of Rajasthan could not be assailed as invalid or inoperative; but his contention is that section 18 of the Extradition Act makes an express reservation in cases where Treaty rights exist and to the extent that the provisions of Chapter III of the Extradition Act derogate from those of any Treaty relating to extradition of offenders, the Treaty is entitled to prevail.

To appreciate the merits of this contention, it may be convenient to refer at this stage to a few sections of the Indian Extradition Act of 1903 as well as to the material provisions of the Extradition Treaty between the Tonk State and the British Government which have a bearing upon the present question.

Chapter III of the Indian Extradition Act deals with surrender of fugitive criminals in case of States other than foreign States and section 7, with which this chapter opens, provides as follows :

"(1) Where an extradition offence has been committed or is supposed to have been committed by a person, not being a European British subject, in the territories of any State not being a foreign State, and such person escapes into or is in British India, and the Political Agent in or for such State issues a warrant, addressed to the District Magistrate of any district in which such person is believed to be, (or if such person is believed to be in any Presidency town

to the Chief Presidency Magistrate of such town), for his arrest and delivery at a place and to a person for authority indicated in the warrant such Magistrate shall act in pursuance of such warrant and may give directions accordingly."

* * * *

The expression "extradition offence" has been defined in section 2(b) and means "any such offence as is described in the First Scheme to the Act." The First Schedule gives a catalogue of offences described with reference to specific sections of the Indian Penal Code and it includes offences punishable under sections 383 and 420 of the Indian Penal Code *prima facie,* it seems therefore that all the conditions laid down in section 7 of the Extradition Act are fulfilled in the present case. The warrant has been issued by the Political Agent of a State which is not a "foreign State" as defined by the Act and the offences with which the appellant is charged are "extradition offences" as specified in Schedule I. Sir Alladi's contention, as stated above, is that section 7, which is in Chapter III of the Extradition Act, is controlled by section 18 which lays down that "nothing in this chapter shall derogate from the provisions of any treaty for the extradition of offenders, and the procedure provided by any such treaty shall be followed in any case to which it applies, and the provisions of this Act shall be modified accordingly."

Turning now to the Extradition Treaty between the Tonk State and the British Government, it will be seen that the First Article of the Treaty provides for extradition, where a British subject or a foreign subject commits a "heinous" offence in British territory and seeks shelter within the limits of the Tonk State. The Second Article deals with an offender who is a subject of the Tonk State and having committed a "heinous" offence within the State seeks asylum in British territory; while the Third Article relates to a person other than a Tonk subject who commits a "heinous" offence within the limits of the Tonk State and seeks asylum in British territory. The conditions

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under which extradition could be had in all such cases and the procedure to be followed are laid down in article 4. Article 5 then gives a list of offences which would be deemed as coming within the category of "heinous" offences. It is not disputed that neither "cheating" nor "extortion" are mentioned in this list. The whole controversy, therefore, centers round the point as to whether in view of the provisions of the Extradition Treaty mentioned above, extradition could legally be made or demanded in respect of offences coming under sections 383 and 420 of the Indian Penal Code which are mentioned in the list of offences specified in Schedule I to the Extradition Act but do not find a place in article 5 of the Treaty. Could it be said that the provisions of the Extradition Act, derogate in this respect from the Treaty between the Tonk State and the British Government and consequently, the terms of the Treaty would override the statute as indicated in section 18 of the Extradition Act?

The learned Attorney-General, who appeared for the Government of India, put forward a two-fold argument in reply to the contention of Sir Alladi. He argued in the first place, that section 18 of the Indian Extradition Act has no application to the present case inasmuch as the Extradition Treaty between the Tonk State and the British Government, upon which the appellant relies, does not subsist and cannot be enforced, at the present day. The other contention is that even if the Treaty still subsists, there is nothing in its terms which prohibits extradition for offences other than those described as heinous offences in article 5. It is argued that "to derogate" means "to detract" or "to take away" and the Schedule to the Extradition Act by mentioning certain offences, which do not occur in the list of "heinous offences" as given in the Treaty, cannot be said to have derogated from the terms of the Treaty. Both these points were fully argued on both sides and it is clear that if on either of these points a decision is reached adverse to the appellant, the appeal is bound to fail.

So far as the first point is concerned, Mr. Setalvad has drawn our attention to various political changes that have come over the Tonk State since the conclusion of the Extradition Treaty in 1869. In 1869 Tonk was one of the Native States in India with a "separate" political existence of its own and the Treaty that was entered into in that year was meant to regulate exclusively the rights and obligations in matters of extradition of offenders as between the Tonk State on the one hand and the British Government on the other. In 1887 there was a modification of the Treaty but it is not disputed that the modification made certain alterations in the procedure which are not material for our present purpose.

The major political change with regard to all Indian States which vitally affected their existing Treaties with the British Government occurred on the 15th of August, 1947, when India became an Independent Dominion. Section 7 of the Indian Independence Act provided *inter alia* that:

"(1) As from the appointed day—

.....

(b) The suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States.....

As a result of this provision, the Extradition Treaty between Tonk and the British Government must be deemed to have lapsed with effect from the 15th of August, 1947. If matters stood there, obviously there would be nothing left upon which section 18 of the Indian Extradition Act could possibly operate. There was, however, a Standstill Agreement entered into by the Indian Dominion with the Indian States, the first article of which runs as follows:

"1. (1) Until new agreements in this behalf are made, all agreements and administrative arrangements as to matters of common concern now existing between the Crown and any Indian State shall, in so far as may be appropriate, continue as between the Dominion of

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India or, as the case may be, the part thereof, and the State.

(2) In particular, and without derogation from the generality of sub-clause (1) of this clause the matters referred to above shall include the matters specified in the Schedule to this agreement."

The Schedule does mention "extradition" as one of the matters to which the Standstill Agreement is applicable. This was certainly intended to be a temporary arrangement and Mr. Setalvad argues that as there was no Treaty in the proper sense of the term but only a substitute for it in the shape of a temporary arrangement, section 18 of the Extradition Act which expressly mentions a Treaty cannot be applicable. While conceding that *prima facie* there is force in the contention, I think that this would be taking a too narrow view of the matter and I should assume for the purposes of this case that under the Standstill Agreement the provisions of the Treaty of 1869 still continued to regulate matters of extradition of criminals as between the Tonk State on the one hand and the Indian Dominion on the other till any new agreement was arrived at between them.

Though the Standstill Agreement was to take effect after the establishment of the Indian Dominion, the Instrument was actually signed on 8th of August, 1947. On the 16th of August, 1947, Tonk acceded to the Dominion of India and one of the terms in the Instrument of Accession is that the "Ruler accepts the position that with regard to matters specified in the Schedule to the Instrument, the Dominion Legislature would be entitled to make laws for the State". "Extradition including the surrender of criminals and accused persons to parts of His Majesty's Dominion outside India" is one of the matters specified in the Schedule. Thus the State gave up and surrendered in favour of the Dominion Legislature its right to legislate in respect to extradition after the date of accession. Whether the existing Extradition Treaty was *ipso facto* abrogated by this Instrument of Accession is not so clear. Obviously, the Indian Dominion

could pass any legislation it liked regarding matters of extradition between the Tonk State, and any other State, either Indian or Foreign. No such law was, however, passed by the Indian Legislature except that very recently under an Adaptation Order the Extradition Act of 1903 has been made applicable to States under Group B in the Indian Constitution in which Rajasthan is included. It is to be noted that the Extradition Act itself, which is made applicable to the United State of Rajasthan, contains an express provision in section 18 which safeguards existing treaty rights. It is somewhat unusual that an Extradition Treaty would be subsisting even after the State had acceded to India but we have no materials before us upon which we could definitely hold that the Treaty has been expressly superseded or abrogated by the Indian Legislature.

The next important thing is that in April, 1948, there was a Covenant entered into by the Rulers of nine States including Tonk, by which it was agreed by and between the covenanting parties that the territories of these nine States should be integrated into one State by the name of the United State of Rajasthan. This was done with the concurrence of the Dominion of India. Later on, on 12th of May, 1949, Mewar also became a party to this Covenant and the United State of Rajasthan was reconstituted by the integration of the territories of all the ten States. By the Covenant of merger, the Covenanting States agreed to unite and integrate their territories in one State known as the United State of Rajasthan and to have a common executive, legislature and judiciary. The Rulers of all the States became members of the Council of Rulers and the President was designated as the Raj Pramukh of the United State. Article VI of the Covenant of Merger runs as follows:

"(1) The Ruler of each Covenanting State shall, as soon as practicable and in any event not later than the first day of May, 1948, make over the administration of his State to the Raj Pramukh; and thereupon—

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(a) all rights, authority and jurisdiction belonging to the Ruler which appertain or are incidental to the Government of the Covenanting State shall vest in the United State and shall hereafter be exercisable only as provided by this Covenant or by the Constitution to be framed thereunder ;

(b) all duties and obligations of the Ruler pertaining or incidental to the Government of the Covenanting State shall devolve on the United State and shall be discharged by it ; and

(c) all the assets and liabilities of the Covenanting State shall be the assets and liabilities of the United State."

The question now is how far was the Extradition Treaty between the Tonk State and the British Government affected by reason of the merger of the State into the United State of Rajasthan. When a State relinquishes its life as such through incorporation into or absorption by another State either voluntarily or as a result of conquest or annexation, the general opinion of International Jurists is that the treaties of the former are automatically terminated The result is said to be produced by reason of complete loss of personality consequent on extinction of State life(1). The cases discussed in this connection are generally cases where independent States have ceased to be such through constrained or voluntary absorption by another with attendant extinction of the former's treaties with other States. Thus the forceable incorporation of Hanover into the Prussain Kingdom destroyed the previous treaties of Hanover. The admission of Texas into the United States of America by joint resolution extinguished the Treaties of the Independent Republic of Texas(2). The position is the same when Korea merged into Japan. According to Oppenheim, whose opinion has been relied upon by Sir Alladi, no succession of rights and duties ordinarily takes place in such cases, and as political and personal treaties presuppose the existence of a contracting State,

(1) *Vide* Hyde on International Law, Vol. III, p. 1529.
(2) *Vide* Hyde on International Law, Vol. III, p. 1531,

they are altogether extinguished. It is a debatable point whether succession takes place in cases of treaties relating to commerce or extradition but here again the majority of writers are of opinion that they do not survive merger or annexation (1).

The remarks quoted above do not, however, seem quite appropriate to a case of the present description. Here there was no absorption of one State by another which would put an end to the State life of the former and extinguish its personality. What happened here was that several States voluntarily united together and integrated their territories so as to form a larger and composite State of which every one of the covenanting parties was a component part. There was to be one common executive, legislature and judiciary and the Council of Rulers would consist of the Rulers of all the Covenanting States. It may not be said, therefore, that the Covenanting States lost their personality altogether and it is to be noted that for purposes of succession of Rulership and for counting votes on the strength of population and other purposes the Covenant of Merger recognises a quasi-separation between the territories of the different States. But although such separation exists for some purposes between one State territory and another, it is clear that the inhabitants of all the different States became, from the date of merger, the subjects of the United State of Rajasthan and they could not be described as subjects of any particular State. There is no such thing as subject of the Tonk. State existing at the present day and the Ruler of Tonk cannot independently and in his own right exercise any form of sovereignty or control over the Tonk territory. The Government, which exercises sovereign powers, is only one, even though the different Rulers may have a voice in it. It seems to us that in those altered circumstances the Extradition Treaty of 1869 has become entirely incapable of execution. It is not possible for the Tonk State, which is one of the contracting parties to act in accordance with the terms of the treaty, for it has no longer any independent

(1) Oppenhein on International Law. Vol. I, p. 152.

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authority or sovereign rights over the Tonk territory and can neither make nor demand extradition. When as a result of amalgamation or merger, a State loses its full and independent power of action over the subject-matter of a treaty previously concluded, the treaty must necessarily lapse(1). It cannot be said that the sovereignty of the Tonk State in this respect is now vested in the United State of Rajasthan. The authority, so far as extradition was concerned, was already surrendered by the Tonk State in favour of the Dominion Government by the Instrument of Accession. But even assuming that these treaty rights could devolve upon the United State of Rajasthan by reason of article 6 of the Covenant of Merger, the latter, it seems to me, could be totally incapable of giving effect to the terms of the treaty. As has been said already, there could be no such thing as a subject of the Tonk State at the present moment and article 2 of the Treaty which provides for extradition of Tonk subjects accused of having committed heinous offences within Tonk territory and seeking asylum elsewhere would be wholly infructuous. The United State of Rajasthan could not possibly demand extradition on the basis of this article, and if reciprocity, which is the essence of an Extradition Agreement, is gone, the Treaty must be deemed to be void and inoperative.

The decision in *Terlinden* v. *Ames*(2) which was relied upon by Sir Alladi in course of his arguments, rather fortifies the view that I have taken. The question there was whether an Extradition Treaty between Prussia and the United States of America, which was entered into in 1852, could be given effect to after the incorporation of Prussia into the German Empire. The question was answered in the affirmative. It was pointed out *inter alia* that the Constitution of the German Empire left sufficient independent power and sovereignty to the States composing the confederation to enable them to act upon these treaties and it was observed by Chief Justice Fuller, who delivered the opinion of the Court, that where sovereignty in respect

(1) *Vide* Hyde on International Law, Vol. III, p. 1535.
(2) 184 U. S. 270.

to the execution of treaties is not extinguished and the power to execute remains unimpaired, outstanding treaties cannot be regarded as void. This is the real criterion and as obviously the power of the Tonk State to execute the treaty is altogether gone after the Covenant of Merger, the treaty cannot but be regarded as void.

The other case cited by Sir Alladi, *viz.*, that of *Lazard Brothers* v. *Midland Bank Ltd.*(1) has absolutely no bearing on this point. It laid down the well accepted proposition of International Law that a change in the form of government of a contracting State does not put an end to its treaties. The treaty entered into by the Czarist Russia could be given effect to after the Revolution, once the new government was recognised as a person in International Law.

My conclusion, therefore, is that the Extradition Treaty between the Tonk State and the British Government in 1869 is not capable of being given effect to in the present day in view of the merger of the Tonk State in the United State of Rajasthan. As no treaty rights exist, section 18 of the Indian Extradition Act has no application and section 7 of the Act has been complied with, there is no ground upon which we can interfere.

In view of my decision on the first point, the second point does not require determination and I refrain from expressing any opinion upon it.

In the result, the appeal fails and is dismissed.

Das J.

DAS J.—I substantially agree with the reasonings given in the judgment just delivered by my learned brother Mukherjea and concur in dismissing this application.

Appeal dismissed.

Agent for the appellant : *Rajinder Narain.*

Agent for the respondent : *P. A. Mehta.*

(1) [1933] A. C. 289.