

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Attorney-General for the Dominion of Canada v. Fedorenko, from the Court of King's Bench for Manitoba; delivered the 13th July 1911.

PRESENT AT THE HEARING :
THE LORD CHANCELLOR.
VISCOUNT HALDANE.
LORD MACNAGHTEN.
LORD SHAW.
LORD DE VILLIERS.
LORD ROBSON.

[DELIVERED BY THE LORD CHANCELLOR.]

The only question in this Appeal is whether the absence of a requisition by the Russian Government for extradition vitiated the proceedings under which this accused was arrested and committed for surrender ?

Mr. Justice Robson held that these proceedings should be founded upon a certain preliminary requisition, and that therefore, as there was not such a preliminary requisition, the accused should be discharged. His reason was that upon his construction of the Treaty with Russia this condition had to be complied with, and that in so far as the Canadian Extradition Act (C. 155 of the Revised Statutes 1906) was inconsistent with that Treaty the Treaty must prevail.

Their Lordships are of opinion that what was done in the arrest and committal was in

accordance with Section 10 of the Extradition Act, and that there is no inconsistency between the Act and the Treaty. The Treaty provides by Article IX. that, after a requisition in due form, the authorities of the State applied to shall proceed to the arrest of the fugitive. In that case the proceeding to arrest is obligatory. The Article does not provide that there shall be no arrest till after a requisition.

Their Lordships desire to say that nothing has come before this Board except this point of law. The other rights of the accused and of the State remain wholly unaffected.

Their Lordships will humbly advise His Majesty that this Appeal should be allowed, and that the Order of Mr. Justice Robson, dated the 17th of December 1910, should be discharged.

In the Privy Council.

THE ATTORNEY-GENERAL FOR THE
DOMINION OF CANADA

v.

FEDORENKO.

DELIVERED BY
THE LORD CHANCELLOR.

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