

EXTRADITION OF CRIMINALS.

prisoner from the gaol to which he or she was committed by the readiest way out of Her Majesty's dominions, it shall in every such case be lawful for any of Her Majesty's Judges in that part of Her Majesty's Dominions in which such supposed offender shall be in custody, upon application made to him or them by or on behalf of the person so committed, and upon proof made to him or them that reasonable notice of the intention to make such application has been given to some or one of Her Majesty's Principal Secretaries of State, or in Ireland to the Chief Secretary of the Lord Lieutenant of Ireland, and in any of Her Majesty's Colonies or possessions abroad for the Officer administering the Government of any such Colony or possession, to order the person so committed to be discharged out of custody, unless sufficient cause shall be shown to such Judge or Judges why such discharge ought not to be ordered."

Section five enacts, "that if, by any law or ordinance to be hereafter made by the local Legislature of any British Colony or possession abroad, provision shall be made for carrying into complete effect within such Colony or possession the objects of this present Act, by the substitution of some other enactment in lieu thereof, then it shall be competent to Her Majesty, with the advice of Her Privy Council, (if to Her Majesty in Council it shall seem meet, but not otherwise,) to suspend the operation, within any such Colony or possession, of this present Act so long as such substituted enactment shall continue in force there, and no longer."

In 1849 our Colonial Legislature passed an Act entitled, "An Act for *better* giving effect *within* this Province, to the Treaty," &c. It recites the tenth article of the Treaty, and further, "that certain provisions" of the 6 & 7 Vic. cap. 76, "have been found inconvenient in practice in this Province," and "more especially that provision which requires that before any such offender as aforesaid shall be arrested, a warrant shall issue under the hand and seal of the person administering the government, to signify that such requisition as aforesaid hath been made by the authority of the United States," &c., "inasmuch as by the delay occasioned by compliance with the said provision, an offender may have time afforded him for eluding pursuit."

It then enacted, "that it shall be lawful for any of the judges of any of Her Majesty's superior courts in this Province, or for any of Her Majesty's justices of the peace in the same, and they are hereby severally vested with power, jurisdiction and authority, upon complaint made under oath or affirmation, charging any person found within the limits of this Province with having committed,

within the jurisdiction of the United States of America, or of any of such States, any of the crimes enumerated or provided for by the said treaty, to issue his warrant for the apprehension of the person so charged, that he may be brought before such judge or such justice of the Peace, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient by him to sustain the charge according to the laws of this Province, if the offence alleged had been committed therein, it shall be his duty to certify the same, together with a copy of all the testimony taken before him, to the Governor or Lieutenant-Governor of this Province, or to the person administering the government of the same for the time being, that a warrant may issue, upon the requisition of the proper authorities of the said United States or of any of such States, for the surrender of such person, according to the stipulations of the said Treaty; and it shall be the duty of the said judge or of the said Justice of the Peace to issue his warrant for the commitment of the person so charged to the proper Gaol, there to remain until such surrender shall be made, or until such person shall be discharged according to law."

It then in effect enacted sections 2, 3 and 4, of the English Act, with this addition, that section 2 of our Act sanctioned a requisition from the United States, "or any of such States."

The Queen afterwards with the advice of Her Privy Council, suspended the operation of the 6 & 7 Vic. cap. 76, within the Colony of Canada, so long as our substituted enactment (12 Vic. cap. 19) should continue in force and no longer.

This was the state of our law till December 5th, 1859, when the 12 Vic., cap. 19, was carried into the Consolidated Statutes, as chapter 19 of Canada. It being declared that the "Consolidated Statutes shall not be held to operate as new laws, but shall be construed and have effect as a consolidation and as declaratory of the law as contained in the said acts, and parts of acts repealed, and for which the Consolidated Statutes are substituted" (cap. 29, sec. 8); it was deemed unnecessary to procure a further order from the Queen in Council, still suspending the operation of the 6 & 7 Vic. cap. 76. So the law continued till 1861, when, in order to give still better effect to the treaty, it was deemed expedient by the Legislature to allow only certain magistrates, qualified because of their position and knowledge of law, to act in carrying out the provisions of the treaty, so as to avoid if possible