

magistrate shall have ascertained the existence of legal grounds for the charge, and sufficient to put the accused on his trial." Kent based this view on the "law and usage of nations," which, he said, "rest on the plainest principles of justice." So late as 1864 President Lincoln surrendered a Cuban criminal to the government of Spain, with which country the United States had then no extradition treaty. The act was questioned in the Senate, and in reply to a request for information on the subject, the President sent a report prepared by Secretary Seward, on whose advice the surrender had been made. *Inter alia*, Mr. Seward said:—

"There being no treaty between the United States and Spain, nor any Act of Congress directing how fugitives from justice in Spanish dominions shall be delivered, the extradition in the case referred to, in the resolution of the Senate, is understood by this department to have been made in virtue of the law of nations and the constitution of the United States. Although there is a conflict of authorities concerning the expediency of exercising comity towards a foreign government by surrendering at its request one of its own subjects charged with the commission of crime within its territory, and although it may be conceded that there is no national obligation to make such a surrender unless it is acknowledged by treaty or by statute law, yet a nation is never bound to furnish asylum to dangerous criminals who are offenders against the human race."

In a letter on the same case to the Chairman of the Judiciary Committee of the House of Representatives, Mr. Seward declared that "the object to be accomplished in all these cases is alike interesting to each government, namely, the punishment of malefactors—the common enemies of every society," and that "while the United States affords an asylum to all whom political differences at home have driven abroad, it repels malefactors, and is grateful to their governments for undertaking their pursuit and relieving us from their intrusive presence." This is precisely the view of extradition on which Canada and the United States should act without hampering themselves by any treaty on the subject, and if the United States declines to surrender our malefactors when we take the trouble for our own purposes to ask for them, we should nevertheless avail ourselves of every opportunity of sending across the border all the criminals that were wanted in the United States for punishment. Instead of conceding to criminals a right of asylum, we should regard it as a grievance when our neighbours do not offer to take back all their fugitive malefactors. It would be interesting to trace the origin and history of the above perverted view of "asylum," but such an inquiry is foreign to the subject before us.

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