

C. L. Cham.]

IN RE RICHARD B. CALDWELL—HATCH V. ROWLAND.

[C. L. Cham.]

The purpose of the statute was to permit the foreign evidence to be made use of here, and not to make it obligatory in the foreign country to have issued a warrant against the offender as a basis for our authority to act.

When once the foreign officers have the person accused surrendered to them for removal from this country it must be for themselves to justify their detention of the person in their own country.

It may be that in cases of felony there the detention may be justified by any one in like manner, and to the like extent that it may be justified here without a warrant at all. But whether it can or cannot, or whether the offence is there a felony or not, can make no difference here.

Our concern must be to deal with these foreign offences in our own country in like manner as if they had been committed here: to enforce the treaty effectually and in good faith, and to leave all questions of municipal law between the foreign authorities and their prisoner to be dealt with and settled by their own system with which in that respect we have nothing whatever to do.

I am therefore of opinion, that it was not necessary that an original warrant should have been granted in the United States for the apprehension of the person accused, to enable proceedings to be effectually taken against him in this Province, for an offence within the laws of the treaty.

The second objection was, that the direct evidence of criminality was that of two accomplices, and that such evidence was not sufficient to establish the charge without proper corroborative testimony.

I do not attribute much weight to this objection, the evidence of accomplices is admissible, and jurors may when the rule of law with respect to such persons has been explained to them, find a verdict on the evidence of accomplices alone. Justices holding such preliminary investigations, may assuredly do so, when the question is whether the accused shall be put upon his trial or not; and when all such questions, as to how far his accomplices are to be credited, will be duly and at the proper time considered, the objection is not sustainable.

It was thirdly alleged, that the facts did not shew that the offence of forgery had been committed. It appears to me the offence has been sufficiently charged and proved to constitute the crime of forgery.

If it be under the act of 1823 (see Laws of the United States, Dunlop, p. 678, ch. 38), the offence is a felony.

If it be under the act of 1863 (see United States Statutes at Large, 37th Congress, ch. 67), the offence will I presume be a misdemeanour.

And if it be under the act of 1866, 39 Congress, ch. 24, it is a felony.

But whether a felony or misdemeanour can be of no consequence—it is nevertheless the offence of forgery, and it is with that alone that the treaty and the statute deal.

It was lastly objected that the accused could not be legally apprehended here upon the charge, because the offence, if committed at all, was committed more than two years before the complaint was made against him, and by the law of the United States, the lapse of two years was a bar to the criminal prosecution.

The period of limitation was denied. It was said to be five years in cases which affected the United States revenue. If it be restricted to the term of two years, then it was said the case must fail.

It was answered on the other hand that it was a matter of defence only, and the defence might be repelled by showing that the accused was a fugitive from justice.

It appears to me that what the judicial officer in this country has to do, is to determine the *prima facie* criminality of the accused, to determine whether the evidence is sufficient to sustain the charge or not.

It is not by any means determined in the United States whether a demurrer will lie, or a motion in arrest of judgment may be made, if the indictment show the offence to have been committed beyond the statutory period.

The accused is at liberty to take the benefit of the limitation under the general issue, and the prosecutor may show in reply, that the accused is not entitled to the benefit of the protection by reason of his flight from justice.

It appears to me it will be very inconvenient if the magistrate here is compelled to go beyond the law of enquiry as to criminality.

Suppose some pardoning statute to be relied on—with many exceptions and special provisions—and the accused claims the benefit of it on the claim for extradition. Is the magistrate to try this collateral question, whether the accused is or is not within its provisions, or has or has not forfeited his claim to its protection?

The limitation is a matter of defence; the accused is entitled to the advantage of it by plea, or by some proceeding in the nature of a plea, and he may be precluded from getting the advantage of it by a proper replication, or by counter evidence in the nature of a replication.

It affects his liability to be prosecuted or convicted, it does not affect his criminality.

On the whole, I think the accused should be remanded generally to the custody from whence he came, to abide the decision of his Excellency the Governor-General under the statute.

Prisoner remanded.

HATCH V. ROWLAND.

Ex. fu.—Stock in incorporated company.

Held, that stock in an incorporated company is only bound from the time when notice of the writ is given to the company by the sheriff under Con. Stat. Can. cap. 70, ss. 3, 4, and not from the time of the delivery of the writ to the sheriff.

[Chambers, March 10, 1870.—*Mr. Dalton.*]

This was an interpleader summons, obtained by the sheriff of the United Counties of Northumberland and Durham.

On the argument, the parties agreed to waive their right to an issue, and to leave the decision of the question in dispute to Mr. Dalton.

The matter in dispute was a small amount of stock in the Port Hope Gas Company, an incorporated company.

It appeared that on the 24th August, 1863, there were standing on the books of the company five and a half shares of its stock, in the name of the defendant, who on that day transferred the stock to James Clarke. It so remained until the 18th October, 1869, when Clarke re-