CANADA REPORTS.

ONTARIO.

COMMON LAW CHAMBERS.

(Reported by Henry O'Brien, Esq., *Barrister-at-Law.)*

In re Richard B. Caldwell.

Extradition—Habeas Corpus—Forgery—Warrant—Evidence of accomplice.

Held: 1. It is not necessary under the Extradition Treaty and Act, that an original warrant should have been granted in the United States, for the apprehension in this country of the person accused, to enable proceedings to be effectively taken against him in this Province for an offence within the treaty.

2. The evidence of accomplices is sufficient to establish a charge for the purposes of extradition.

3. Where the crime comes within the treaty, it is immaterial whether it is, according to the laws of the United States, only a misdemeanour and not a felony.

4. A magistrate here holding an investigation for the purpose of extradition should not go beyond a bare enquiry as to the *primâ facie* criminality of the accused, and should not enquire into matters of defence which do not affect such criminality.

[Chambers, March 25, 1870—*A. Wilson, J.*]

A writ of *habeas corpus* was obtained on behalf of the prisoner, directed to the Sheriff of the County of York and others.

The return stated that the prisoner was detained under the warrant of the police magistrate of the City of Toronto, on a charge of forgery committed in the United States, against the laws of that country.

J. H. Cameron, Q. C., for the prisoner, urged the following points in favour of his discharge.

1. There was no charge made in the United States before or since this charge.

2. The charge is only on the evidence of an accomplice.

3. The offence charged is not forgery within the law of the United States.

4. The charge is not within the treaty, and is condoned by a statute of limitation in the United States, which period (two years) had expired before the charge was made.

See 1 Parker, Crim. Rep. 108: *Ex parte Martin*, 4 C. L. J. N. S., 198; 29–30 Vic. cap. 45, sec. 3.

M. C. Cameron, Q. C., *contra.*

The remedy is not by habeas corpus.

It is not necessary that the charge should have been made in the United States before proceeding here: *Reg.* v. *Anderson*, 4 C. L. J. N. S., 315; *Ex parte Martin, ubi sup.*: *The Queen* v. *Gould*, 20 U. C. C. P., 154.

Fugitives from justice are not entitled to the benefit of the limitation claimed, 5 Cranch 37; 1 Wharton's Am. Law, sec. 436.

The case was argued before Mr. Justice Adam Wilson, who prepared the following judgment, which, however, was delivered by the Chief Justice of the Common Pleas during the absence of the former learned judge on circuit.

A. Wilson, J.—It was objected that no charge had been made in the United States against the prisoner for the alleged offence, and that until criminal proceedings had been taken there, none could properly, under the treaty and our statutes passed for giving effect to the same, be initiated here.

The statute of the Dominion, 31 Vic. cap. 94, (Reserved Act; see 32, 33 Vic. p. xi) reciting the treaty, refers to "persons who being charged with the crime of murder, &c., within the jurisdiction of the high contracting parties, should seek an asylum, or should be found within the territories of the other, provided that this should only be done upon such evidence of criminality, as according to the laws of the place where the fugitive or person so charged should be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed, &c."

The *charge* may therefore be made within the jurisdiction of *either* of the high contracting parties, in case the evidence of criminality, "according to the laws of the place where the fugitive or person *so charged* should be found, would justify his apprehension and commitment for trial if the crime or offence had *been there* committed." The language of the enacting part, (sec. 1) is to the same effect.

I should have thought that the statute permitted a charge to be made here against a person who had committed an offence within the treaty in the United States of America, although no charge had been begun there against the person for that offence, and I should have thought it to be free from all doubt but for the second section of the act, which enacts, that "In every case of complaint and of a hearing on the return of the warrant of arrest, copies of the depositions upon which the original warrant was granted in the United States, certified, &c., may be received in evidence of the criminality of the person so apprehended." The Con. Stat. of Canada, ch. 89, sec. 2, referred to the original warrant, not as the warrant that *was* granted, but which "*may have been granted*"

I do not, however, consider the statute to require that no charge should be laid here, when the offence has been committed in the United States, until a warrant has been granted there.

The legal functionary is bound to act here "on complaint under oath or affirmation charging any person, &c.," with one of the treaty offences. And when the person charged is brought before the judge or other person who directed the arrest, the judge or other person is to examine on oath, "any person or persons touching the truth of the charge, and upon such evidence as according to the laws of this Province, would justify the apprehension and committal for trial of the person accused, if the crime had been committed here, the judge or other person shall issue his warrant for the commitment of the person charged, to remain until surrendered or duly discharged."

The judge or other person acting may proceed upon original *vivâ voce* testimony in like manner "as if the crime had been committed in this province." He may, however, also receive copies of the depositions on which the original warrant was issued in the United States in evidence of the criminality of the accused.

This, however, is an enabling act. There is no obligation on the prosecutor to produce such depositions. And I do not conceive that the statute requires there shall be first such depositions taken, and a warrant granted thereon in the United States, to give jurisdiction to the magistrate here.