

## EXTRADITION OF CRIMINALS.

foreign country, or the warrant of the Governor General here: (*Id.*) A form of warrant is given in the schedule to the English statute 8 & 9 Vic. cap. 120; but as that act is apparently not in force here, the form which it gives ought not to be too closely followed. In case the person committed be not conveyed out of the province within two months after commitment (over and above the time required to convey the prisoner from the gaol to which he has been committed, by the nearest way out of the province), any of the judges of the superior courts having power to grant a habeas corpus, upon application made to him or them by or on behalf of the person committed, and upon proof made to him or them that reasonable notice of the intention to make such application has been given to the Provincial Secretary, may order the person so committed to be discharged out of custody, unless sufficient cause be shown why such discharge should not be ordered. This is in effect the same as sec. 4 of the Imperial Statute 6 & 7 Vic. c. 76, from which it is apparently taken. The act of Congress of the United States, passed on 12th August, 1848, contains a like provision: (Con. Stat. Can. c. 89, s. 4.)

It is not said expressly in the treaty, nor except by inference in any of the statutes under it, *where* the surrender is to be made. It is provided by sec. 4 of 24 Vic. c. 6, that "the person or persons authorized as aforesaid (i.e. authorized in the name and on behalf of the United States to receive), may hold such person in custody and take him to the territories of the said United States, pursuant to the said treaty; and if the person so accused escapes out of any custody to which he stands committed, or to which he has been delivered as aforesaid, such person may be retaken in the same manner as any person accused of any crime against the laws of this province may be retaken upon an escape." Such is the language of sec. 8 of the Imperial Statute already quoted.

The clear intendment of the enactment is, that the delivery shall take place to the United States messenger within our territory; for it provides for the conveyance of the fugitive in the charge of that messenger to the territories of the United States, which means to the frontier, and also provides for an escape within our territory whilst in the like custody. The third section of the Act of Congress of the

United States, passed 12th August, 1848, is to the same effect. This being so, both powers agree as to the interpretation of the Treaty, so far as this point is concerned.

## 3.—EXPENSES.

The extradition under the Treaty is deemed for the benefit of the party requiring the surrender. In truth it is for the benefit of both countries that criminals should be punished, but the assumption of the treaty is just what we have mentioned. This being so it is considered only fair that "the expense of apprehension and delivery should be borne and defrayed by the party who makes the requisition and receives the fugitive." By making the requisition the party making it assumes the responsibility of paying the expenses of apprehending as well as delivering the fugitive (per Richards, C. J., in *re Burley*). The ordinary expenses, including fees to counsel, would seem to be intended (7 opinion Attorney General U. S. 612).

## EFFECT OF SURRENDER.

The surrender is made for trial on a particular charge expressed in the treaty, and for that only. The foreign government can only try the fugitive on the charge for which he is surrendered (per Richards, C. J., in *re Burley*, p. 45). What is to become of him afterwards is not so easily determined. Sir John B. Robinson, in the case of Anderson the escaped slave, said, "We are not to be influenced by the consideration (a very painful one in all such cases) that the prisoner, even if he be wholly acquitted of the offence imputed to him, *must* remain a slave in a foreign country" (20 U. C. Q. B. 173). But notwithstanding the dictum of a judge so eminent, we venture to affirm that the surrender being for a special purpose, and for that purpose only, the fugitive, when that purpose is attained, should be free to return to his asylum. The surrender is made of a person accused of crime to be tried on that accusation. If not guilty of the charge of which accused and for which surrendered he should not be, it seems to us, he retained on a different charge, or because of any municipal law or lien. The latter we do not recognize, and but for the treaty we are not bound to recognize the former. So it is apprehended an arrest of the fugitive in the foreign country on civil process of any kind for an offence not within the