

EXTRADITION OF CRIMINALS.

DIARY FOR MARCH.

- 1. Wed ... *Ash Wednesday. St. David.*
- 5. SUN ... *1st Sunday in Lent.* [for County Court.
- 6. Mon ... Recorder's Court sits. Last day for notice of trial
- 12. SUN ... *2nd Sunday in Lent.* [for York & Peel.
- 14. Tues ... Qr. S. & Co. Ct. sit in each Co. Last day for ser.
- 16. Thur ... Sittings Court of Error and Appeal.
- 17. Frid ... *St. Patrick.*
- 19. SUN ... *3rd Sunday in Lent.*
- 21. Frid ... Declare for York and Peel.
- 23. Sat ... *Lady Day. Annunciation V. M.*
- 26. SUN ... *4th Sunday in Lent.*

NOTICE.

Owing to the delay that has unavoidably taken place in the issue of the January number and of this number of Law Journal and Local Courts' Gazette, the time within which payments must be made to secure the benefits of cash payments be extended to 1st April next.

Owing to the very large demand for the Law Journal and Local Courts' Gazette, subscribers not desiring to take both publications are particularly requested at once to return the exact numbers of that one for which they do not wish to subscribe.

THE

Upper Canada Law Journal.

MARCH, 1865.

EXTRADITION OF CRIMINALS.

Jurists are divided upon the question, how far a sovereign state is, independently of treaty obligations, bound to deliver up persons charged with crime committed in another state, upon the demand of the foreign state.

Some writers maintain the doctrine, that according to the law and usage of nations, every sovereign state is obliged to refuse an asylum to individuals accused of crimes affecting the general peace and security of society, and whose extradition is demanded by the government of that country within whose jurisdiction the crime was committed.

Others, maintain that the extradition of persons accused of crime, independently of treaties, is not a matter of obligation but of comity, and they refer to the fact of the existence of so many special treaties respecting this matter, as conclusive evidence that there is no general usage among nations, constituting a perfect obligation and having the force of law, properly so called (see Wheaton's International Law, 6 Edn., p. 176).

The opinions expressed by eminent jurists in the English House of Lords, respecting the extradition treaty with France, is strong to show that the law of England does not

recognize the obligation of the British Government to surrender fugitives accused of crime committed in foreign countries, in the absence of a treaty or statute providing for and authorizing the same (per Macaulay, C. J., in *Regina v. Tubbee*, 1 U. C. Pr. R. 102, 103).

Such also is the doctrine which, at an early period, was maintained by the Government of the United States, and has since been confirmed by judicial authority in the American Courts of Justice, both State and Federal (see Wheaton's International Law, 177).

This being so, the necessity of a treaty on the subject between the Governments of Great Britain and the United States, was felt at a very early date. The first treaty between these two great powers, was made on 19th November, 1794, commonly called "Jay's Treaty" and related only to criminals accused of murder and felony, but as it has long since been superseded it is unnecessary to say more about it. The next was that commonly called the Ashburton Treaty, or Treaty of Washington, signed at Washington on 9th August, 1842, by Lord Ashburton on behalf of the British Government, and Daniel Webster on behalf of the Government of the United States. The ratifications were exchanged at London on 13th October following. It relates to many subjects, besides the giving up of fugitive criminals from justice, but with the latter only are we at present concerned.

The tenth article reads as follows: "It is agreed that Her Britannic Majesty and the United States, shall upon mutual requisitions by them, their ministers, officers or authorities respectively made, deliver up to justice all persons who being charged with the crime of murder or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper committed within the jurisdiction of either, shall seek an asylum or shall be found within the territories of the other; provided that this shall only be done upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had been there committed, and the respective judges and other magistrates of the two governments, shall have power, jurisdiction and authority upon complaint made under oath, to issue a warrant for the apprehension