

Gilbert as Police Magistrate, and was, I think, on his part, wholly extra judicial. No complaint or information appears to have been laid before him to justify his taking the deposition, and if the charge of Piracy, which the statements in it unanswered would justify, had been made at that time before him, he had no jurisdiction to entertain it; still less had he jurisdiction if the offence was an alleged crime committed within the jurisdiction of the United States, and therefore amounted to no legal charge, and to no legal evidence of the crime of Piracy; but is it not absolutely necessary that the parties should be charged with the commission within the jurisdiction of the United States of one of the crimes mentioned, that is legally charged judicially, or by public process, or in some manner warranted by the laws of the country in which the alleged offence was committed. I think the words of the statute too clear to admit of any reasonable doubt on this point; and the 2nd section of the Act confirms me in this view. This Section contemplates it being done by the issuing of a warrant, for in providing that certain evidence may be used by the Magistrate or officer in the investigation of the criminality of the person apprehended, it says, "copies of the depositions upon which the original warrant was granted &c." This obviously refers to the original Warrant granted in the country where the crime was committed, and anterior to the requisition; and this view would seem to be entertained by jurists of the highest celebrity in the United States, for in the judgment of Nelson, Justice, in the Supreme Court of the United States in Kane's case, as reported in 14 Howard, he says: "This species of evidence is very differently guarded in the Act of Parliament, 6th and 7th Vic. There copies of the depositions laid before the Government, and upon which the proper officer issued his warrant to the Magistrates authorizing them to institute proceedings to arrest and commit the fugitive, are those only permitted to be given in evidence; in other words, copies of the depositions upon which the Government acted in the matter are admissible as evidence of criminality. The original of these are those upon which our Government make the Requisition, and of course the good faith of the nation is pledged that they are taken before competent officers, and that the facts stated are true." And Chief Justice Taney concurring, as he said he did, in all that Nelson, Justice, then said, contented himself with expressing his entire assent to the opinion Nelson had then just delivered; and

Daniel, Justice, concurred in all that Nelson, Justice said. And that this principle has been acted on will be seen by reference to Bisset's case, 6 Ad., and Bl., in England, where we find a warrant was first issued in France, and to Kane's case in the United States, just referred to, where a warrant was issued in Ireland, in addition to the special authority and affidavit of the Consul. In Kane's case, reported in 14 Howard, Mr. Barclay the British Consul was specially employed, the report says by direct authority of the British Minister, accredited to the Government of the United States, and in pursuance of this authority Mr. Barclay made the necessary affidavit; and no case has been cited to me, nor am I aware of any, where a different practice has been adopted. On the contrary I find in a note to the last edition by Lawrence of Wheaton's International Law, this view confirmed by the opinion of Mr. Cushing, May 31st, 1854, in the published opinions of the Attorneys General of the United States, volume 6, page 486. The practice is declared by him in these words:—

"The practice of our own Government, as well as that of Great Britain, requires that all claims of Extradition should be founded on a judicial warrant, with proper evidence to justify the warrant. The United States will not, therefore, make a demand on Great Britain for a person alleged to be a fugitive from the justice of one of the United States without the exhibition of a judicial warrant issued on sufficient proof by the local authority." And again in an opinion by the same learned gentleman, Nov. 2, 1854, published in the same work, vol. 7, page 6, he says: "A mere notification from a foreign legation that a party guilty of a crime has escaped, and perhaps fled to the United States of America, is not sufficient to justify the preliminary action of the President. The general rule is, the Government of which extradition, whether by comity only, (citing Kluber Sec. 66, Martin's Precs, Sec. 101) or by Treaty, is demanded, before it is called on to act, must have reasonable *prima facie* evidence of the guilt of the party, submitted to it, as well as the demand of the Executive authority." And again vol. 8, 215 page, in another opinion of the same, he says: "But to justify the commencement of proceeding in extradition it must appear that the criminal acts charged were committed within the territorial jurisdiction of the demanding Government."

But suppose the documents contain a charge against these prisoners, where do we find it alleged in them that the offence charged was

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