

The second objection raised is, that the proceedings were taken under the Extradition Act of 1877, and it is not shewn that that Act is in force in Canada. Section 5 of the Act provides that, as regards its application to any foreign state, it shall come into force by an Imperial Order-in-Council suspending the operation in Canada of the Imperial Act of 1870, concerning the extradition of criminals; said Order-in-Council to be published in the *Canada Gazette*.

The counsel for the prisoner contends that the passing of said Order-in-Council, and its publication in the *Canada Gazette*, should have been proven by the production of the *Gazette*; and no such evidence was adduced.

In fact, the Order-in-Council was passed on the 28th day of December, 1882, and it is found published in the first volume of the Dominion Statutes of 1883.

But the contention of the counsel for the prisoner is that, it not having been proven before the extradition judge, the Court cannot take judicial notice of it.

It is true that the return, under the writ of *certiorari*, does not shew that said Order-in-Council was proved to have been passed; it is, however, admitted by the counsel for the prisoner that it was mentioned to the extradition judge at the examination, and the volume of the Statutes of 1883, in which it was published, was sent for and brought into court; but it is claimed that it should have been put in as part of the evidence.

The real question is, whether the Court can take judicial notice of said Order-in-Council, and of its publication in the Statutes of 1883.

By Dominion Statute 38 Vic. c. 1, s. 1, it is provided that the Orders-in-Council and proclamations, or other documents, and such Acts of the Parliament of the United Kingdom, as the Governor in Council may deem of a public and general nature or interest in Canada, and may direct to be inserted in the first volume of the Statutes, published in any session of Parliament, shall be printed in said volume.

So, Orders-in-Council may be published in two ways: in the *Canada Gazette*, and in the volume of the Statutes; and it seems that those more particularly of a public and general nature or interest in Canada, shall be printed in the said volume. And as they are so published in the same volume as the Statutes, for

the in
preven
think a

It w
Court
their p
of the
differen
was to
had be
lication
ing said
been ac

The
Counci
two hun
the requ
with.
it woul
under t
county
in-Coun
it not b
not be p

But th
the who
tion is d
in-Coun
the Statu
is prom
same aut
One can
a judge t

The co
as extrad

SMITH,
facts are
applicati
The learn
dition, d