

DUGGAN, *Recorder*.—On behalf of the prisoner it is urged—first, that being a British subject, he is not within the provisions of the Extradition Treaty; second, that before and at the time of the committing of the acts charged as the robbery, war existed between the United States of America and the said Confederate States; that such act was one which the prisoner, then engaged in a belligerent enterprise, had by the law of nations a right to commit.

With regard to the first point the language of the treaty, as recited in our Act 22 Vic., chap. 89, of the Consolidated Statutes of Canada, is as follows:—"That Her Majesty and the said United States should, upon mutual recognition by them or their ministers, officers or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either of the high contracting parties, should seek any asylum or be found within the territories of the other."

The terms employed are plain and most comprehensive, embracing all persons, without exception or qualification of any kind. What persons, in the words of the treaty, are to be given up? Expressly "all persons who being charged," &c. That the treaty includes, and was intended to include, without exception, all persons, irrespective of country or nation, I entertain no doubt, and therefore hold that the prisoner, on the ground of his being a British subject, is not exempt from its provisions.

Then, as to the existence of war, I consider the existence of war proved. This important *status* is by the Supreme Court of the United States of America, in the judgment given on March 19th, 1863, in the case of the *Hiawatha* and *Amy Warwick*, distinctly recognized to be that of the contending parties. And I do not say that, taking into account the whole proceedings of the prisoner, as shown in the evidence for the prosecution, it may not be justly presumed that he was engaged in the enterprise which he and others acting with him professed. But I do say that it appears clear to me, upon the evidence, that the prisoner's arrangements for the alleged enterprise, the collecting of men and arms, were clandestinely made in this country, and were partially acted upon within this country, by proceeding from it direct with these men and arms into the adjoining territory of the United States of America, and that therein, and by these means, acts of hostility and violence were waged upon its non-combatant inhabitants—this country being happily at peace and in amity with the United States of America and with its people. I consider the above acts a flagrant violation of the public law and a gross injustice done to our country.

Then as to the taking from Ashley of his money by violence, and the putting him into peril of his life, the avowed object of the alleged enterprise was the release of the prisoners at Johnson's Island. Johnson's Island is in the State of Ohio, and far away from the scene of war and warlike hostilities. The country around is the abode of non-combatant people, engaged in the ordinary peaceful avocations of every day life, and it was through this country and amongst these people that the alleged enterprise was attempted to be carried out. Would it be lawful

for the belligerent enemies of the nation to which these people belong, simply on the ground of being such enemies, without any necessity for the acts by violence, and at the peril of the lives of these people, to despoil them of their effects and plunder them at will? It is said by writers on international law that by the modern usage of nations, which has now acquired the force of law, private property on land is exempt from confiscation, with the exception of such as may become booty in special cases, when taken from enemies in the field or in besieged towns, and military contributions levied upon the inhabitants of the hostile territory. It is not pretended that the prisoner committed the act complained of under any of the circumstances suggested. Ashley, when deprived of his money by violence, and at the peril of his life, was to the knowledge of the prisoner such a non-combatant as I have described. If the prisoner on the occasion in question had an absolute right, without necessity of any kind, then to take Ashley's money at the peril of his life, would he not equally have had the right in like manner by violence to despoil of his money and effects every other non-combatant United States citizen whom he might happen to meet and choose to attack under colour of carrying out, or because of being engaged in, a belligerent enterprise? I do not find that such a right exists, or is sanctioned by the code of Christian and enlightened nations.

I have herein endeavoured to give all the facts and circumstances material on this proceeding, and I have now to state, in conclusion, that I find and determine that the evidence taken before me, according to the laws of this Province, on the charge of robbery here preferred against the prisoner, Bennett G. Burley, would justify the apprehension and committal for trial of the said Bennett G. Burley, according to the laws of this Province, for the said robbery, if the same had been committed in this Province.

Order for committal.

COUNTY COURTS.

(Before the County Court Judge, at Goderich.)

THOMAS V. GRACE.

Subscription for charitable purposes.

Liability where purposes partly carried into effect with knowledge of subscriber, though no consideration sufficiently stated in the heading of the subscription list.

[October Term, 1864.]

This was an action for the amount of a subscription for building a church and rectory in Goderich. The defendant signed a subscription list for the sum claimed. The heading of the list was in these words: "We, the undersigned, do hereby severally promise and agree to pay to F. W. Thomas, Esq., agent of the Bank of Montreal, in Goderich, the sums set opposite our respective names, for the purpose of building an Episcopal church and rectory in the town of Goderich."

The action was defended on the ground that the church and rectory had not been built, and that therefore defendant was not liable, he having subscribed for both purposes, and was not a consenting party to the money being disposed of for one of the purposes only.