

it must necessarily be shown that the offence is called by the same name in both countries; and, moreover, this opinion appears to be but an *obiter dictum*, and one that does not seem to have been concurred in by Cave, J., who, in his judgment at pp. 136, 137, treats the question as simply turning on whether an offence has been established which, if committed in England, would be a crime under English law of the character of any of those mentioned in the Act. And we may observe that although the English Extradition Act includes a similar provision to s. 2, s-s. (b), of the Canadian Act, it does not appear to include any similar provision to that contained in s. 24.

The weight of opinion seems to us to be in favour of the view that under the Canadian Extradition Act the question of liability to extradition turns on whether or not the offence charged is one which, if committed in Canada, would come within any of the crimes specified in the first schedule, or, if not included in those, whether it would be a crime in Canada of the nature of any other crime specifically mentioned in the Extradition treaty under which the extradition is claimed.

It may be said that in this view of the Act a person might be extradited for having committed an act which, though constituting a crime in Canada, if committed here, might, nevertheless, not be a criminal act at all in the United States, but that is a contingency that is hardly possible; but it is quite possible that a crime which is designated by one name in Canada might go by another in the United States, and *vice versa*. Take, for instance, the crime of larceny, which has now, under the Canadian Criminal Code, disappeared from our criminal law, and become merged in "theft"; but even in this case, although the name of larceny has disappeared, the criminal act which constituted larceny is still indictable as formerly, although under another name; and we apprehend that a prisoner accused of larceny in the United States might still be extradited, notwithstanding that the offence, if committed in Canada, is now called "theft."

In view of the changes effected in the criminal law by the Code it is, however, desirable that the Extradition Act should be amended so as to conform to its phraseology, and thus exclude the possibility of offenders escaping justice on any technical grounds.

At page 393 Burton, J.A., puts the case of an offence being