

WINSLOW'S CASE.

of right, not of good intentions in a collateral matter. Besides, good faith in this connection means the good faith of detective Bucket or Vidocq, a substance as evanescent as the domicile of a fugitive criminal.

Such being the reason and the opinions of writers of the highest consideration, let us see what is brought to meet them. It appears that in France, where this important principle was first enunciated, the courts acted upon it for a quarter of a century. In 1867, another circular from the minister of justice, who now represented an emperor, and no longer a citizen king, admonished the judges that this was a political matter, and that all the courts could do was to postpone the trial until the government had been applied to. A criminal could acquire, he said, no right against the justice of his country: the tribunal could only try the facts; it could not take cognizance of the conditions upon which extradition had been granted, except upon a notification from the minister of justice.* Mr. Clarke thinks the courts have acquiesced in this view;† but the careful reader of his sixth chapter will find, we think, some reason to doubt his conclusion. It seems to us probable that the highest court of France has not yet yielded its independence to the dictation of executive authority; the last case mentioned by Mr. Clarke having been carefully decided upon its own circumstances, which were held to take it out of the rule. At any rate, the French have not abrogated the rule, but merely changed the department charged with its execution. This may amount to a practical denial of justice in cases which excite no diplomatic interest, as we shall show; but the principle is still fully admitted in France.‡

In the few cases that have been decided within the British jurisdiction and that of the United States, the courts, with some difference of opinion, have, on the whole, followed the later French doctrine, putting it precisely on the French ground, and two of them citing the phrase, that a criminal cannot acquire any right against the justice of his country. Only two of

these cases are reported at any length. The first is *U. S. v. Caldwell*,* decided in 1871 by the same able and learned judge who has lately been called to deal with Lawrence's case. The decision is, that the courts cannot inquire into the alleged breach of international law, but must leave it to the executive department. The other is *Adrianse v. Lagrave*,† in which the Court of Appeals, reversing an able opinion of the Supreme Court, citing *U. S. v. Caldwell*, and quoting much of the French circular, hold that a defendant brought here under the treaty with France is not, by the courts, to be protected from the service of civil process.

It is a matter of surprise that these cases should be cited as deciding a point of international law, when they most explicitly and unmistakeably refuse to consider it. That they do not and cannot, according to the opinions of the courts themselves, touch any such point, is well shown by an early case decided before the Ashburton Treaty was made. In *State v. Brewster*,‡ the defendant alleged that he had been illegally brought by the prosecutors from Canada, where he resided; his supposed crime, apparently, having been committed in Vermont, near the border-line; in short, that he was kidnapped. The court held this to be quite immaterial; saying, that, when a prisoner was within their jurisdiction charged with crime, it was not for them to inquire by what means he was brought within the reach of justice. Now, if that case decides that kidnapping is permitted by the law of nations, then *U. S. v. Caldwell*, and others like it, decide that a prisoner may, by international law, be lawfully tried for a crime not mentioned in the proceedings for his surrender; but otherwise they do not. The cases which we have mentioned are all those of which any extended report is given upon this point; but there are notices in Clarke of two cases in Canada which we have examined, and of one in England which is not reported. They shed no light upon the question of international law. It does not appear, however, that the practice of the courts, as far as it has gone, has been

* Clarke, pp. 171, 172. This passage is also cited in the opinion of the Court of Appeals in *Adrianse v. Lagrave*, 59 N. Y. 110.

† P. 174.

‡ See Clarke, p. 176.

* 8 Blatch. 131.

† *Adrianse v. Lagrave*, 59 N. Y. 110, reversing *Bacharach v. Lagrave*, 1 Hun, 689.

‡ 7 Vermont R. 118 (1835).