

C. L. Ch.]

In re BENNET G. BURLEY.

[C. L. Ch.]

tion as to its effect. The recitals I think sufficiently state the effect of the evidence and the decision of the Recorder thereon.

There is no doubt that under the Imperial statute passed to carry out the provisions of the treaty, very different proceedings are necessary to arrest a person who may have committed a crime in and fled from the United States. The proceedings required by that act had been found to be so inconvenient that it became desirable to substitute other enactments in lieu of the Imperial statute. The preamble of our statute, 12 Vic., cap. 19, refers especially to the inconveniences of requiring the warrant to issue by the Governor, to signify that a requisition had been made by the authority of the United States for the delivery of the offender, and to require all justices, &c., to govern themselves accordingly, and to aid in apprehending and committing to gaol the person accused, for the purpose of being delivered up to justice, according to the provisions of the treaty. After further declaring it expedient to make provision for carrying the treaty into complete effect within this Province by the substitution of other enactments in lieu of the Imperial Act, the Legislature proceeded to pass the statute of 1849, which was amended by the act of 1861, and by both these enactments the initiatory proceedings to arrest a fugitive from justice from the United States may be taken without any warrant from the Governor.

The effective words of the last Act are that upon complaint, made under oath, charging *any person found* within the limits of this Province with having committed within the jurisdiction of the United States of America any of the crimes enumerated in the treaty, it shall be lawful for any Judge, &c., Recorder of a city, &c., in this Province, to issue his warrant for the apprehension of the person so charged, that he may be brought before such Judge or other officer, and upon the said person being brought before him under the said warrant, it shall be lawful for such Judge, &c., to examine upon oath any person or persons, touching the truth of such charge, and upon such evidence as, according to the laws of this Province, would justify the apprehension and committal for trial of the person so accused, if the crime of which he shall be so accused had been committed herein, it shall be lawful for such Judge or other officer to issue his warrant for the commitment of the person so charged to the proper gaol, there to remain until surrendered according to the stipulation of the treaty, or until discharged according to law, and the Judge, &c., shall thereupon forthwith transmit to the Governor a copy of all the testimony taken before him, that a warrant may issue on the requisition of the United States for the surrender of such person, pursuant to the said treaty.

By the Imperial Statute, on the requisition being made by the authority of the United States, the Secretary of State or person administering the government in any colony of Her Majesty, by a warrant under his hand and seal, is to signify that such requisition has been so made, and to require all justices, &c., to govern themselves accordingly, and to aid in apprehending the person so accused. The act then proceeds

—“and thereupon it shall be lawful for the justice, &c., to examine persons under oath touching the truth of the charge, and upon such evidence as would justify the apprehension and commitment for trial of the accused, to issue a warrant for the apprehension of such person, and also to commit the person so accused to gaol, there to remain until delivered pursuant to such requisition as aforesaid.”

Mr. Justice Richey, in the *Chesapeake* case, whose able judgment I have perused with great interest, decided on the effect of the English statute, which is very different from ours, on this point. By the English Act the requisition is necessary to authorise the warrant of the Secretary of State or Governor, and that warrant is a condition precedent to the issue of a warrant by the justice to apprehend or to commit the party accused, and when committed he is to remain in custody until delivered pursuant to the requisition.

Our statute on the contrary, was intended expressly to render the warrant of the Governor unnecessary; and when the person is committed by the judge, &c., in this Province, he sends a copy of the evidence to the Governor, that a warrant may issue upon the requisition of the United States government for the surrender of such person pursuant to the treaty. It does not necessarily follow from the words of our act that the requisition must precede the arrest or committal of the person accused.

If it were necessary to make the requisition by the authority of the government of the United States before arresting a person who having committed a crime there, flies to this country, he might escape entirely before he could be arrested. The delay in obtaining the requisition might be so great that the criminal would have left the Province, and perhaps this continent, before he could be arrested, though the most clear and positive evidence could be procured on the spot to show that he had committed the offence. I think our Legislature intended to remedy this evil, and that the act they have passed has done so. The provision of the treaty for the payment of the expenses of the apprehension and delivery of the fugitive by the party making the requisition and receiving the fugitive, can be literally carried out by calling on the United States government to pay such expenses when they make the requisition and receive the fugitive. By making the requisition they assume the responsibility of paying the expenses of apprehending as well as delivering him.

I do not see sufficient reason to hold that the arrest or warrant of commitment is bad for not showing a requisition from or on behalf of the United States government for the delivery of the prisoner, as a person charged with the offence. If the evidence shows he has committed the offence under our statute, he may well be committed until surrendered.

This brings me to another objection, that the prisoner was charged in the United States with the offence of piracy, and that he cannot now be committed for the crime of robbery. The charge made in this Province, under which the prisoner was arrested, was robbery. If the requisition on behalf of the United States government be for his extradition for the crime of piracy, I have