

the accused had been discharged, either by an extradition judge or upon a writ of *habeas corpus*, for some or any defect in the proceedings in this country; either that the person who issued the first warrant had no jurisdiction or that there was some defect in the preliminary proof or proceedings, or that the warrant or order upon which he stood committed was invalid, or that the person had purged away the offence or crime by a failure in proof upon the preliminary enquiry, or that the discharge upon the *habeas corpus* is a bar to any subsequent arrest.

The principle contended for by counsel here, "*Nemo bis vexari pro una et eadem causa*," can only be held to have application where there has been a trial, and a final conviction or acquittal upon that trial; or where there has been an accusation in one form of indictment and disposed of by a legal termination, and the person accused by another form on the same facts, or where a statute provides a bar to further proceedings.

My acting in this capacity under the treaty and the Extradition Act, is simply and purely ancillary—in aid of the foreign court to which jurisdiction of trying this prisoner, and pronouncing upon the crimes alleged against him belongs—there is no power to try either the offence or the offender here, and a murderer or a convict for any crime named in or covered by the treaty (according to my judgment) does not purge his crime by a discharge upon *habeas corpus*. It would be contrary to the polity of the governments who are parties to the treaty, and of international law. We might harbor malefactors to any extent if such were held to be the case, contrary to the comity and object of the treaty. I hold that the treaty, being of international arrangement and concern, must be upheld and carried out to all reasonable intentment, and that it overrides all previously existing domestic laws to the contrary.

Although it is true the practice under the treaty is governed by our mode of conducting preliminary enquiries, as a matter of procedure, still the principle which applies to cases submitted to a grand jury in this country, where, if a bill of indictment be ignored in a charge for a criminal offence—upon which a prisoner is confined in gaol—there is nothing, although he be discharged from custody, in the fact of ignoring the bill, to prevent the accusation being taken

up, on a subsequent occasion, by another grand jury, at some future sittings of a court of competent jurisdiction, and of a bill of indictment being found for the same offence. The ignoring of the bill on the first indictment and the discharge of the accused from gaol, is no bar to the second accusation, nor would it purge the offence in any way.

The statute of Charles does not apply to a person accused of a crime committed in a foreign country—it only applies to cases of commitment on a criminal charge for an offence against the domestic law of this country. Nothing could justify the arrest of a foreigner—who has sought an asylum here, as a fugitive from foreign justice for a criminal offence alleged to have been committed abroad—in the absence of a treaty justifying such a proceeding—in *Rex v. Mackintosh*, 1 Stra., 308, it was held that the statute of Charles did not apply to a person committed for treason done in Scotland, because the courts will not act under the statute in the case of a person charged with a crime committed abroad.

Under the existing treaty with the United States, and the Extradition Act, the judges who perform judicial acts ancillary to the tribunals of the United States within the convention must be treated as should those tribunals themselves, in order to promote the purposes for which those tribunals exist, their acts are in the interest of promoting civilization by the detection, prevention, and punishment of crime, and to hold that the former discharge upon *habeas corpus* by a single judge would be to oust the foreign tribunal of its jurisdiction over the offence; or to suppose that the domestic law of this province would allow a fugitive from a foreign land, who has sought an asylum here, to purge his offence committed in the foreign land, no matter how heinous it might be, would be to turn the treaty into a failure and a delusion, and as said by KENT, C.J., "The statute never intended such a destruction of principle as to entrust to a judge, in vacation, the power to control the judgment or check the jurisdiction of a court of record," and it is not the policy of the high contracting parties to the existing treaty, that the criminals of either country should be covert or couchant in the country of the other.

I therefore find that the prisoner, John Wesley Parker, is a fugitive from justice from Coffee County in the State of Kansas, accused there of the crimes hereinbefore enumerated and referred