

EXTRADITION OF CRIMINALS.

Upper Canada they are not conditions precedent to the jurisdiction of the magistrate: (*In re Anderson*, 11 U. C. C. P. 1. *In re Burley*, ante.) Our legislature, as we have shown, in 1849, expressly declared that the requisition or warrant of the Governor General should not be a condition precedent. The delay in obtaining the requisition or warrant might be so great as to afford the accused certain means of escape. Our legislature intended to remedy this evil, and the act they passed has done so. (per Richards, C. J., in *re Burley*.)

The delivery is to be of "all persons, &c." implying subjects of both nations (*In re Burley*), as well slaves as freemen: (*In re Anderson*). In the former case it was contended that a natural born subject of her Majesty, accused of having committed crime in the United States, was not within the treaty; but the judges considered the point too clear for argument, and unanimously held that British subjects committing crime in the United States are within the treaty. In the latter case it was said that, to treat slaves as "chattels," and therefore excluded from the treaty, would have the effect of encouraging slaves to rob and to murder, and to make Canada their asylum—a result which could never have been contemplated, and too dreadful to be seriously argued. The language "all persons," is too plain to be mistaken. The words should receive a liberal interpretation, and hitherto have done so.

But the delivery is to be of all persons "who, being charged, &c." The meaning of the word "charged" is by no means clearly ascertained. Technically it may be said to mean "charged by information;" but its common acceptation is that of being accused, and in the latter sense it seems to be used. But the treaty does not contemplate persons being surrendered upon mere suspicion, and it is well that it does not, for there are so many inducements to procure extradition of individuals, upon pretence of crime, falling within the treaty, so as to restore them to foreign jurisdiction for other purposes, that a treaty less guarded than the one under consideration might lead to oppression: (per Sullivan, J., in *re Kermott*, 1 U. C. Cham. R. 236.) Whatever power a magistrate may have to detain upon evidence amounting to mere suspicion, for the purpose of other testimony being imported into the case, it is clear that a judge

before whom the prisoner is brought for his discharge on habeas corpus has no such power. (*Ib.*) The treaty has been held to apply to persons convicted of crime in the United States and fleeing to Canada: (*In re Asher Turner*, 1 U. C. L. J. N.S. p. 16.) So far as the technical complaint is concerned, it need not be laid in the United States before being laid here.

It is clear, from the provisions contained in our act, that the proceedings for arrest may be commenced in this province: (per Draper, C. J., in *re Anderson*, 11 U. C. C. P. 53; and in *re Burley*.) The treaty is intended to attach only on those whose crimes as well as flight have taken place since the treaty: (per Baron Platt, in *Regina v. Clinton*, Law Times, Nov. 1, 1845.)

The treaty is restricted in its terms to seven specified crimes, thus, "who being charged with the crime of murder, assault to commit murder, piracy, arson, robbery, forgery, or utterance of forged paper, &c." Murder is an offence against the laws of every civilized community, and equally known to the laws of all. The assault to commit murder is also made criminal by the laws of most civilized nations. Piracy, as used in the treaty, has been held by a majority of the judges of the Queen's Bench in England to mean municipal piracy, and not piracy on the high seas, which, being an offence against the laws of nations, may be tried in any country: (*Reg. v. Tienan*, 10 L.T. N.S. 500.) Arson is a crime well known to the laws of both countries at the time the treaty was made, and equally punishable by the laws of both countries. The same may be said of robbery, forgery, and the utterance of forged paper. But neither the treaty nor the statutes passed under it are to be taken as founded on a presumption that the criminal or civil laws prevailing in the territories of the two contracting parties would be found in all respects identically the same. In arson and in forgery, for instance, it is likely there may be points of difference as regards the description of property, and of the written securities, which it is the object of the law in the several countries to protect: (per Robinson, C. J., in *re Anderson*, 20 U. C. Q. B. 171.)

The particular crime must be shewn to have been committed within the "jurisdiction" of the country demanding the surrender. The word "jurisdiction" may mean either "territory" or "judicial authority." We incline to