

REGINA v. PHIPPS.

*Extradition—Ashburton Treaty—Forgery—
Original warrant.*

The prisoner was the superintendant of an almshouse in Philadelphia, Penn., which was supported by the City of Philadelphia. Certain persons furnished goods to the almshouse and were entitled to receive warrants from the almshouse for the price thereof. The warrants were duly prepared and signed, in favour of the parties entitled, in the hands of W., the secretary of the almshouse, to be delivered to the proper parties on their signing the counterfoils of the warrants. The prisoner obtained possession of the warrants by falsely representing to W. that he had authority to sign the names of the respective parties entitled and by signing such names on the counterfoils. The warrants were then cashed at the city treasury.

Held, [CAMERON, J., dissenting,] that the offence amounted to forgery within the meaning of the Ashburton Treaty, and that the prisoner should be remanded for extradition.

Per HAGARTY, C.J.—The evidence disclosed a *prima facie* case of forgery, sufficient to warrant the commitment for trial of the prisoner if the crime had been committed in Canada.

Per ARMOUR, J.—The treaty was not intended to include the crime of forgery, only when that crime is common to both countries. In framing the treaty the high contracting parties were dealing with the then present and future, and the general term forgery should include everything in the nature of forgery, and which thereafter might be held to be forgery at common law by the decisions of the Courts, or might be declared to be forgery by the statute law.

Held, also, that the original warrant, within the meaning of 31 Vict., c. 94, sec. 2 (D), is not the first of two or more consecutive warrants, but is any warrant issued in the United States.

MIDLAND RAILWAY CO. v. ONTARIO ROLLING MILLS CO.

*Contract to deliver iron—Cash as delivered—
Delivery of part—Refusal of payment until
whole delivered—Repudiation of contract—
Counter claim—Damages for non-delivery of
remainder.*

The plaintiff agreed to deliver to the defendant 1,300 to 1,500 tons of old iron rails, etc.,

"cash on delivery of each 100 tons, or with privilege of drawing against them as may be agreed between us, as they are shipped." On 17th February, 1880, the plaintiff, having delivered 1,150, sent an account of shipments and drew for \$1,500, which the defendant refused to accept on 21st of February, erroneously asserting that two car loads, price \$333, had not been received, when, in fact, they had been received, as afterwards acknowledged by them, and adding, "we think you should now deliver the balance due on contract before asking us to pay any more money. The time has so far gone by the date when we expected the whole amount, that we think it not unreasonable to ask this." There was a silence for some time, and on 5th June, 1880, the plaintiffs wrote, "We shall now soon be able to complete the delivery of old rails," and then went on to refer to another contemplated contract. In answer, the defendants' agents referred to the contemplated contract, but said nothing about the completion of the present one. In August, 1880, the plaintiffs again drew for the price of the amount delivered, which was refused acceptance for the same reasons as before. The plaintiffs sued for the price of the iron delivered, and the defendants counter-claimed for damages for the non-delivery of the difference between the iron delivered and 1,300 tons.

Held, [HAGARTY, C.J., dissenting,] reversing the judgment of OSLER, J., who tried the case, that the refusal of the defendants to pay for the iron, except upon delivery of the remainder, not amounting to such a repudiation of the terms of the contract as would have then entitled the plaintiffs to sue for breach thereof in not accepting the remaining 150 tons, did not absolve the plaintiffs from the delivery of the remainder; and that while the defendants were liable for the price of the amount delivered, they were entitled to judgment on their counter-claim for damages caused by failure of the plaintiffs to deliver the balance.

Kerr, Q.C., for the plaintiffs.

Osler, Q.C., for the defendants.