

WINSLOW'S CASE.

tion has been granted cannot be prosecuted and tried, except for the crime for which his extradition has been obtained." To the like purport are Heffter* and Martens.† Each of these authors cites others,‡ whose works are not accessible to us; but their own authority is ample, and no one can doubt that our writers would have accepted it, if their attention had been called to the subject. The rule was so laid down in a celebrated circular issued by the French minister of justice in 1841, to which we shall refer again in a moment. Only two writers in English have said any thing directly upon the matter, so far as we know. Mr. Gibbs, author of a pamphlet published in London in 1868,§ containing many important suggestions which were adopted by Parliament in 1870, after saying that political offences are not a subject for extradition, adds,|| "In close connection with the foregoing principle, and designed undoubtedly to support it, follows another, to which our attention has not been much directed,¶ but which is treated by foreign writers as well established,—that a person surrendered is liable only for the offence on account of which his extradition was obtained." He cites Heffter, and the French circular of 1841, which he calls a manifesto of the French views on the whole subject of extradition, and which he says has had a considerable share in forming the opinion of the Continent. Clarke mentions the circular in somewhat similar terms,** and quotes a passage from it to the same effect, but,†† as we have said, without adding his own opinion. Mr. David Dudley Field says,‡‡ "No person surrendered shall be prosecuted or punished . . . for any offence which was not mentioned in the demand." We understand that Mr. Field in his "Draft Outlines" does not intend merely to state the existing law, but also what he thinks it ought to be; but for this sec-

tion he quotes authority, showing that he considers it already established.

Let us examine for a moment the reason of the rule. Extradition, from being a matter of courtesy between princes, used almost wholly for the confusion of rebels and traitors, has become an important police regulation, never now applied to political offences, but, on the other hand, extended to a great variety of ordinary crimes. The one change is due to the mutations of dynasties since 1789, which have brought home to many ruling powers a sense of the convenience of an asylum; and the other, to the vastly increased intercourse between countries even the most widely separated. It may be said, in general, that the exceptions to extradition, besides mere minor offences not worth the trouble and expense of employing international machinery for their punishment, are of those crimes upon which the laws or sentiments of the contracting nations are not in accord; such as political and ecclesiastical offences, game-laws and revenue-laws. There is one other class, that of crimes committed by soldiers and sailors in service, such as desertion, which are rarely included in treaties, for the reason, perhaps, that although all nations agree in punishing them with great severity, yet all feel that this punishment ought to be applied promptly, and, as it were, at the drum-head, or not at all.

Now, the reason, as Mr. Gibbs intimates, why a person is not to be tried for an offence for which he was not surrendered, is that in no other way can the right of asylum for these excepted crimes be maintained. If a man given up for embezzlement can be hung for treason, or be transported for shooting a rabbit, what becomes of the asylum? It has been said that the question is only one of good faith in asking the surrender. No doubt, if a case shows the absence of honesty from the beginning, the whole world would cry shame upon the government which has been guilty of such fraud. But this is a very inadequate view of the subject. Good faith is not asylum. It is no consolation to a man who is about to be hung for treason, that the government honestly suspected him of having embezzled five dollars; nor is it an answer to the foreign government whose asylum has proved nugatory. The question is one

* French ed. § 63.

† Précis, (ed. 1864) § 101.

‡ Martens cites no less than six.

§ Extradition Treaties by Frederick Wymouth Gibbs, CB. Lond. 1868.

|| P. 30, § iv.

¶ That is, attention in England.

** Clarke, p. 158 (2d ed.)

†† Pp. 161, 162.

‡‡ Draft Outlines of an International Code, p. 123, § 237.