In re Trueman B. Smith.

Extradition—Counterfeiting—Forgery.

A prisoner was arrested in Upper Canada for having committed in the United States "the crime of forgery, by forging, coining, &c,, spurious silver coin," &c.

Held, 1. That the offence as above charged does not constitute the crime of "forgery" within the meaning of the Extradition Treaty or Act.

2. That it certainly is not the crime of forgery under our law, and therefore the prisoner could not be extradited.

Definition of the term "forgery" considered.

[Chambers, March 3, 1868.]

This was an application by a prisoner to be discharged on a writ of *habeas corpus*, on the ground that the charge under which he was in custody was not within the Extradition Treaty or the Act of Canada giving it effect.

The charge or complaint was, that "Smith at the Town of Toledo, —— County, State of Iowa, on or about the 21st March, 1867, did commit the crime of forgery by forging, coining, counterfeiting, and making spurious silver coin of the stamp and imitation of the silver coin of the United States of America of the denomination of 5 and 10 cent pieces, with implements and materials which he produced for the purpose of carrying on the business of coining such spurious money."

Jas. Patterson showed cause for the Crown, referring to Con. Stat. Can. cap. 89; 2 *Bishops* Criminal Law, secs. 432, 434, 435 and 451; 5th Rep. Crim Law Com., A.D. 1840, p. 69; 3 Inst. 169 (*per* Lord Coke); 2 Bl. Com. 247; 2 East P. C. 852; *Rex.* v. *Coogan*, 2 East P. C. 853; *Rex.* v. *Jones*, 1 Leach, 4th ed. 775, 785; *Reg.* v. *Anderson*, 20 U. C. Q. B. 124; *In re Windsor*, 6 New Rep. 96.

Curran, contra, for the prisoner. By Con. Stat. Can. cap. 89, the crime charged must be a crime by the law of the country where prisoner arrested, and this prisoner was arrested in Upper Canada (see also *Re Windsor*, 34 L. J. N. S. 163). As to the meaning of forgery, and that it does not cover cases of coining, see 4 Com. Dig. 406 *et seq*., and Tomlin's Law Dict.

Adam Wilson, J.—The Statute of Canada (cap. 89) applies to the crimes of murder, or assault to commit murder, piracy, arson, robbery, *forgery, or the utterance of forged paper*, committed within the jurisdiction of the United States (see also 24 Vic. c. 6); and the question is, whether the charge above stated as explained of forging and counterfeiting spurious silver coin, &c., constitutes the offence of forgery within the meaning of the treaty and statute?

I am of opinion it does not; it is unquestionably not forgery by our law here; nor from the evidence given can I assume it to be forgery according to the law of the State of Iowa, or of the United States of America, if that would make any difference. The statute declares that the offence charged must be such as would, according to the laws of this Province, justify the apprehension and committal for trial of the person accused, if the crime charged had been committed here; so that if not an offence of the character charged according to our law, the person is not to be apprehended, committed or delivered over to the foreign government; no comity shall prevail in such a case: *In re Windsor*, 6 New Rep. 96; 10 Cox. C. C. 118; 11 Jur. N S. 807.

Forgery is defined in 4 Bl. Com 247, to be "the fraudulent making or alteration of a writing to the prejudice of another man's right;" and this is substantially the definition accepted and approved of in *Reg.* v. *Smith*, 1 Dearsley & Bell, 566, in which counsel have arrayed the definitions of different authors of this offence, to which may be added, Bac. Abr. "Forgery."

Hawk. P. C., in Book 1, c. 70, sec. 1, it is described to be "an offence in falsely and fraudulently making or altering any matter of record or any other authentic matter of a public nature, as a parish register or any deed or will"

In *Reg.* v. *Closs*, 1 Dearsley & Bell, 460, Cockburn, C. J, said, "a forgery must be of some document or writing," and therefore putting an artists name on the corner of a picture in order to pass it off as an original picture by that artist was held not to be forgery.

There is no case where the making of false coin has been determined to be forgery, and it is not so by our statute.

Such an offence is here a misdemeanour for the first act and a felony for the second, but it is not the offence of forgery at all.

The decision of *Re Dubois, otherwise Coppin*, 12 Jur. N. S. 867, shews that this is the mode in which the treaty and statute are to be interpreted, and our own statute reciting the treaty is almost conclusive evidence that the "forgery" referred to is the offence of that name well understood in the United States and in this Province, and, to make it plainer, it relates also to "the utterance of forged paper"

The prisoner must be discharged.

Prisoner discharged.

ENGLISH REPORTS.

COMMON PLEAS.

Nosotti v. Hudson.

Practice—Extension of time for setting down cause—15 & 16 *Vict. c.* 76, *s.* 101.

By the 101st section of the Common Law Procedure Act, 1852, a judge may extend the time for proceeding to trial. This power is discretionary with him, and he may exercise it after the twenty days' notice given by the defendant, under the same section, to bring the issue on for trial has expired.

[16 W. R. 315, Jan. 17 1868.]

This was an action for dilapidation, in which notice of trial at the next Westminster sittings was originally given by the plaintiff on the 6th of April, 1867. This notice was, however, countermanded and continued from time to time; and as the plaintiff failed to bring on the issue to be tried, the defendant, on the 23rd of November last, gave the plaintiff the twenty days' notice required by the 101st section of the Common Law Procedure Act, 1852, for bringing the issue on at the next sittings, after the expiration of such notice. On the 3rd of January the plaintiff gave the ordinary 10 days' notice of trial for the first sittings this term, but on the 13th of January the cause had not been set down. Thereupon the plaintiff took out a summons for leave to set down the cause, and on the 14th of January, Byles J., holding that his power to extend the time for proceeding to trial had not run out, made on order that the plaintiff should be at liberty to set down the cause.

Littler now moved to set this order aside.—The question turns on the proviso at the end of the