

## EXTRADITION OF CRIMINALS.

the consequences of the blunders of ignorant or incompetent magistrates. Accordingly, sections 1, 2 and 3 of the Consolidated Statute, chapter 89, were repealed and new provisions substituted, framed with the view we have mentioned. The right of any one of the States of the Union to make requisition ceased by the same act to be sanctioned. There were other alterations in language subservient to the design of the act of little consequence, and which we have not space at present to notice. The latter act in due course, and as a matter of precaution, received the sanction of the Queen in Council, at a Court holden at Balmoral on October 11, 1861.

Thus we have in general terms presented to our readers the tenth article of the Ashburton Treaty, and our legislation in reference thereto down to the present time.

We now propose to examine the language of the article of the Treaty itself by the light of adjudged cases.

The treaty is a contract between two sovereign states. Like other contracts, it must be so construed that effect be given to it, and to every word of it, with a view to the carrying out the object of the parties. That object is to punish crime; and subordinate thereto to apprehend, try and punish fugitive criminals. Crime is local, and, in general, can only be punished in the country where committed. Criminals endeavour to evade the punishment due to crime, and so at times flee from the jurisdiction that has the power to punish, into the territory of some adjacent power. The mutual obligation of the treaty is the surrender of such fugitives. But this cannot be done without machinery, and the machinery cannot be put in motion without expense. Hence we find in the treaty, besides the general obligation to deliver fugitives from criminal justice, stipulations in regard to the machinery to be used, and provisions for the payment of all expenses attending the same.

The article of the treaty therefore may be considered in a three fold aspect. 1. The obligation. 2. The machinery; and 3. The expense.

## 1.—THE OBLIGATION.

The two nations agree that, upon "mutual requisitions by them or their ministers, officers or authorities, respectively made"—that is, on a requisition made by the one government, or by its ministers or officers properly authorised,

upon the other—the government upon whom the demand is thus made shall deliver up to justice, &c. In other words, on a demand made by the authority of either government on the other, the fugitive shall be delivered up. This is the exact stipulation entered into when plainly interpreted. It is a compact between two nations, in respect to a matter of national concern—the punishment of criminal offenders against their laws. The duty or obligation entered into is the duty or obligation of the respective nations; and each is bound to see that it is fulfilled, and each is responsible to the other in case of a violation. When the *casus federis* occurs, the requisition or demand must be made by the one nation upon the other: (*In re Kane*, 14 Howard, 103.) The treaty should be construed in a fair and liberal spirit. There should be no laboring with legal astuteness to find flaws or doubtful meanings in its words, or in those of the legal forms for carrying it into effect. We are to regard its avowed object—the allowing of each country to bring to trial all persons charged with the expressed offences. Neither of the parties can properly have any desire to prevent such trial, or to shield a possible offender: (per Hagerty, J., in *re Burley*, 1 U. C. L. J. N. S. 50.)

The treaty is silent as to the form of the requisition, and equally silent as to the time when it should be made. The requisition may, it is apprehended, be in the form of a letter from the Secretary of State, or other accredited officer of the government, requiring the surrender; and may, it is apprehended, so far as we are concerned, be made either before or after proceedings commenced against the fugitive in our country. The English statute 6 & 7 Vic. cap. 76, s. 1, provides that "*in case* requisition shall at any time be made, &c., it shall be lawful for one of her Majesty's principal Secretaries of State to signify that such requisition has been made, and to require all justices, &c., and thereupon it shall be lawful for any justice, &c." Reading this, one would suppose that, before the justice can act, there must be first the requisition from the foreign government, and then the warrant from the Secretary of State to all magistrates, &c. This act is still in force in New Brunswick; and in the case of the Chesapeake, it was there held that these warrants should precede the jurisdiction of the local magistrate; but in