

political character, or if he prove to a competent authority that the requisition for his surrender has in fact been made with a view to try or punish him for a crime of a political character." It must be remembered that this latter clause is of general application, and does not directly bear on the crime of malicious injury. For instance, it bears equally on the crime of murder, assault with intent to murder, and arson. In all these cases, and perhaps in some others within the treaty, it might be contended that the crime was of a political character. The only crime which is almost necessarily of a political character is treason, and this crime, besides being excluded from all treaties, cannot be included in this, for the sufficient reason that treason is unknown to the law of the United States. There are forms of treason which may be not of a political character, but no treaty could apply to them, because the offence would not be the same in England or Canada as it would be in the United States. In any future treaty it would be as well to provide that any offence not of a political character, amounting to treason in the British Empire, shall be included, if according to the law of the United States, the same act would amount to any one of the offences named in the treaty. The clause in regard to political offences is expressed in the same terms as the corresponding clause in the treaties between Great Britain and Continental nations. It was the sole advantage, if advantage it can be called, of the Ashburton Treaty that it contained no clause excluding political offences; but it was tolerably clear that neither Great Britain nor the United States would have given up a political prisoner even under the Ashburton Treaty. Mr. Phelps says that 'the provision that no surrender shall be made for a political offence is unnecessary, because such a clause establishes a universal rule to which all extradition treaties are subject, but its insertion can do no harm, but its omission might excite comment.' If the practice is spoken of as distinguishing from the strict law, no fault need be found with this statement; but, in theory, an extradition treaty applies to every crime included in and not excluded from its four corners. Probably the clause about offences of a political char-

acter does not appear in the Ashburton Treaty, because none of the crimes there mentioned were supposed capable of a political complexion. The addition of this clause makes those crimes, as well as the new crimes added, capable of that character. In practice there will probably be no difficulty in applying the clause in question to cases which may arise. We in England have found it necessary to treat some of the dynamite outrages as overt acts evidencing a levying of war against the Queen. The question whether a man could be demanded from the United States on such a charge will not depend on the clause as to political offences, but will turn on the fact that this offence does not come within the general words of the treaty. On the other hand, if evidence be produced that a man has actually been guilty of maliciously injuring inhabited places with dynamite or otherwise by himself or through others, he must be surrendered as 'guilty of malicious injury to property whereby the life of any person shall be endangered,' unless he can show that the very charge with which he is charged is of a political character. It is not enough for him to show that his motive was a political motive. If so, a man who shot a Prime Minister or a foreign minister in the belief that he was ruining his country could not be surrendered. The actual charge, or the offence really meant to be charged in cases in which an evasive charge is suggested, must be of a political character—that is to say, it must partake of treason and an overt act to subvert the Government; and, as we see that the treaty in no part applies to this class of case, its application is practically *nil*.

Mr. Phelps is quite right as a general principle when he says, in commenting on the new clause requiring convicted prisoners to be given up, that, 'if those accused of crimes should be surrendered, much more should those actually convicted;' but care should be taken that this clause, which does not appear in the Continental treaties, should not be introduced into them without careful inquiry into the law of the country in question. In the United States, as in England, there is no such thing as trial *in absentia*, and therefore the clause can do no harm in a treaty