

Extradition Statute of 1877, which was put into force since that case was decided.

A further argument is made for the prisoner based on Section 4 of the Dominion Extradition Act of 1877, which reads as follows: "In the case of any foreign state with which there is at or after the time this Act comes into force, an extradition arrangement, this Act shall apply during the continuance of such arrangement. Provided that the operation of the Act of the Parliament of the United Kingdom passed in the year of Our Lord one thousand eight hundred and seventy, and entitled: "*An Act for amending the law relating to the Extradition of Criminals*," shall have ceased or been suspended within Canada in the case of that state."

Previous to the 28th Dec. 1882, the necessary measures had not been adopted to suspend the operation of the Imperial Extradition Act of 1870, and to bring into force the Dominion Extradition Act of 1877, to which end provision had been made in these two Acts. By Imperial order-in-council of that date, published in the *Canada Gazette* of the 3rd March 1883, the Imperial Act of 1870 was suspended within the Dominion of Canada so far as it related to any foreign state in the case of which it then applied. It did then apply and had been acted upon with regard to the United States, but independently of certain limitations and restrictions to which Her Majesty's Government desired it should be subjected, and which were provided by treaty or otherwise in the case of other governments.

The suspension of the Imperial Act of 1870, therefore, was operated by the order in council of date the 28th Dec., 1882. But it is argued that subsection 3 of sec. 4 of the Canadian Act of 1877 shows that the application of the Imperial Act of 1870 to the United States in virtue of section 27 was a conditional and qualified one, the Act having been applied so that the Canadian Act 31 Vic. chap. 94 should form part of it, and hence the Canadian Act of 1877 could only be applied to the United States by the Governor General's Order in Council subject to the same conditions and qualifications in virtue of section 27. But section 27, after repealing previous legislation, provides that the Act shall be in force with the exception of anything it contained inconsistent with the treaties to

which it referred, in the same manner as if an Order in Council referring to such Treaties had been made, and had directed that every law or order once in force in any British possession formed part of the Act. It follows that the Statute of 1870 came in force as regards the United States without any Order in Council, but that restrictions and limitations or additional provisions beyond what was contained in the Treaty with the United States were not in force as regards that country.

Therefore the extended schedule of crimes attached to that statute, and the conditions therein stated which by orders in Council came to be applied in the case of Treaties with other States, did not apply to the United States and could not be applied by any Canadian order in Council. Sub-Section 3 of section 4 of the Dominion Act of 1877 imposed it as a duty on the Dominion Governor in Council, in cases where the Imperial Act of 1870 had been or should be applied with restrictions and limitations, to direct by their order like restrictions and limitations. This explains the exception made of the United States in the despatch of Lord Derby to the Governor General Lord Lorne, of date the 7th February, 1883. The Imperial Act of 1870 never having been with its restrictions and limitations applied to the United States, was only in force as regards them to the extent of the actual Treaty stipulations, and needed no Canadian Order in Council to put it in force as regards restrictions and limitations, because they did not apply.

I have only to add that the Canadian Act 31 Vic. chap. 94, was repealed by the Dominion Act of 1877, 40 Vic. chap. 25, coming into force.

I think a fair case has been made out for the prisoner's extradition, and he has failed to show any illegality in his detention or commitment. I order him to be remanded for extradition according to the exigency of the commitment by which he is held. In my opinion Treaty regulations between States should be executed in good faith in a liberal spirit with a disposition to facilitate the obtainment of justice.

The order of commitment for extradition is confirmed.

*C. P. Davidson, Q.C.*, and *Selkirk Cross* for the United States Government.

*E. W. P. Guerin* and *Eugene Lafleur* for the Petitioner.