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No. 80.

4th Session, 6th Parliament, 24 Victoria, 1861.

BILL.

An Act to amend the Act 22 Vic., cap. 89,
respecting the Treaty between Her Ma-
jesty and the United States of America,
for the apprehension and surrender of
certain offenders.

Received and read, 1st time, Saturday, 23rd
March, 1861.

Second reading, Tuesday, 2nd April, 1861.

Mr. McDougall.

QUEBEC.

PRINTED BY THOMPSON, HUNTER & CO.,
ST. URSULE STREET.

An Act to amend Chapter 89 of the Consolidated Statutes of Canada, respecting the Treaty between Her Majesty and the United States of America, for the apprehension and surrender of fugitive offenders.

WHEREAS doubts have been expressed as to the true intent and meaning of the Act, respecting the Treaty between Her Majesty and the United States of America, for the apprehension and surrender of fugitive offenders, and it is expedient to remove such doubts and amend the said Act in other respects;

Preamble

Be it enacted as follows :—

1. Section one of the said Act (being Chapter 89 of the Consolidated Statutes of Canada) is hereby repealed, and the following substituted therefor :—

Sect. 1, c. 89,
Con. Stat.
Can. repealed
and new
clause substituted.

10 “ Upon complaint, made under oath or affirmation, charging any
“ person, found within the limits of this Province, with having com-
“ mitted within the jurisdiction of the United States of America,
“ any of the crimes enumerated in the said Treaty, any of the
“ Judges of Her Majesty’s Superior Courts in this Province, or
15 “ any Judge of a County Court in Upper Canada, or any Judge
“ of the Superior Court in Lower Canada, or any Recorder of any City,
“ or any Commissioner appointed by any of the said Superior Courts
“ (which Courts are hereby authorized to appoint Commissioners, who
“ shall severally have all the powers of a County or a Superior Court
20 “ Judge, for the purposes of this Act,) may issue his warrant for the ap-
“ prehension of the person so charged, that he may be brought before
“ such Judge, Recorder or Commissioner to the end that the evidence of
“ criminality may be heard and considered, and, if on such hearing, the
“ evidence be such as he would deem sufficient to sustain the charge of
25 “ murder, or assault with intent to commit murder, or piracy, or
“ arson, or robbery, or forgery, or the utterance of forged paper,
“ as the case may be, according to the laws of this Province, if the
“ alleged criminal act or acts had occurred or been committed within
“ this Province, he shall certify the same, together with a full
30 “ and true copy of all the testimony taken before him to the Governor,
“ that a warrant may issue upon the requisition of the proper authorities
“ of the said United States, for the surrender of such person according
“ to the stipulations of the said Treaty, and the said Judge, Recorder,
“ or Commissioner, shall issue his warrant for the commitment of the
35 “ person so charged to the proper gaol, there to remain until such sur-
“ render be made, or such person be discharged according to law.”

By whose or-
der, and on
what evidence
persons
charged with
crimes com-
mitted in U.
S. may be ar-
rested and
detained.

Application to Courts under Sect. 4, may be made within two months from Commitment as well as after.

2. And be it further enacted, that any of the Judges of Her Majesty's Superior Courts (including the Judges of the Court of Chancery), may entertain the application mentioned in the fourth section of the said Act, as well before as after the expiration of two months from the period of commitment of the person making the application, and may review the decision of the committing Judge, Recorder, or Commissioner, and not concurring therein, may order the person so committed to be discharged from custody.

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Warrant for apprehension of offender.

3. And, for the more speedy and better execution of the said Treaty, be it enacted, That any Judge, Recorder, or Commissioner, before whom any complaint has been made pursuant to the said Treaty, and in terms of the said recited Act, as amended by this Act, shall, upon such evidence as according to the laws of this Province would justify the apprehension of the person so accused, if the alleged criminal act or acts had been committed in this Province, issue his warrant for the apprehension of such person, in the form annexed to this Act or to the like effect, and such warrant may be executed in any part of this Province and shall have the same force and effect throughout the Province, as if the same had been originally issued or subsequently endorsed by a Judge or other person having jurisdiction in the place where the same shall be executed, and may be lawfully executed anywhere within this Province, by the Constable or Constables to whom the same shall be directed, or who shall be appointed to execute the same, who shall severally have all the powers and privileges for the execution of such warrant, as any Constable duly appointed hath or may have within his Constablewick.

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May be executed at any place in the Province.

Warrant for detention of offender.

4. Every person who shall be apprehended under any such warrant shall be brought with all convenient speed before the Judge, Recorder, or Commissioner, by whom such warrant shall have been issued, or some other Judge, Recorder or Commissioner, who may cause the warrant of committal of such person to be drawn up according to the form given in the Schedule annexed to this Act, or to the like effect, which shall be good and sufficient in law to warrant the persons to whom the same shall be directed, to detain such person in custody as directed in the said warrant until delivered or discharged according to law.

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Provision where the offender was a slave.

5. If upon the hearing of any case under the said recited Act as amended by this Act, it shall appear that the person apprehended was held in slavery, or was making his escape therefrom, when the offence with which he is charged was committed, the Judge, Recorder or Commissioner before whom such person is brought, shall make diligent enquiry into all the facts and circumstances attending the commission of the alleged offence, with the view of ascertaining whether the same was committed in self-defence, or in the effort to escape from slavery, and shall make a special report of the said facts and circumstances to the Governor.

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SCHEDULE TO WHICH THIS ACT REFERS.

Warrant of Apprehension.

COUNTY OF
TO WIT :

} To all and each of the Constables of the

Whereas a complaint on oath (or affirmation) hath been duly made

before me, pursuant to the Acts for giving effect to the treaty made between Her Majesty and the United States of America, in the year one thousand eight hundred and fifty-two, for the apprehension of certain offenders, charging A.B., late of with having committed the crime of [*here specify the offence*] within the jurisdiction of the United States of America.

This is therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., pursuant to an Act passed in the year of Her Majesty, intituled [*here insert the title of this Act*], wherever he may be found in this Province, and bring him before me, or some other Judge, Recorder or Commissioner, authorized to hear complaints under the said Act, to answer unto the said charge for which this shall be your warrant.

Given under my Hand and Seal, at , in the County (or City) of , being Judge of the County Court, for the said County, (or Recorder of the City of , or a Commissioner appointed pursuant to the said Act, as the case may be) this day of , in the year of Our Lord

J. P. (L. S.)

Warrant of Committal.

COUNTY OF , } To A. B., one of the constables of the ,
TO WIT: } and to the keeper of the Gaol at .

Be it remembered, that on the day of , in the year of Our Lord , A. B., late of , is brought before me, J. P., Judge of the County Court of the County of , (or Recorder or Commissioner, as the case may be), and is charged before me for that, he, the said A. B., on the day of at within the jurisdiction of the United States of America, did [*here state the offence*] and for as much as it hath been shewn to me upon such evidence as by law is sufficient to justify the committal to Gaol of the said A. B., pursuant to an Act passed in the year of the reign of Queen Victoria, intituled , as amended by an Act passed in the twenty-fourth year of the reign of Queen Victoria, intituled [*here insert the title of this Act*], that the said A. B. is guilty of the said offence:

This is therefore to command you, the said constable, in Her Majesty's name, forthwith to convey and deliver the body of the said A. B. into the custody of the said keeper of the Gaol at , and you the said keeper to receive the said A. B. into your custody in the said Gaol, and him there safely keep until he shall be thence delivered pursuant to the provisions of the said Acts, for which this shall be your warrant.

Given under my Hand and Seal, at , in the County of (or City of), this day of , in the year of Our Lord

J. P. (L. S.)