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Correspondence respecting the Case of the Fugitive Slave, Anderson.

Presented to both Houses of Parliament by Command of Her Majesty. 1861.

LONDON:
PRINTED BY HARRISON AND SONS.

CORRESPONDENCE

RESPECTING THE

CASE OF THE FUGITIVE SLAVE,

ANDERSON.

Presented to both Houses of Parliament by Command of Her Majesty.
1861.

LONDON:
PRINTED BY HARRISON AND SONS

LIST OF PAPERS.

Correspondence respecting the Case of the Fugitive Slave, Anderson.

No. 1.

Mr. Irvine to Lord J. Russell.—(*Received October* 21.)

My Lord, *Washington, October* 8, 1860.

I HAVE the honour to inclose herewith to your Lordship copy of a note which I have received from General Cass, requesting that Her Majesty's Government will issue a warrant to deliver up the person of a man of colour named John Anderson, who has been charged with the commission of murder in the State of Missouri and who has fled to Canada, and has now been arrested and confined in the jail of the town of Brantford.

I have, &c.
(Signed) W. DOUGLAS IRVINE.

Inclosure in No. 1.

General Cass to Mr. Irvine.

Sir, *Department of State, Washington, October* 2, 1860.

FROM information just received at this Department, it appears that John Anderson, otherwise called Jack, a man of colour, has been charged with the commission of murder in the State of Missouri, has fled to Canada, whither he has been followed by officers of the State of Missouri, who have caused him to be arrested and confined in the jail of the town of Brantford, where he now is.

I have therefore the honour to request through you, Sir, that Her Britannic Majesty's Government will be pleased to issue the necessary warrant to deliver up the person of the above-named John Anderson, otherwise called Jack, to any person or persons duly authorized by the authorities of Missouri to receive the said fugitive and bring him back to the United States for trial.

I avail, &c.
(Signed) LEW. CASS.

No. 2.

Mr. Hammond to Sir F. Rogers.

Sir, *Foreign Office, October* 22, 1860.

I AM directed by Lord J. Russell to transmit to you herewith a copy of a despatch from Her Majesty's Chargé d'Affaires at Washington,* inclosing a copy a note which had been addressed to him by the United States' Secretary of State, applying for the extradition of a man of colour, named John Anderson, who is charged with the commission of murder in the State of Missouri, and is stated to be now in confinement in the jail of the town of Brantford, in Canada: and I am to request that you will move the Secretary of State for the Colonies to take the necessary steps for complying with this application, should there be no objection thereto.

I am, &c.
(Signed) E. HAMMOND.

* No. 1.

No. 3.

Sir F. Rogers to Mr. Hammond.—(Received October 29.)

Sir, *Downing Street, October 27, 1860.*

WITH reference to your letter of the 22nd instant, I am directed by the Secretary of State to acquaint you, for the information of Lord J. Russell, that the Governor of Canada has been instructed to take such measures as are authorized by the laws of Canada for the extradition to the authorities of the State of Missouri of the person of John Anderson, otherwise called Jack, who is charged with the commission of murder in that State.

I am, &c.
(Signed) FREDERIC ROGERS.

Inclosure in No. 3.

The Secretary of State for the Colonial Department to Sir E. Head.

Sir, *Downing Street, October 27, 1860.*

INFORMATION has been received at this Department that a man of colour named John Anderson, otherwise called Jack, has been charged with the commission of murder in the State of Missouri, and having fled to Canada, has been followed by officers of the State of Missouri, who have caused him to be arrested and confined in the jail of the town of Brantford, where it appears that he now is.

I have therefore to instruct you to take such measures as are warranted by the laws of Canada to deliver up the person of the above-named John Anderson to any person or persons duly authorised by the authorities of Missouri to receive the said fugitive and bring him back to the United States for trial.

I am, &c.
(In the absence of the Duke of Newcastle,)
(Signed) J. RUSSELL.

No. 4.

Lord J. Russell to Lord Lyons.

My Lord, *Foreign Office, October 29, 1860.*

I INCLOSE, for your information, a copy of a letter from the Colonial Office,* stating that the Government of Canada has been instructed to take the proper steps for the extradition of J. Anderson, who is charged with murder in the State of Missouri, as requested in the note addressed to you by General Cass, of which a copy was inclosed in Mr. Irvine's despatch No. 41 of the 8th instant.

I am, &c.
(Signed) J. RUSSELL.

No. 5.

Sir F. Rogers to Mr. Hammond.—(Received January 16.)

Sir, *Downing Street, January 16, 1861.*

I AM directed by the Duke of Newcastle to transmit to you, for the information of Lord John Russell, the accompanying copy of a despatch which his Grace addressed by the mail of Thursday last to the officer administering the Government of Canada, on the subject of the fugitive slave Anderson.

I am, &c.
(Signed) FREDERIC ROGERS.

Inclosure in No. 5.

The Duke of Newcastle to the Officer administering the Government of Canada.

Sir, *Downing Street, January 9, 1861.*

I HAVE received by the last mail from Canada a report of the Judgments recently delivered at Toronto in the case of Anderson, a fugitive slave.

* No. 3.

The facts are recited in the Judgments, and it appears that the Court, by a majority of two Judges to one, has pronounced a decision that the prisoner is not entitled to be liberated. It further appears, however, that the prisoner's Counsel has given notice of appeal, and I am informed that the case will be argued before the Court of Queen's Bench some time before the close of the present month.

If the result of that appeal be adverse to the prisoner, you will bear in mind that under the Treaty of Extradition he cannot be delivered over to the United States' authorities by the mere action of the law. That can only be done by a warrant under the hand and seal of the Governor.

The case of Anderson is one of the gravest possible importance, and Her Majesty's Government are not satisfied that the decision of the Court at Toronto is in conformity with the view of the Treaty which has hitherto guided the authorities in this country.

I am therefore to instruct you to abstain in any case from completing the extradition until Her Majesty's Government shall have had further opportunity of considering the question, and, if necessary, conferring with the Government of the United States on the subject.

I have further to direct you to keep me fully and immediately informed upon any further steps which may be taken in this very peculiar and important case.

I am, &c.
(Signed) NEWCASTLE.

No. 5A.

The Duke of Newcastle to the Officer administering the Government of Canada.

Sir, *Downing Street, January* 16, 1861.

REFERRING to my despatch of the 9th instant, in which I directed you to keep me informed on any future steps which might be taken in Canada in the case of John Anderson, and, considering the importance which this case is likely to assume, I think it necessary to require that you send me not only information of what may be hereafter done, but also as complete and accurate a report as possible of all the proceedings, legal or otherwise, which have occurred from the very commencement of this case.

I have, &c.
(Signed) NEWCASTLE.

No. 6.

Mr. Hammond to Sir F. Rogers.

Sir, *Foreign Office, January* 17, 1861.

I HAVE laid before Lord John Russell your letter of the 14th instant, inclosing a copy of an instruction which the Duke of Newcastle had addressed to the officer administering the government in Canada in regard to the case of the fugitive slave Anderson, and I am to state to you in reply, for his Grace's information, that Lord John Russell entirely concurs in the terms of that instruction.

I am, &c.
(Signed) E. HAMMOND.

No. 7.

Sir F. Rogers to Mr. Hammond.—(Received January 17.)

Sir, *Downing Street, January* 17, 1861.

I AM directed by the Duke of Newcastle to transmit to you, for the information of Lord John Russell, the copy of a letter which has been addressed to his Grace by the Governor of Canada, Sir Edmund Head, upon the case of John Anderson.

His Grace is of opinion that it is not necessary at present to add anything to the instructions sent to the officer administering the government of Canada on the 9th instant, a copy of which was communicated to you yesterday.

I am, &c.
(Signed) FREDERIC ROGERS.

Inclosure 1 in No. 7.

Sir E. Head to the Duke of Newcastle.

My Lord Duke, *Colonial Office, January* 15, 1861.

I HAVE the honour to inclose a copy of a Memorandum forwarded to me by Mr. Cartier, Attorney-General for Lower Canada, which will explain to your Grace the present position of Anderson's case.

This Memorandum was prepared in the office of the Attorney-General for Canada West, and therefore, I presume, may be relied on.

Your Grace will see that Anderson's case will probably be decided by the Court of Error and Appeal in the first or second week in February, as the Court meets early in that month.

Now it is possible that the Court of Common Pleas in Upper Canada (to whom an application for a writ of *habeas corpus* will be made), as well as the Court of Appeal, may decide against the prisoner, as the Court of Queen's Bench have already done.

Your Grace will therefore see that it is necessary to be prepared for such a decision, and that the views of Her Majesty's Government with reference to the obligations of the Treaty should be, before the end of the first week in February, or even earlier, conveyed to the officer administering the Government of Canada.

If there is nothing in the law of the province to intercept the action of the Executive in the extradition of Anderson, it will at once be necessary to decide in Canada whether the demand made for him by the United States' Government should be complied with or refused; and the discretion of taking so grave a step, involving, as it does, a possible breach of supposed treaty obligations, must, I conceive, rest with Her Majesty's Ministers here.

I know that it is thought possible there may be an appeal from the Court of Error and Appeal in Upper Canada to Her Majesty's Privy Council. On this point of course I am not able to offer an opinion, but I should recommend that the case should be considered irrespective of this question. If such an appeal is found to exist, the necessity for immediate action on the part of the Executive Government would be again postponed.

I have, &c.
(Signed) EDMUND HEAD.

Inclosure 2 in No. 7.

Memorandum.

THE Court of Queen's Bench has remanded the prisoner to his former custody in Brantford; but it is most probable that the Government will be asked by all parties to allow the prisoner to remain in Toronto jail. Though the Court of Queen's Bench are of opinion that there is not an appeal in this case to the Court of Error and Appeal, yet it seems probable that the Court of Error and Appeal may entertain it, in which case the prisoner would have to appear there when the case is argued.

The present view taken by the prisoner's Counsel is, to have the return made a matter of record in the Court of Common Pleas, and to plead in confession and avoidance, and thereupon obtain the decision of that Court; and if adverse to the Queen's Bench, and if the Government took no action, then to appeal to the Court of Error and Appeal on that record, as it is the peculiarity of the course taken by the prisoner's Counsel, and consequent absence of a record, which, in the opinion of the Chief Justice of the Queen's Bench, prevents an appeal, as it now stands, to the Court of Error and Appeal.

No. 8.

Mr. Hammond to Sir F. Rogers.

Sir, *Foreign Office, January* 21, 1861.

I HAVE laid before Lord John Russell your letter of the 17th instant, inclosing a copy of a letter from Sir E. Head respecting the case of the fugitive slave Anderson.

I am to request that you will state to the Duke of Newcastle, in reply, that Lord John Russell presumes that his Grace's instructions to the officer administering the Government in Canada, of which a copy was inclosed in your letter of the 14th instant, will reach that officer before the time in February mentioned by the Governor-General; and, if so, his Lordship thinks the only thing now necessary is, to desire the Acting Governor to facilitate the action of any officer of the Court of Queen's Bench at Westminster sent to bring the prisoner to England.

I am, &c.
(Signed) E. HAMMOND.

No. 9.

Mr. Elliot to Mr. Hammond.—(Received February 2.)

Sir, *Downing Street, February* 1, 1861.

WITH reference to your letter of the 21st instant, I am directed by the Duke of Newcastle to transmit to you, for the information of Lord John Russell, the inclosed copy of a despatch which his Grace addressed on the 17th ultimo to the officer administering the Government of Canada, respecting the issue of a writ of *habeas corpus* by the Court of Queen's Bench in this country in the case of the fugitive slave Anderson.

I have, &c.
(Signed) T. FREDK. ELLIOT.

Inclosure in No. 9.

The Duke of Newcastle to the Officer administering the Government of Canada.

Sir, *Downing Street, January* 17, 1861.

YOU will perceive by a newspaper, of which I inclose a copy, that the Court of Queen's Bench in this country has issued a writ of *habeas corpus* requiring that the fugitive slave Anderson now in custody at Brantford or Toronto should be sent to England.

The writ is supposed to be directed to the sheriff or jailer in whose custody Anderson at present is, and it is, therefore, possible that you may not be called upon to take any action in the matter. But in the event of your being called upon to do so, I think it advisable to instruct you that you are at liberty to follow such advice as you may receive from your Law Advisers after full consultation with them.

I have, &c.
Signed) NEWCASTLE.

No. 10.

Lord Lyons to Lord J. Russell.—(Received February 25.)

My Lord, *Washington, February* 12, 1861.

A RESOLUTION was moved yesterday in the Senate by Mr. Green, Senator for Missouri, that "the President of the United States be requested (if not incompatible with the public interest) to communicate to the Senate a copy of any correspondence which may have taken place between this Government

and that of Her Britannic Majesty, and of any despatches which may have been received from the United States' Minister at London, relative to the extradition of one Anderson, a man of colour, charged with the commission of the crime of murder in the State of Missouri."

It is probable that this Resolution will be passed by the Senate, and complied with by the President.

I have, &c.
(Signed) LYONS.

No. 11.

Mr. Hammond to Sir F. Rogers.

Sir, *Foreign Office, February* 27, 1861.

I AM directed by Lord J. Russell to transmit to you, for the information of the Duke of Newcastle, a copy of a despatch from Her Majesty's Minister at Washington,* reporting that a motion has been made in the Senate for the production of papers respecting the case of the fugitive slave Anderson.

I am, &c.
(Signed) E. HAMMOND.

No. 12.

Lieutenant-General Sir W. Williams to the Duke of Newcastle.—(Received February 11.)

My Lord Duke, *Montreal, January* 26, 1861.

I HAVE had the honour of receiving your Grace's despatch of the 9th instant, respecting the extradition of Anderson.

Being fully impressed with the importance and gravity of the case, I had made up my mind to take no step in the matter without the express directions of Her Majesty's Government, and I shall not fail to follow closely your Grace's instructions.

I have, &c.
(Signed) W. F. WILLIAMS.

No. 13.

Lieutenant-General Sir W. Williams to the Duke of Newcastle.—(Received March 1.)

My Lord Duke, *Quebec, February* 4, 1861.

I HAVE the honour to inclose a copy of the Toronto "Globe," giving an account of the granting, by the Chief Justice of the Court of Common Pleas in Upper Canada, of a writ of *habeas corpus* in the case of Anderson.

Although this information is not in an official shape, I have thought it right to give your Grace the earliest intelligence which has reached me in this matter.

I have, &c.
(Signed) W. F. WILLIAMS.

Inclosure in No. 13.

Extract from the "Toronto Globe" of February 2, 1861.

IN CHAMBERS.

"*Mr. S. B. Freeman, Q.C.*, yesterday applied to Mr. Chief Justice Draper for a writ of *habeas corpus*, directed to the Sheriff of the County of Brant, to bring up the body of Anderson next week before the Court of Common Pleas,

* No. 10.

and for a writ of *certiorari* directed to Mr. Mathews, the committing Magistrate, to return the warrant and other papers.

"*Chief Justice Draper.*—Mr. Freeman, are you satisfied that the prisoner is in the custody of the Sheriff of Brant? I see from the papers that in England it was sworn that he is in Toronto jail.

"*Mr. Robert A. Harrison.*—The prisoner is, I believe, in the custody of the Sheriff of the County of Brant, under a warrant directed by the Court of Queen's Bench.

"*Chief Justice Draper.*—I learn from the public papers that a writ of *habeas corpus* has been moved in the Court of Queen's Bench in England.

"*Mr. S. B. Freeman, Q C.*—Yes, my Lord, it so appears; but I am desirous of obtaining the opinion of the Common Pleas in this Province.

"*Chief Justice Draper.*—Mr. Freeman, take the writ."

The two writs were in Toronto yesterday. We do not know which may be the first to reach Brantford. In either case, we think there is now every ground for the assurance that Anderson is safe, and we trust he may get a speedy discharge, without the trouble and cost being incurred of sending him to England.

The new aspect which the case has assumed has excited a great deal of interest at home, as well as here, and we publish in other columns the comments of the "Times," and other English journals. We publish, also, a more ample report than was received by the "Ætna," of the proceedings in the Court of Queen's Bench on the occasion of issuing the writ.

No. 14.

Lieutenant-General Sir W. Williams to the Duke of Newcastle.—(Received March 1.)

My Lord Duke, *Quebec, February 5, 1861.*

IMMEDIATELY on the receipt of your Grace's despatch of the 16th of January, I took steps for procuring copies of all papers and documents relating to Anderson's case. I will not fail to forward them without delay when they are prepared.

I have, &c.
(Signed) W. F. WILLIAMS.

No. 15.

Lieutenant-General Sir W. Williams to the Duke of Newcastle.—(Received March 8.)

My Lord Duke, *Montreal, February 15, 1861.*

IN obedience to the instructions contained in your Grace's despatch of the 9th of January, I have now the honour to transmit the inclosed certified copies of the papers in the Anderson Extradition Case, up to the judgment given by the Court of Queen's Bench at Toronto.

The record of the proceedings before the Judges of the Court of Common Pleas will be forwarded so soon as I shall have received it.

For convenience of reference I annex a schedule of the documents now transmitted.

I have, &c.
(Signed) W. F. WILLIAMS.

Inclosure 1 in No. 15.

Warrant of Commitment.

Province of Canada, County of Brant.

TO all or any of the Constables or other Peace Officers in the county of Brant, and to the keeper of the common jail of the county of Brant, at Brantford, in the said county of Brant.

Whereas John Anderson was this day charged before us, two of Her Majesty's Justices of the Peace in and for the said county of Brant, on the oath of William C. Baker, of Howard County, Missouri, and others, for that he the said John Anderson did in Howard County, in the State of Missouri, on the 28th day of September, 1853, wilfully, maliciously, and feloniously stab and kill one Seneca T. P. Diggs, of Howard County. These are, therefore, to command you, the said Constables or Peace Officers, or any of you, to take the said John Anderson, and safely him convey to the common jail at Brantford aforesaid, and there deliver him to the keeper thereof, together with this Precept. And I do hereby command you, the said keeper of the said common jail, to receive the John Anderson into your custody in the said common jail, and there safely keep until he shall be delivered by due course of law.

Given under my hand and seal this 28th day of September, in the year of Lord 1860, at Brantford, in the county of Brant aforesaid.

(L.S.) (Signed) W. MATHEWS, *J. P.*
HENRY YARDINGTON, *J. P.*
JAMES LAUGHRY, *J. P.*

Inclosure 2 in No. 15.

Writs.

Canada to wit.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to the Sheriff of the County of Brant, greeting. We command you that you have before our Justices of our Court of Queen's Bench at Toronto, on Friday, the 23rd day of November, in the year of our Lord 1860, the body of John Anderson, detained in your custody, as is said, together with the day and cause of his taking and detainer, by whatsoever name the said John Anderson may be called therein, to undergo and receive all and singular such things as our said Courts shall then and there consider of concerning him in that behalf, and have you then and there this writ.

Witness, the Honourable Sir John Beverley Robinson, Baronet, Chief Justice of our said Court of Queen's Bench, this 20th day of November, in the year of our Lord 1860, and of our reign the twenty-fourth.

(Signed) ROBT. STANTON.

I have the body of the within-named John Anderson, as is herein required of me; and the further execution of this writ appears by the annexed copy warrant of commitment.

The answer of John Smith, Esquire, Sheriff of the County of Brant.

Canada to wit.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to William Mathews, Esquire, one of Her Majesty's Justices of the Peace in and for the County of Brant, greeting. We, being willing for certain reasons that all and singular examinations, informations, and depositions taken by or before you touching the commitment of John Anderson to the custody of the Keeper of the jail at the town of Brantford, in and for the said county, upon a charge of murder, as is said, be sent by you before our Justices of our Court of Queen's Bench at Toronto, do command you to send under your seal before our said Justices of our said Court of Queen's Bench at Toronto, immediately after the receipt of this our writ, all and singular the said examinations, informations, and depositions, with all things touching the same, as fully and perfectly as they have been taken by or before you, and now remain in your custody or power, together with this our writ, that we may cause further to be done thereon what of right, and according to the law and custom of our said Province of Canada, we shall see fit to be done.

Witness, the Honourable Sir John Beverley Robinson, Baronet, Chief Justice of our said Court of Queen's Bench, this 20th day of November, in the year of our Lord 1860, and in the twenty-fourth year of our reign.

(Signed) ROBT. STANTON.

The execution of this appears by the schedule hereto annexed.

The answer of William Mathews, one of Her Majesty's Justices of the Peace in and for the county of Brant within mentioned, with the seal affixed.

(Signed) W. MATHEWS, *J. P.*

Inclosure 3 in No. 15.

Evidence, &c.

Province of Canada, County of Brant.

THE information and complaint of James A. Gunning, of the city of Detroit, in the State of Michigan, taken this 30th day of April, in the year of our Lord 1860, before the Undersigned, one of Her Majesty's Justices of the Peace in and for the said County of Brant, who saith that one John Anderson did, on the 28th day of September, A.D. 1853, wilfully, deliberately, and maliciously murder one Seneca T. P. Diggs, in the County of Howard, in the State of Missouri, one of the United States of America, all of which this deponent doth verily believe.

(Signed) J. A. GUNNING.

Sworn before me the day and year first above mentioned at Brantford.

(Signed) W. MATHEWS, *J. P.*

Brantford, September 27, 1860.

Province of Canada, County of Brant, to wit.

Examination of John Anderson, charged by J. A. Gunning with having wilfully, deliberately, maliciously, and feloniously murdered one Seneca T. P. Diggs, of Howard County, in the State of Missouri, one of the United States of America, on the 28th day of September, 1853.

Prisoner, by counsel, G. M. Wilson, Esq., denies the charge.

William C. Baker sworn, says: I live in Howard County in the State of Missouri. I have lived there ever since 1844, except one year I lived in the same State during that time, part in Saline County, part in Jackson County. I work at the carpenter trade, and sometimes work on a farm. I know the prisoner; he was a slave, and belonged to Moses Burton of Howard County, State of Missouri, when I first knew him. I became acquainted with him in the fall of 1844. He lived with Mr. Burton when I went to Missouri in 1844, and continued with him until 1853. He went by the name of Jack Burton; the last I saw of him was in 1853, until I saw him in this country. I am certain of Anderson's identity. I did not see him from 1853 until I came here. Burton transferred him in 1853 to Mc Donald, of Saline Connty, about thirty or thirty-two miles away, that is Burton's from McDonald's. Anderson had a wife; she lived with Samuel Brown in Howard County, that was a mile and a half or two miles from Burton's. I knew a man by the name of Givens; he lived about six miles from Brown's. Seneca T. P. Diggs and Givens lived on adjoining farms. I know Anderson was in the neighbourhood of Brown's in September 1853. I live in the neighbourhood of Brown's since 1853. I have not heard of Anderson being there since 1853. I first saw Anderson in Simcoe Jail in Canada; he was brought out, and two others, coloured persons, with him. I knew him the moment I saw him; he has a mark on his fingers; his right forefinger is stiff in the joint. I heard he had a cut on one of his legs. Don't know this from my own knowledge. Diggs, Brown, Givens, and myself, all lived in Howard County. Diggs is not now living; I saw him lying in his bed, suffering from a wound he received from a knife; he died in fourteen days after he was stabbed; he lived four days after I last saw him. I saw him twice after he was wounded. The first time I saw him he told me a man by the name of Jack, who belonged to a man of the name of Mc Donald, of Saline County, was passing his farm and spoke to him, and asked him the way to Charles Givens. Diggs said he told him to go in and eat dinner, and he would go to Givens with him. He further stated that he started to go to the house; he, Diggs, thought that Anderson was going in. Jack told him he was going to Givens for the purpose of getting to

buy him; he then broke and ran away. He called out to his black boys to catch him. They ran in a circle, and after running for some time, when Mr. Diggs was going over a fence, Jack came in contact with him and stabbed him. I saw one cut in his right side; the doctor told me he would die. This took place the same day. He seemed to be suffering very much when I saw him. The doctor said he would die from the wound.

Cross-examined by Mr. Wilson.—I knew he had a stiff finger ever since I was acquainted with him. Don't know how he got it. I have frequently had hold of his hand. I saw Anderson once in September 1853, in Howard County, a day or two before the cutting of Diggs; he was on Brown's farm; he was running from a couple of my neighbours to keep them from taking hold of him. They wanted to deliver him up to McDonald; he had been out from McDonald's about three weeks. They supposed Anderson ran away from McDonald's, as his wife was on that side of the river. W. Diggs said he asked Anderson if had a pass. There have been slaves escaping occasionally from there. I did not swear that Diggs told me he had received but one cut. The doctor's name was Samuel Crews; he was understood to be regular physician, practising for years in the County of Howard. Employed me to come over here. I have no authority. I came to identify prisoner. County of Howard is to pay me for this. They pay my expenses, and two dollars and a-half per day. I draw it from the Clerk. The Clerk's name is Charles H. Stewart. I am not paid from other persons or from other sources. Mr. Diggs when I first saw him understood what he was talking about.

(Signed) W. C. BAKER.

Court adjourned until 10 o'clock to-morrow.
(Signed) W. MATHEWS, *J. P.*

In consequence of the arrival of Mr. Freeman (Counsel for prisoner) the examination was resumed this afternoon, 27th of September, 1860.

Messrs. Freeman and Tisdale appeared for the prisoner; Messrs. Van Norman and Mc Kerlie for the plaintiffs. The prisoner was brought in at 5 P.M.

W. C. Baker recalled: I live in Howard County, State of Missouri. Anderson was a slave there in Missouri. I did not see the wound made; Diggs told me it was about dinner-time when he first saw Anderson; he asked him to take dinner at his house. When Anderson broke away from him Diggs was trying to stop him. Diggs was trying to stop him from running away from his master Mc Donald. I understood he was going to be sold. He went towards Givens to induce him to buy him. A slave does not sell himself, but sometimes he tries to get an exchange of masters; but they have no right by law to do so. He was going to induce Givens to buy him. Diggs told him the law of the State compelled him to stop him if he had no pass. Diggs asked him to go to his house. Diggs and they started to the house; when they got on a piece Jack broke loose and broke away. It was at dinner-time when he saw Jack first, and told him to go to his house and get dinner, and he would go along with him. After he broke and ran from him the parties who pursued him made a circle. Jack ran in a circle. Diggs called to his black boys to catch him: they started after him. There were three or perhaps more black boys. Diggs was going to stop him to return him to his master Mc Donald in slavery. It was in that pursuit that Diggs was stabbed and got his death-blow. Did not understand from Diggs it was to do Jack any harm they tried to catch him, but merely to retain him.

Examined by McKerlie and Van Norman.—From the time I knew Anderson his character was bad: he was savage and ill-disposed. As they were making a circle Diggs was getting over a fence. Jack was coming towards him and tried to stop him, and he, Diggs, was going to take hold of him to stop him. Jack was coming towards him and stabbed him.

Examined by Freeman.—As Diggs got over the fence they came in contact and he received the stab. Diggs had gone to the fence to stop him, so he said to me. The prisoner had difficulties with the man who raised him; he refused to do what he was bid. On one occasion he refused to catch his master's horse when he was told. He and his master had some words; there were no blows struck. Don't know personally any other act, but his public reputation was bad, for stealing and being a thief. Don't know he was ever convicted. The neighbours said he stole. Don't know that he ever stole for his master. He

was accused of stealing chickens, eggs, and butter. Don't know that he was ever brought before a Justice for it. Samuel Brown accused him of this. John M. Harris and J. C. George Brown accused him for stealing eggs; the others of butter and chickens. Can't say when it was; these accusations are common there against the coloured people. In 1847 and 1848 I heard this. He was there at this time, but he was not taken up for any of these things.

(Signed) W. C. BAKER.

Thomas L. Diggs sworn, says:—I am the son of Seneca F. P. Diggs, of Howard County, State of Missouri; I have always resided at home; was not at home when my father received his wounds. When I returned home I found my father in bed; he was suffering very much. He never rose from a bed of suffering. He never spoke of recovering; he thought he would not get well. The doctor told the family my father would not get well. Two or three days before my father died he wished to speak to me, and I went to him, and he said he would soon be dead; he could not live much longer. He spoke of my mother, and brothers and sisters. He spoke of the cutting affair. He said he went to the barn with the hands to take in tobacco. He got through before 12 o'clock, or a little before he started for dinner. He came across a nigger; he had no pass; he asked him where he was going and who he belonged to. The nigger told him he was going to Charley Givens to get him to buy him. He belonged to a man on the other side of the river of the name of McDonald. He said he did not want to live on the other side of the river; Samuel Brown had his wife. My father asked him if he had a pass. He said no. My father told him it looked suspicious, living so far off; he must be a runaway. My father told him he could not allow him to go without a pass, as he would be held responsible. He told him to go to the house and get his dinner, and he would go with him to Charley Givens, and he would see about the matter. He started on to the house. The nigger was going on very quietly. All at once he started off and ran. He said he told his negroes to catch him. They started after him and he went with my brother. He was not able to go so fast, and he stayed with him. After they had run round some time the negro met him. The negro ran at him and stabbed him. He had a little stick in his hand, and as the negro ran at him he struck at him. The negro cut him a little in the wrist, then he stabbed him in his breast. The blow stunned him. He turned to leave him, and his feet caught in something, and while he was in the act of falling or had fallen he stabbed him again in the back. The negro then immediately ran. The paw-paw is a very light wood; it never grows large. The one my father had was small.

I am 25 years old last December. My father was a delicate man, slim and small; his height, six feet; he was slight, spare made. He would not be able to cope with prisoner. His health was not good. They considered the negro a runaway. My father's was about thirty miles from Mc Donald's, as I have heard. He did not live in the same county with father. I suppose my father wanted to catch the negro. I would suppose he wanted to return him to the owner. He was a slave, I have no doubt. Prisoner is about five feet eight or nine inches; his weight is about 160 or 170 lbs. My father's usual weight was 135 or 140 lbs. When the negro ran at my father he had the knife drawn in his hand.

(Signed) THOS. L. DIGGS.

Ben. Hazlehurst sworn, says: I live in Brantford; am a county constable. Prisoner made no statement to me but what he said in Court. He said he was attempting to get away, and he cut a man, but he did not believe he was dead. This took place in the State of Missouri. He said he was chased in attempting to get away, and he cut a man. I understood he was getting away from slavery.

(Signed) B. HAZLEHURST.

S. B. Freeman, Counsel for the prisoner, consenting that the evidence of Phil, a slave, shall be taken as evidence.

(Signed) W. MATHEWS, *J. P.*

Phil, a slave, the property of Frances A. Diggs, widow of Seneca T. P. Diggs, of lawful age, being produced, sworn, and examined, deposeth and saith: Next

fall will be seven years ago a negro man came to us (my master, Seneca T. P. Diggs, and the balance of the negroes) in my master's field. My master asked him if he had a pass. He said he did not have a pass. Master told him he could not let him go clear without a pass. He told my master that a man by the name of Burton raised him; that he now belonged to a man over the river by the name of Mc Donald; that he had a wife at Mr. Sam Brown's, in Howard County; that he was then going to Mr. Givens' to get Givens to buy him. Master told him that he could not let him go on that way without a pass; that he must go on up to the house, and eat dinner, and then he would go with him up to Mr. Givens'. He told master that his name was Jack. Just before we got to the house, the negro man broke and ran. Master told us negroes to run after him. We ran after him. Master said we should have the reward if we would catch him. While we was running him he took out his knife. We runned him around a good long while. Master would halloa all the time, and we would answer him. At last master met the negro, and I saw him cut master twice with a knife. I saw him when he run at my master with the knife. While we were running after him he said he would kill us if we came near him. We ran after him some time after he stabbed master, but could not catch him. The negro that killed my master was named Jack; he once belonged to Moses Burton, of Howard County, and had a wife at Sam Brown's. I knew him, and have seen him before the day he killed my master. This happened in Howard County, Missouri, in the United States of America, in the year 1853.

his
(Signed) PHIL, ✕ a Slave.
mark.

Sworn to and subscribed before me, the day and year aforesaid.
(Signed) J. A. HOLLIDAY, *J. P.*

J. A. Holliday sworn, says: I live in Howard County, State of Missouri; have been there since the month of June 1829; I was born there; am a lawyer by profession. The 1st section, 3rd Article of the Act concerning slaves, Revised Statutes, 1845, for the State of Missouri, provides: Any person may apprehend any negro or mulatto being, or suspected of being, a runaway slave, and take him or her before Justices of the Peace. The 2nd section provides that the Justice shall take possession of and deliver him or her to the owner. The 18th section of the same Article provides, that any slave found to be more than twenty miles from his home shall be declared to be a runaway. The 16th section provides, that any one apprehending a runaway slave shall be paid the sum of 5 dollars as a reward if taken within the State, and 50 dollars if taken without the State, and 10 cents for every mile of travel in order to convey the runaway home to his master. This law was in force in 1853, and is still in force, in substance. I heard of the death of Mr. Diggs at the time it took place, and have not heard of the death of any other person there since in that way, nor for several years before. I don't know that I ever saw prisoner until the other night; I may have seen him, but don't know that I have.

(Signed) J. A. HOLLIDAY.

Benjamin F. Diggs.—I live in Howard County, State of Missouri, United States of America. I am 15 years old 30th May last. I am son of Seneca T. P. Diggs. He is now dead. He died in fall of 1853, in the month of November of that year, on the 11th, I think. The cause of his death was two wounds he received from a coloured man, who inflicted them with a knife, about 12 o'clock in the day. Father was a farmer. I was with father when he was stabbed, about five or six yards from him. He was in pursuit of the negro when he was stabbed. I was with father when he first started in pursuit of him. Other parties say four black boys of my father's were following up. I was with father, and could not keep up, and he stayed with me. When he was stabbed he had got over the fence. When the nigger had got to him I was on the fence. Father was about six yards from the fence. Saw him stab father. There was nobody with the man or father but me. I saw the knife; it was a long dirk knife. Father was first stabbed in the breast. After that, father turned to run away, and hung his foot in some vines, and fell. The man then stabbed him in the back, and then broke and run. Father got up, and walked a piece, and fell about fifteen or twenty yards. This was about a mile from our

house. Father lay about an hour when he fell last. No one was with him but me, During that time I saw his wounds; he pulled down his shirt and showed them to me—two wounds. I saw them inflicted by this man, one on the breast, the other on the back. The other parties were still running after the nigger. After this, we heard some one halloa, and father told me to answer. Father was not able to get up. Dr. Crews and one of our own nigger men first came up. The Doctor lived about half-a-mile from where father was stabbed. After a while, another of our niggers came up, and he and I went to Bass's, to get quilts to carry him over the Creek. They lived about a quarter of a mile off. A sleigh was brought, drawn by a horse. Father was put on the sleigh, and taken to Dr. Crews'. He stayed there till he died. He never went home after. Had never seen the man who stabbed father before that time. The prisoner is about the colour and size of the man, but I would not swear he is the man.

Examined by Mr. Freeman.—I was not present at the first. What I saw first was father and some of the black boys. One told me it was a runaway. There were two men and two boys, from 17 to 19 years of age. They were walking along. I asked one of the boys who the strange black man was. He told me some one said he was a runaway. I walked along towards our house to dinner. This man was going along. They came in sight of a house in the field, when the stranger broke, and run, and left the rest; that is, he ran away from the rest, through the woods, from the others, pretty fast: he appeared to run as if he was trying to run away. Don't know what the others thought; they ran after him; father told them to run after him. Father wanted to give him back to McDonald. Moses Burton used to own him. He tried to get away so that father could not deliver him back to his master. Father told the boys to go after him and catch him. They were present. There were four went after him, all blacks. Father told them to catch him. Father also ran after him. Don't remember if he halloaed; but he went after him. The nigger and one man ran in a circle. Father and I went across, and father had just got over the fence. The nigger and he met. Did not hear any words pass. I took a deposition once before Mr. Holliday, J.P. Father had a little stick in his hand. The negro ran at him with an open knife, drawn, in his hand. It was a paw-paw stick. My father struck at him with the stick after the nigger had run at him with the open knife. The stick hung in some bushes, and broke. The nigger then stabbed father. Father raised the stick to keep the nigger from cutting him with the knife as he ran at him. They had run across one Wood's pasture before this happened; it would be between a quarter and half-a-mile; more than half-an-hour, or perhaps not so long: but he did not go far from our farm. He was trying to get away, and they trying to catch him. One coloured boy was about twenty yards off when father was stabbed.

(Signed) BENJ. F. DIGGS.

Prisoner committed and evidence certified to his Excellency the Govern o General.

(Signed) W. MATHEWS, *J. P.*

I herby certify that the within papers are true copies of the papers filed in the Court of Queen's Bench on the application for the discharge of John Anderson with the writ of *certiorari* and return thereto, to which writ they are annexed.

In witness whereof I have hereto affixed the Seal of the Court of Queen's Bench, this 8th day of February A.D. 1861.

(Signed) CHR. C. INNELL,
Clerk of the Crown and Pleas.

Inclosure 4 in No. 15.

Judgment of Chief Justice Robinson.

In the Court of Queen's Bench.

ON the 20th November, 1860, a writ of *habeas corpus* was granted, returnable in the Queen's Bench, to bring up the body of John Anderson, detained in the custody of the Sheriff of the County of Brant, with the cause of his detention.

To this writ the Sheriff returned that the prisoner was in his custody upon a warrant in these words:—

"Province of Canada, County of Brant.

"To all or any of the Constables, or other Peace Officers, in the County of Brant, and to the Keeper of the Common Jail of the County of Brant, at Brantford, in the said County of Brant.

"Whereas, John Anderson was this day charged before us, two of Her Majesty's Justices of the Peace in and for the said County of Brant, on the oath of Willian C. Baker, of Howard County, Missouri, and others, for that he, the said John Anderson, did in Howard County, in the State of Missouri, on the 28th day of September, 1853, wilfully, maliciously, and feloniously, stab and kill one Seneca P. T. Diggs of Howard County. These are therefore to command you, the said Constables, or Peace Officers, or any of you, to take the said John Anderson, and safely him convey to the Common Jail at Brantford aforesaid, and there deliver him to the keeper thereof, together with this Precept.

"And I do hereby command you, the said keeper of the said Common Jail, to receive the said John Anderson into your custody in the said Common Jail, and there safely keep until (he) shall be delivered by due coure of law.

"Given under my hand and seal, this 28th day of September, 1860, at Brantford, in the County of Brant aforesaid.

(Signed) "W. MATHEWS, *J. P.*
"HENRY YARDINGTON, *J. P.*
"JAMES LAUGTRY, *J. P.*"

The complaint on which this warrant issued was made by one James A. Gunning of the City of Detroit, in the State of Michigan, and was sworn in the County of Brant, before W. Mathews, a Justice of the Peace for that County.

It stated that John Anderson did, on the 28th of September, 1853, wilfully, deliberately, and maliciously, murder one Seneca T. P. Diggs, in the County of Howard, in the State of Missouri, one of the United States of America, all of which the deponent doth verily believe.

This last line seems like a qualification of the positive statement with which the information commenced, though it is often added in depositions, even when the deponent speaks of conclusions which he has been led to form from facts within his personal knowledge. If this deponent, however, was not an eye-witness to any act tending to prove Anderson's guilt, it would not follow that his complaint could not be received as ground for bringing the party before the Justice, and detaining him a reasonable time until the proper evidence could be produced. There may have been but one witness to the crime in any such case, and in many there may be no witness surviving, and if a fugitive offender from abroad or one of our own country could not be arrested and held in custody on such an information as this, and in many cases without a warrant, until the more positive and direct testimony can be produced, the chance would be but small of arresting the offender, and very desperate crimes would often go unpunished. When some great crime, and especially a murder, has been committed, we see hand-bills with minute descriptions of the person known or suspected to be guilty dispersed through our own and the neighbouring country, and in many cases it is by Peace Officers and others venturing to act upon such notices that the person is stopped in his flight, sometimes with a warrant and sometimes without. The person or persons who have a knowledge of the facts are often not in a condition to make pursuit themselves, and at any rate they could not be everywhere at one time, nor could informations sworn to by them be so widely distributed as to be everywhere at hand, ready to meet the offender. And even where they could be produced at the moment, still the offender would be in many cases out of reach before a warrant could be framed upon them.

No objection, I think, was taken to the information sworn to by Mr. Gunning, and when the Justices had the prisoner before them, and heard the testimony that was afterwards produced, they could not properly decline to act upon it.

Upon a *certiorari* directed to the Justices of the Peace who made the warrant of commitment, the evidence was returned which they had received in support of the charge; and the Justices have further returned that they had certified to the Governor that the evidence was sufficient, in their opinion, to

support the charge, and had also sent a copy of the testimony, which is in substance this :—

The prisoner, John Anderson, in and before the year 1844, and from that time till 1853, was living with one Moses Burton, whose slave he was, in the County of Howard, in the State of Missouri, one of the United States of America.

In 1853, before September, Burton transferred, that is, as I infer from the evidence, sold, Anderson to one McDonald, who lived in Saline County, in the State of Missouri, about thirty-two miles distant from the residence of Burton.

Anderson had a wife, who lived with one Samuel Brown, in Howard County, about two miles from Burton's.

In September 1853, Anderson had been seen by several parties in the neighbourhood of Brown's, and Brown's farm and McDonald's being on opposite sides of the river and so distant from each other, it was suspected, and was rumoured in the vicinity, that Anderson had run away from his master McDonald, and he had in September 1853, a day or two before his meeting with the deceased, Seneca T. P. Diggs, been seen on Brown's farm by two persons, who pursued him in order to take him up and deliver him to McDonald, from whom it was supposed he had escaped. He ran away from them, and had been about three weeks from his master McDonald, when, about the 28th day of September, the deceased, Diggs, who lived about six miles from Brown's, having been at work in his barn with some of his negroes, was going from thence across his field to his dwelling-house, about noon, to get dinner. He had four of his negroes with him, and on their way to the house they met Anderson, who asked him if he could tell him where one Charles Givens lived. This Charles Givens lived on the next farm to the deceased, Diggs, and in answer to Diggs' inquiry of Anderson where he was going, and to whom he belonged, Anderson told him that he was going to Givens to get him to buy him. He belonged, he said, to a man on the other side of the river named McDonald, and he added that he did not want to live on the other side of the river, because his wife was living at Brown's, on the same side as Diggs lived, and about six miles from his farm and Givens'.

Diggs then asked him if he had a pass. He said he had not. Diggs remarked that that looked suspicious, as he was so far from McDonald's, and that he must be a runaway. He told Anderson also that he could not allow him to go without a pass, for that he would be himself responsible; and he told Anderson to go with him to his house and get his dinner, and that he would then go with him to Givens and see about the matter. They were at that time going towards the house; Anderson was going quietly along the road, and as they came near to Diggs' house he suddenly started off and ran away. Diggs called to his four negroes to run after him, telling them that if they could catch him they should have the reward.

Diggs had a son of his with him, a child about eight years of age, and did not keep up with the negroes while they were pursuing Anderson, but followed them. Anderson, while he was running from the negroes, took out a knife and called out that he would kill them if they came near him. The negroes had continued chasing him round for some time in a kind of circle, when Diggs, having gone across the circle, saw Anderson not far from him on the other side of a fence, and with his little boy got over the fence and continued the pursuit, having a small stick in his hand. Anderson, when Diggs had got about six yards from the fence, turned upon him, having an open knife in his hand, and ran at him. Diggs struck at him with the stick, which caught in some bushes and broke; and then Anderson stabbed Diggs with his knife (a long dirk knife) in the breast. Diggs turned to run from him, and caught his foot in a vine, and fell, when Anderson went up to him and stabbed him in the back and ran off. Diggs got up and walked fifteen or twenty yards, and then fell, being unable to get further. At this time one of Diggs' negroes was about twenty yards from them, and the others were at a distance, and, for all that appeared, may not have been in sight. The negroes continued to pursue Anderson, but he escaped from them and found his way to Upper Canada, where he was recognized, and apprehended in the spring of this year, 1860.

The place where Diggs was stabbed was about a mile distant from his house. His little boy remained with him an hour or more, till one of the

negroes came with a doctor named Crew, who lived about half-a-mile from the spot, and Diggs was removed on a sled to the doctor's house, where he remained till he died, two or three weeks afterwards, or perhaps rather longer, for in regard to the time there seems to be some discrepancy in the evidence.

Two of Diggs' sons were examined before the magistrates at Brantford, in this province, to whom the complaint was made; and the deposition of one of the negroes, who was near enough to see, and did see, Anderson stab the deceased, was, by consent of the prisoner's counsel, allowed to be read.

One of the sons, now fifteen years of age, is the same boy who in 1853 was with his father when he received his wounds. The other son, ten years older, saw nothing of the occurrence, but proved the account given to him by his father, two days before he died, when he had no hope that he would recover. Another witness, William C. Baker, gave evidence of the same description, from the account which he received from Diggs, while he was lying at Dr. Crews.

There is little variation in the accounts, and the testimony of the witnesses has the appearance of being given fairly. The prisoner Anderson admitted after his arrest that he cut a man in attempting to escape from slavery, but did not believe he had killed him.

He desired to address the Court when brought before it upon this writ, and said the same thing in substance.

There seems to be no room for doubt either as to the facts of this case, in any important particular, or as to the spirit in which Digges and Anderson acted from the moment they met on that day in September, which proved fatal to Diggs.

In the arguments addressed to us by Anderson through his Counsel, and in some observations which he made himself, it is clear that he desires to rest his defence upon the ground that in stabbing Diggs, and in his whole conduct on that day from the time they met, he was actuated solely by the desire to gain his freedom, by escaping from slavery. This, it was urged, was the motive that prompted him throughout; and we were told that, although he did profess to Diggs that he was anxious merely to change his master, for the reasons which he gave, and had come to that part of the State for the purpose of endeavouring to induce Givens to buy him, yet that that was merely a pretence put forward to lull suspicion, and to cover his real design, for that he had in fact escaped from his master, McDonald, and was bent on making his way out of the State, and had come to Howard County for the purpose of communicating with his wife, and arranging with her how she could follow him to Canada; and it was asserted in argument, in corroboration of this (though I see nothing of that in the evidence before the committing magistrates), that his wife did actually make her escape about the same time, and got to Detroit before himself. On the other hand, in the evidence brought forward to sustain the charge, it is plainly and consistently stated that Diggs acted entirely from the motive of preventing the escape of Anderson, and with the view to restore him as a slave to his master, McDonald.

They seem to have been strangers to each other up to that day; and Diggs, according to the evidence, acted not from any knowledge he had that Anderson was a slave, but from suspicion, strengthened by the fact that he admitted he had no pass, and that McDonald, who lived twenty or thirty miles off, was his owner.

The witness Baker, speaking from Diggs' statements, made to him while Diggs was lying mortally wounded, and without hope of recovery, says, "It was about dinner-time when Diggs first saw Anderson; he asked him to take dinner at his house. When Anderson broke away from him, Diggs was trying to stop him;" that is, as Baker explains, "he was trying to stop him from running away from his master, McDonald."

"Diggs told him," he says (that is, told Anderson, as I understand the evidence), "that the law of the State compelled him to stop him if he had no pass. Diggs called to his black boys to catch him, and they started after him. There were three or perhaps more black boys. Diggs was going to stop him to return him to his master, McDonald, in slavery. It was in that pursuit that Diggs was stabbed, and got his death-blow. I did not understand from Diggs that it was to do Jack any harm; they tried to catch him, but merely to detain him." Again, Baker says, "As they were making a circle,

Diggs was getting over a fence. Jack was coming towards him, and tried to stop him, and he (Diggs) was going to take hold of him to stop him. Jack was coming towards him and stabbed him. As Diggs got over the fence they came in contact, and he received the stab. Diggs had gone to the fence, and so he said to me."

The youngest son of Diggs, who was then with his father, says: "I was with father when he was stabbed, about five or six yards from him. He was in pursuit of the negro when he was stabbed. I was with father when he first started in pursuit of him. Other parties, say four black boys of my father, were following up." And he elsewhere explains that there were two men and two boys, from 17 to 19 years of age, and he heard it said among them that the strange black man they were pursuing, was a runaway. "Father told me," he says, "to run after him. Father wanted to give him back to McDonald. He tried to get away, so that father could not deliver him to his master. Father also ran after him. I don't remember if he halloaed, but he went after him. When the negro and father met, I did not hear any words pass. Father had a little stick in his hand. The negro ran at him with an open knife drawn in his hand. It was a paw-paw stick my father had. My father struck at him with the stick after the negro had run at him with the open knife. The stick hung in some open bushes and broke. The negro then stabbed father. Father raised the stick to keep the negro from cutting him with the knife as he ran at him. He was trying to get away, and they trying to catch him. One coloured boy was about twenty yards off when father was stabbed."

Thomas Diggs, the other son of the deceased, was from home at the time of this occurrence, and saw nothing of it, but he speaks from the account which his father gave him of it when he was near dying, and as this witness was then ten years older than his younger brother, his account of what Diggs said when lying *in extremis* may be more safely relied on. This is his account of his father's statement of what took place after Anderson broke from them in walking towards the house:—"All at once he started off and ran. He" (that is, Diggs) "said he told his negroes to catch him. They started after him, and he went with my brother, who was not able to go so fast, and he staid with him. After they ran around for some time, the negro met him. The negro ran at him and stabbed him. He had a little stick in his hand, and as the negro ran at him, he struck at him. The negro cut him a little on the wrist, then he stabbed him in his breast. The blow stunned him; he turned to leave, and his foot caught in something, and while he was in the act of falling, or had fallen, he stabbed him again in the back. The negro then immediately ran. The pau-pau is a very light wood, it never grows large. The one my father had was small. My father was a delicate man, thin and small; his height was six feet. He was slight, spare made. He would not be able to cope with the prisoner; his health was not good. They considered the negro a runaway. My father was about thirty miles from McDonald's, as I have heard. He did not live in the same county with father. I suppose my father wanted to catch the negro; I would suppose he wanted to return him to the owner. He was a slave I have no doubt. Prisoner is about 5 feet 8 or 9 inches. His weight is about 160 or 170 pounds. My father's usual weight was about 135 or 140 pounds. When the negro ran at my father, he had the knife drawn in his hand."

That slave of Diggs' who was one of the party pursuing, and was near enough to him when he received his wound to see what passed, gives this account of the matter:—

"Next fall will be seven years ago, a negro man came to us, that is, to my master Seneca T. P. Diggs, and the balance of the negroes in my master's field. My master asked him if he had a pass: he said he had not. Master told he could not let him go clear without a pass. He told master that a man by the name of Burton raised him; that he now belonged to a man over the river by the name of McDonald; that he had a wife at Mr. Samuel Brown's in Howard County, and that he was going to Mr. Givens to get Givens to buy him. Master told him that he could not let him go on that way without a pass; that he must go on up to the house and eat dinner, and then he would go with him to Givens'. He told master that his name was Jack. Just before we got to the house the negro man broke and ran. Master told us negroes to run after him: we ran after him. Master said we should have the reward if we could catch him. While we were running him he took out his knife. We ran him around a good long while.

Master halloaed all the time, and we would answer him. At last master met the negro, and I saw him cut master twice with the knife. I saw him when he ran at my master with the knife. While we were running after him he said he would kill us if we came near him. We ran after him some time after he had stabbed master, but could not catch him. The negro that killed my master was named Jack. He once belonged to Moses Burton, of Howard County, and had a wife at Sam. Brown's. I knew him, and had seen him before the day he killed my master. This happened in Howard County, Missouri, in the United States of America, in the year 1853."

The testimony of this last witness was taken before a Magistrate in the State of Missouri, and by consent of the prisoner's Counsel was read before the Justices at Brantford in support of the charge. The Statute, indeed, provides for a deposition taken in the foreign country being received in evidence at the investigation in this province, when it has been authenticated in the manner directed, which this does not seem to have been, nor to have been made for the purpose of suing out a warrant in Missouri.

I have stated fully such portions of the several depositions as bear upon the conduct and motives of Diggs, and of the prisoner, as connected with the fact of the prisoner being a slave, and having escaped from his master, and of Diggs having attempted to arrest and detain him, with a knowledge or upon a suspicion that this was the fact, and of his being engaged in that attempt when he received his wound.

These statements have been in substance given by me before in the narrative of the occurrence, but to present them more clearly to view I have brought them together from the several depositions, extracting the statements in the words of the witnesses.

Then as connected with that matter, and in order to prove in what situation, legally speaking, the facts place the respective parties, a witness, J. A. Halliday, was examined, who deposed as follows:—

"I live in Howard County, State of Missouri: have been there since June 1829. I was born there, and am a lawyer by profession. The first section, third Article, of the Act concerning slaves, revised Statutes, 1845, of the State of Missouri, provides that any person may apprehend any negro or mulatto being or suspected of being a runaway slave, and take him or her before Justices of the Peace. The 2nd section provides that the Justice shall take possession of and deliver him or her to the owner. The 18th section of the same Article provides that any slave found to be more than twenty miles from his home shall be declared a runaway. The 16th section provides that any one apprehending a runaway shall be paid the sum of five dollars as a reward if taken within the State, and fifty dollars if taken without the State, and ten cents for every mile of travel in order to convey the runaway home to his master.

"This law was in force in 1853, and is still in force in substance. I heard of the death of Mr. Diggs at the time it took place, and have not heard of the death of any other person there since in that way, nor for several years before.

"I don't know that I ever saw the prisoner till the other night. I may have seen him, but don't know that I have."

This being in substance the evidence that was before the committing Magistrates at Brantford in this province, to sustain a charge against Anderson, the prisoner, now before us, of having committed the offence of murder in the State of Missouri, it became their duty to consider it in connection with our existing Statute for the surrender of fugitive offenders from the United States of America.

Our former Fugitive Offenders Act, 3 Wm. IV, cap. 6, has been repealed by our Statute 23 Vic., cap. 41, and it can hardly be material to refer to it as an aid to the construction of the existing Statutes, because the latter Act was passed for the purpose of giving effect to a Treaty with a foreign Government, and it is to that Treaty we should rather look for an indication of what was most probably meant by anything that may seem ambiguous in the language of the Statute.

The matter now rests upon the Ashburton Treaty of the 9th of August, 1842, ratified the 30th of October, 1842, and upon our Statute, cap. 89, consolidated Statutes of Canada, taken from 12 Vic., cap. 19.

The Treaty provides that the Governments of the two countries shall, upon mutual requisition, deliver up to justice persons charged with any of the crimes specified in the Treaty committed within the jurisdiction of either of the

contracting parties, who should seek an asylum or be found within the territories of the other: "Provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive, or the person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime had been there committed."

Our statute, cap. 89, for carrying into effect this Treaty, provides, that upon complaint, made under oath or affirmation, charging any person found within the limits of this province with having committed within the jurisdiction of the United States of America any of the crimes enumerated in the Treaty, any of the Judges of our Superior Courts, or any of Her Majesty's Justices of the Peace in this province, "may issue his warrant for the apprehension of the person so charged, that he may be brought before such Judge or Justice of the Peace, to the end that the evidence of criminality may be heard and considered; and, if on such bearing the evidence be found sufficient by him to sustain the charge according to the laws of this province, if the offence had been committed herein, he shall certify the same, with a copy of the testimony taken before him, to the Governor, that a warrant may issue upon a requisition of the proper authorities of the United States, or of any of such States, for the surrender of such person according to the Treaty.

"And the said Judge or Justice of the Peace shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender be made, or until such person be discharged according to law."

Section 2. Copies of the informations on which the warrant has been granted in the United States, certified as the Act directs, may be received on the hearing after arrest in this province, in evidence of the criminality of the person so apprehended.

Section 3. The Governor, upon such requisition by the Government of the United States, or of any State, may, by warrant, order the person so committed to be delivered to the person authorized to receive him on behalf of the United States, or of any such State, to be tried for the crime, &c., and such person shall be delivered up accordingly.

Section 4. If any person committed under this Act and Treaty, to remain till delivered up in pursuance of a requisition, be not delivered up and conveyed out of this province within two months, then any of the Judges having power to grant an *habeas corpus* upon application made to him or them, by or on behalf of the person so committed, and upon proof made to him or them that reasonable notice of the intention to make such application has been given to the Provincial Secretary, may order the person so committed to be discharged out of custody, unless sufficient cause shall be shown to such Judge or Judges why such discharge should not be ordered.

Taking, then, this statute into consideration, together with the return made by the Sheriff of the county of Brant to the writ of *habeas corpus* stating the warrant under which he holds the prisoner in custody, and taking also the return made by the Justices of the evidence upon which they issued that warrant, we have first to consider whether the warrant shows upon the face of it a legal course of imprisonment.

I notice that it does not in terms state that the prisoner has been charged with murder, though the information and complaint on which the Justices proceeded in the first instance to arrest the party did expressly contain a charge of that crime.

But the warrant of commitment does describe the charge in such terms as to show clearly that what the law holds to be murder is the offence of which the prisoner was accused before the Justices, and that they found the charge to be sufficiently sustained by the evidence to warrant the commitment.

The technical term "murder," which is indispensable in an indictment for that offence, ought to have been used, in order that it might be seen plainly, and not by inference merely, that the offence is one of those to which the Treaty, and the statute passed for giving effect to it, directly apply.

Defects of that nature, however, in a warrant are not fatal, for there is not the same necessity for an adherence to technical terms in a warrant as in an indictment; and, upon the return to a *habeas corpus*, it is the foundation of the warrant to which the Courts looks, when that is before them upon a *certiorari*, rather than to the warrant itself. When a legal cause for the imprisonment

appears upon the evidence, the ends of justice are not allowed to be defeated by a want of proper form in the warrant; but the Court will rather see that the error is corrected.

The case of King *v.* Marks and others (3 East's Reports, 157), show the principles on which the Courts act in such cases, and this is matter of constant practice.

I notice also, that the warrant of the Justices does not follow the words of the statute by committing the prisoner to jail, "there to remain until he shall be surrendered (upon the requisition of the proper authorities), or until he shall be discharged according to law." The Justices may have thought that those words in the end of the first clause (of the Statute 22 Vic., cap. 89, Consolidated Statutes of Canada) were inserted, at the direction of the Legislature, that the prisoner, when imprisoned by the Justices upon a charge of an offence committed in one of the United States, should, in fact, so remain imprisoned until surrendered, or otherwise discharged by law, rather than that the Legislature intended that those words should all necessarily form a part of the warrant itself.

Without them, however, all that appears on the face of the warrant is, that the prisoner is placed in custody for an offence alleged to have been committed by him in a country over which our Courts have no jurisdiction, and without any explanation of the authority for such a commitment, or the object of it.

This also is an imperfection in the warrant which the Court in any such case, having judicial knowledge of the grounds of the commitment, would be bound to see corrected, rather than discharge the prisoner on account of it; if, indeed, the words which are in this warrant, "until he be discharged according to law," would not be sufficient in themselves under the direction as to commitment given in the Statute.

I mention these apparent irregularities, chiefly in the hope that it may assist in leading to a more careful attention to form in similar cases that may arise.

No exception was taken to any defects in the warrant in the argument before us, probably because the learned Counsel for the prisoner, who argued his case with much zeal and ability, was well aware that it would serve no purpose in the end to rest the application for his discharge upon them.

It was upon the question whether the commitment of the prisoner Anderson, with a view to his being surrendered under what is commonly called by us the Ashburton Treaty, can be said to be warranted by the evidence, that the case was argued on both sides, and argued in that temperate and strictly professional spirit in which all such discussions for judicial purposes should be conducted. Certainly, the learned counsel who represented the Government showed no wish that the Court should, by any too rigorous construction of the Treaty, or of the statute, strain the law under which the surrender of the prisoner has been applied for.

I had some doubt during the argument whether it is competent for either of the Superior Courts of Upper Canada, or for a Judge of any such Court, to interpose in the case of an offender coming clearly within the terms of the Ashburton Treaty, after the Judge or Justice who has heard the evidence has determined that, in his opinion, it sustains the charge, and has certified to that effect to the Governor, and transmitted a copy of the testimony on which he has decided. Under the 4th section of the Statute, where there has been a delay after the commitment in effecting the surrender, it is expressly provided that any of the Judges of one of the Superior Courts may order the person to be discharged. But this is not an application made under that clause.

It is quite true that there can be nothing clearer than the authority of our Superior Courts of Law to exercise the same control over inferior Criminal Courts, and over Magistrates acting in the administration of the Criminal Law, as is exercised in England in like cases in the Court of Queen's Bench. And, indeed, without such a controlling power the liberty of the subject would be most inadequately provided for. But the superintending authority which I now allude to, is either given in particular cases by Statute, or in other cases, is exercised upon principles of the Common Law in matters occurring in the ordinary administration of criminal justice, and arising within the ordinary reach of our laws.

The arrest of the person now before us, for an offence committed in the

State of Missouri, over which offence we have no jurisdiction, and his detention with a view to his being surrendered to the Government of that State, is a proceeding apart from our ordinary jurisdiction, and rests wholly upon the provisions of a Treaty between Great Britain and a foreign Government, and of our Statute passed in conformity with that Treaty.

We see in that Statute the powers which are given to us and to other Civil authorities for carrying out the Treaty, and the provisions are precise in regard to the part which is to be taken by the different public authorities which are mentioned in it.

In the first place, a Judge or Justice of the Peace, upon a proper complaint, is to issue his warrant for the apprehension of the alleged offender, and the Judge or Justice who has issued such warrant is the person before whom the evidence in support of the charge must afterwards be heard, and he must determine upon its sufficiency, and must certify to the Governor that it is sufficient if he finds it to be so; sending at the same time a copy of all the testimony. And this the Act says is to be done—"That a warrant may issue upon the requisition of the proper authorities of the United States, or of any of such States, for the surrender of such person according to the stipulations of said Treaty, and the said Judge or the said Justice of the Peace shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender be made, or until such person be discharged according to law." (Section 1.)

The question which I am now considering turns upon what we must take to be meant by these last words in the clause, "or until such person be discharged according to law." Do they mean only until the person shall be discharged under the express power given in the 4th clause, on account of delay in delivering him up? Or do they mean until he be discharged by either of the Superior Courts, or by any Judge thereof, interposing upon an application of the prisoner between the commitment by the Justice and his actual surrender to the foreign country, and assuming the authority of discharging the prisoner upon his view of the evidence on which the Justice had decided? Whether the Treaty, ratified as it has been by the Imperial Parliament, taken in connection with our Statute, can be held to leave the Superior Courts in possession of any other power than the power to discharge the prisoner under the 4th section, on account of delay in delivering him over after he had been committed, and the evidence certified to the Government, is a question which we should probably feel it necessary carefully to consider in conjunction with the Judges of the other Superior Courts before we exercise the power of discharge.

No application under the 4th clause upon the ground of delay has been made to us, as I have already stated. Our interposition on any other ground, it may at least be said, is not clearly provided for in the Act, and it may be a question, since the whole proceeding is founded on a public Treaty between two Sovereign Powers, whether each party to that Treaty cannot hold the other to a compliance with its terms without impediment from the exercise of a jurisdiction over the subject matter within either country, beyond what is provided for in the Treaty.

I feel that, on the other hand, the argument is strong for the necessity of a controlling power in the Superior Courts, without which the Governor must be left with the responsibility of exercising, with the assistance of his legal advisers, whatever discretion he may find to be reposed in him by the Statute.

A more full consideration of this question by either of the Supreme Courts whenever it may become necessary, may probably result in removing any such doubts as I have stated; for two learned Judges, of whose assistance we can unhappily no longer avail ourselves, have in cases before them, as individual Judges, in Chambers, assumed that they had the power in cases like the present, to examine into the correctness of the conclusions come to by the committing Justices upon the sufficiency of the evidence. I refer to Kermott's case, vol. i of Cases in Judges Chambers, p. 253, and to Tabbe's case, case 1, Practice Reports 98.

In the former case the authority was assumed to exist, and was acted upon by discharging the prisoner. The latter case, as the commitment showed, could not by possibility come under the Ashburton Treaty, for it was for the crime of bigamy that the prisoner was charged with, and nothing, therefore, that was said or done in the case would necessarily apply as an authority in the case now before us. The prisoner was discharged, on the ground that our earlier Statute,

3 Wm. IV, cap. 6, under which it had been urged that the prisoner could be surrendered to the foreign Government, had been superseded by the Ashburton Treaty and the Statute which followed it. But the late Sir James Macaulay, for whose opinion great respect will ever be entertained in this Court, in disposing of the application before him, expressed a strong opinion in favour of the power of the Superior Courts to examine into the sufficiency of the evidence returned by the committing Magistrate to establish the charge upon which he had committed a prisoner in pursuance of the Ashburton Treaty.

With these authorities in favour of an examination by us of the testimony which has been returned by the committing Magistrate, and with no decision that I am aware of to the contrary, we have not hesitated to consider the depositions which have been before us in the present case; and I will not forbear, in consequence of any such doubts as I have stated, to express my opinion upon the effect of them. I mean their effect in a legal point of view, when taken in connection with the Treaty, and our statute 22 Vict., cap. 89.

And I shall do this in as general terms as I can, in order that nothing said by me here may prejudice a case of this serious description, which, according to the view we may take of the law, may have to receive the consideration of a jury in the country where the offence is said to have been committed.

I have not thought it necessary to dwell upon the proof of identity of the prisoner, or to refer particularly to the testimony of the witness, W. C. Baker, upon that point, which is direct and explicit; for the whole course of cross-examination of the witness on the part of the prisoner, and this very ground on which his discharge has been pressed, is founded upon his identity with the person who killled Diggs, and on the fact, which it is contended is manifest, that he was engaged at the time in a struggle for freedom.

The point which has been argued before us, and the only point, is what construction and effect it is proper to give to those words in the Treaty; and in our statute 22 Vict., cap. 8, sect. 1 (Consolidated Statutes of Canada), which when read together in effect provide that a person charged with committing, within any of the United States of America, any of the offences mentioned in the Treaty, that is to say, murder, or assault with intent to commit murder, piracy, arson, robbery, or forgery, "and charged upon such evidence of criminality as, according to the law of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had there been committed," may be apprehended upon complaint made under oath, in order that he may be brought before the Judge or Justice of the place who has caused him to be apprehended, to the end that the evidence of his criminality may be heard and considered, " and that if on such hearing the evidence be deemed sufficient by him to sustain the charge according to the laws of this province, he shall certify the same, together with a copy of all the testimony taken before him, to the Governor of the province, in order that a warrant may issue, upon the requisition of the proper authorities of the United States, or of any of such States, for the surrender of the person charged according to the stipulation of the Treaty." It will be observed that in one part of the Treaty, as recited in this statute, the evidence of criminality is required to be such " as would justify the apprehension of the party and his commitment for trial, if the offence had been committed in the country where he is found," while in another part the evidence is required to be such "as shall be deemed sufficient to sustain the charge."

Nothing can turn, I think, upon this variation in expression, but we must look upon the same thing as intended by both, for in the Treaty as recited in the commencement of the statute, it is declared to have been agreed by the two Powers that offenders charged with certain offences flying from one country into the territories of the other should be delivered up to justice: "Provided, however, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive so charged shall be found, would justify his apprehension and commitment for trial, if the crime had been there committed."

This shows that nothing more can be meant by the other form of expression than by this, since, by the Treaty, evidence sufficient to commit the party for trial is all that is required to warrant his being given up. And, indeed, it would not be reasonable to require more.

I think " the sufficiency of the evidence of criminality to sustain the charge,

according to the laws of this province, if the offence alleged had been committed therein," is to be determined by the Judge or Justice upon his view of the transaction as described in the testimony taken in connection with the law of the foreign State where it occurred as regards the offence in question; and also with reference to the law which governs our own Courts and Magistrates in regard to the sufficiency of the evidence; that is, its sufficiency in point of legal character, and its adequacy to support the charge of the offence against the law of the foreign country.

I will not take upon me to say that there is absolutely no ground for doubt or discussion upon the meaning of those words in the statute which I have last cited.

I can see that what I take to have been the certain intention of the Treaty, and of our statute, might have been more clearly expressed; but I really cannot say that I have any doubt that the intention was that the Judge or Justice who has heard the testimony is to determine whether the evidence of criminality, if fully credited by a jury, and not repelled in any essential point, is such that it can be truly said that the facts are strong enough, and the proof clear enough, according to the laws of this province, to sustain the charge. What charge? the charge in the case before us of having committed in the State of Missouri the crime of murder.

It has been argued on the part of the prisoner, that both the passages in the statute in which the sufficiency of the evidence to prove criminality is spoken of, have reference to the law of this province, not merely as regards the nature of the proof that may be received, and its conclusive tendency, but also to the law of the province as regards the particular offence, and in relation to whatever circumstances may have influenced the party in committing the act. I cannot go the whole length of that argument, as it is has been endeavoured to apply it in this case.

So far as regards the means of proof, there can be no doubt that it is our law which must govern, according to the provision in the statute. If, for instance, the law of Missouri should admit a confession extorted from a slave by violence or threats, to be used against him on a charge of this kind, we must reject such evidence, notwithstanding, when produced here; and if without it the criminality should not appear to be established, the prisoner could not be detained. So also, if the law of Missouri should allow evidence of a free man not on oath to be admitted against a slave charged with having committed a crime against a free man, the Judge or Justice could not act upon such evidence here. The reason in favour of precaution, to this extent at least, is glanced at by Lord Chief Justice Willes, in the case of Omichund *v.* Barker (Willes' Reports, 549), where a very different question from the present was under discussion. "I entirely disagree," he observed, "from what is reported to have been said by Lord Chief Justice Ley, in 2 Rolls Reports, 346, that in the trials of matters arising beyond sea, we ought to allow such proof as those beyond sea would allow. This would be leaving the point on so very loose and uncertain a footing that I cannot come in to it; for if this rule were to hold, considering in what a strange manner justice is administered in some parts, God knows what must be admitted."

But the construction contended for would seem to exact that there should be a similarity between the law of the State from which the person has fled, and that of our country, in all the features and attributes of the particular crime. To some extent it might be reasonable to hold that the law of the two countries should be found to correspond. For example, if it were the law of Missouri that every intentional killing by a slave of his master, however sudden, should be held to be murder, without regard to any circumstances of provocation, or of any necessity of self-defence against mortal or cruel injury, I do not consider that a fugitive slave who, according to the evidence, could not be found guilty of murder without applying such a principle to the case, could legally be surrendered under the Treaty. But I could not go to the length of holding that because a man could not, in the nature of things, be killed in this province while he was pursuing a slave, because there are not, and by law cannot be, any slaves here, therefore a slave who has fled from a Slave State into this province cannot be given up to justice because he murdered a man in that State, who was at the time attempting to arrest him under the authority of law, in order to take him before a magistrate with a view to his being sent back to his master.

It would not be right, I think, to hold that the fugitive should, under such circumstances, not be surrendered, and to hold this, without reference to what the positive law of that country might allow, or to the conduct of the party pursuing, or of the party pursued, or to the knowledge of the latter that the purpose for which it was desired to arrest him was not contrary to the law of the country, or to the fact (if it should be so) that there was no apparent necessity to inflict death in order to escape.

The statute has been about ten years in force, and so far as I know or have heard, if the construction that is now insisted upon were established it would be a new construction.

Neither the Treaty nor the statute can be taken to have been founded on a presumption that the criminal or the civil law prevailing in the territories of the two Contracting Powers would be found to be the same. In arson and in forgery, for instance, it is likely there may be points of difference as regards the descriptions of property, and of the written securities, which it is the object of the law in the several countries to protect, though, as regards murder, there is nothing in the evidence to establish that the legal definition of the crime is not the same in the State of Missouri as in Canada.

Now we know that a person who in Canada wilfully kills another, without justification or lawful excuse, is guilty of murder, the law deeming the act to have been malicious.

There is nothing before us to show that the law is otherwise in Missouri.

I use the word "excuse" in a sense that would conclude any circumstances of provocation, or otherwise, that should obviously in law reduce the act to manslaughter.

The evidence which the Justices had before them tends to shows that Anderson, the prisoner, stabbed Diggs, the deceased, while he, Anderson, was endeavouring to escape from him, and while Diggs was endeavouring to prevent such escape, and to take him before a magistrate, in order to his being restored to Mc Donald, his master. Anderson was still in the State of Missouri, where he had been living many years, if not all his lifetime; and though he was twenty or thirty miles away from Mc Donald, yet it rests only on his own declaration that he had resolved, if possible, to leave the State, and to escape from slavery entirely. Whether that was or was not his intention at the time, we see that the law of Missouri, of which such evidence has been received as by the existing state of the law, both in England and in Canada, is now admissible (Baron de Bode's case, 82 B., 208, 246, 254; Sussex Peerage case, 11 Cl. & Fin., 85), authorizes any person to apprehend any negro or mulatto being or suspected of being a runaway slave, and to take him before any Justice of the Peace, who may deliver him to his owner.

It is true it is not proved that the prisoner, if he was attempting to escape from slavery altogether, or only from the immediate control of his master, was in either case committing any criminal offence against the law of Missouri; nor is it shown that the law of the State made it the duty of Diggs to apprehend him, under the circumstances in which he found him; but Diggs having, as it appears, authority to take him up and carry him before a magistrate, under the general law of the State, it cannot be said that he was acting illegally at the time that Anderson rushed upon him, and repeatedly stabbed him with a deadly weapon. He was acting under a legal authority as much as if he had been armed with process; the fact being proved, and not denied, that the statute law of Missouri applied to the prisoner under the circumstances in which he was; and unless Diggs abused his authority by using a degree of violence uncalled for by the circumstances, the killing him was not justifiable; nor can it be said, I think, that the facts of the case lead plainly to the conclusion that the act of the prisoner Anderson should be held to be nothing more than manslaughter.

Upon his trial on a charge of murder, if he shall be surrendered, and if he shall be for that offence, it will be for the jury to dispose of the case under the direction of a Judge. There may then appear sufficient reasons to warrant the jury in taking a favourable view of the case, and to lead them to think it probable that the prisoner advanced towards the deceased and stabbed him under an apprehension that it was necessary, not merely to facilitate his own escape, but to save his life, or to avert threatened violence at the moment. But the case, in my judgment, is not one in which the Justices at Brantford would have

been warranted in assuming the functions of a jury, and intercepting a trial for the graver offence.

We may be told that there is no assurance that the prisoner, being a slave, will be tried fairly and without prejudice in the foreign country; but no Court or Magistrate can refuse to give effect to an Act of Parliament by acting on such an assumption; nor can we be influenced by the consideration (a very painful one in all such cases) that the prisoner, even if he shall be wholly acquitted of the offence imputed to him, must still remain a slave in a foreign country.

That was a consideration to be entertained while the subject of the Treaty was under discussion, and before it became a law. It might also have engaged attention in framing its provisions, and we cannot think it probable that it did not.

But neither the Treaty nor the Statute makes allowance for the circumstance of a fugitive offender having been a slave in the country from which he fled. That is not recognized in the Treaty as a reason against his surrender to be tried for murder, arson, or any other crime specified in the Statute, though it could not have escaped attention that the consequence of the surrender would be the putting the fugitive again in the power of his master in case of his acquittal.

Those who are to act judicially in carrying this Statute into effect must, so far as the Statute allows, carry out the Treaty faithfully. They have no right to decline doing so on account of any distinction of consideration which neither the Statute nor the Treaty has made the ground of an exception; and when we say of a Court of Justice that they have not the right to take a particular course, we say the same thing in effect as that they have not the power. In my opinion, therefore, we are bound to remand the prisoner.

If there has been any understanding between the Government of the United Kingdom and the American Government, or any instructions upon the subject of delivering up slaves flying from one of the United States to Canada, and charged while here with having committed in the United States some one of the crimes mentioned in the Treaty, it is probable that the Governor of this province is aware of such understanding or instructions; and his power under the Statute or the Treaty to surrender a fugitive, or to decline to surrender him, cannot be affected by anything that may be said or done by us here.

It is equally clear that the Justices who had to deal with the case in the first instance, or we, who are applied to as a Court of Law to overrule their decision, must conform to what the law requires, and are not at liberty to act upon considerations of policy or even of compassion where a duty is prescribed. To use the words of a great Judge, in dealing with a case in which slavery and its consequences were discussed, "We cannot in these points direct the law, the law must rule us."

Inclosure 5 in No. 15.

Judgment by Mr. Justice Mc Lean.

THE prisoner has been brought before us from the jail of the county of Brant upon a *habeas corpus* issued by order of this Court during the present term, and in compliance with the injunction contained in the writ, the Sheriff has returned the warrant under which the prisoner has been detained in his jail, for the purpose of showing the day and cause of his taking and detainer. The evidence taken before the Justices of the Peace, by whom the prisoner was committed to jail, has also been brought before us by *certiorari*.

Upon this return and evidence we have now to inquire whether the prisoner has been legally committed, and whether he is legally detained in custody.

The information and complaint, as it is called, appears to have been made by one James A. Gunning, of the city of Detroit, so far back as the 13th day of April last, before William Mathews, Esquire, a Justice of the Peace for the county of Brant, and sets forth that one John Anderson did, on the 28th day of September, 1853, wilfully, deliberately, and maliciously murder one Seneca T. P. Diggs, in the county of Howard, in the State of Missouri, one of the United States of America, all of which this deponent doth verily believe. Whether any warrant was issued on this complaint, or, if a warrant was issued, when or where it was executed, does not appear. The Magistrate, in the absence

of any more positive information than mere belief of such a crime having been committed, might well have hesitated before issuing a warrant to apprehend the prisoner, and, without being chargeable with any dereliction of duty, might have called for some proof of a murder having been committed, and of the identity of the party accused as the murderer. No other information or complaint is given as the foundation for issuing the warrant, and I must, therefore, assume that it was issued on that complaint alone.

The 1st section of 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 certain offenders, provides that upon complaint made under oath or affirmation, charging any person found within the limits of this province with having committed, within the jurisdiction of the United States of America, or of any of such States, any of the crimes enumerated or provided for in the Treaty (viz., murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper), any of the Judges of any of Her Majesty's Superior Courts in this province, or any of Her Majesty's Justices of the Peace in the same, may issue his warrant for the apprehension of the person so charged, that he may be brought before such Judge or Justice of the Peace, to the end that the evidence of criminality may be heard and considered. Whether the affidavit of Gunning that he believed the crime of murder had been committed by one John Anderson was sufficient or not, it is clear that the Justice of the Peace thought it so, and acted upon it, for during the whole examination in reference to the charge he professes to proceed upon it as a charge made by J. A. Gunning, though, in the warrant of commitment, the prisoner is stated to be charged, on the oath of William C. Baker, of Howard County, Missouri, and others, the name of Gunning nowhere appearing during the whole investigation, except as swearing to his belief in the original affidavit. If the prisoner had been brought up on *habeas corpus*, while in custody on a warrant issued on that affidavit alone, I incline to think that he would be entitled to his discharge from the want of such a charge as is contemplated by the Statute to justify the issuing of any warrant; but being in custody, and further proceedings having taken place, and the evidence of criminality being heard and considered by the Justice of the Peace, and the prisoner, in consequence, committed to jail, until delivered by due course of law, the question is whether he is now detained in legal custody. The clause of the Statute to which I have referred provides that if, on the hearing of the evidence of criminality by the Justice of the Peace, it is deemed sufficient by him to sustain the charge according to the laws of this province, if the offence alleged had been committed herein, he shall certify the same, together with a 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 United States, or of any of such States, for the surrender of such person according to the stipulations of the Treaty; and the Justice of the Peace shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender be made, or until such person be discharged according to law.

The commitment under which the prisoner is in custody is certainly not in conformity with the statute, either in form or substance. There is nothing on the face of it to indicate that any evidence has been examined by the Justices who signed it touching a complaint against the accused for an alleged murder in the State of Missouri; nothing to show that the Justices, having heard and considered evidence of criminality on a charge for such an offence against the prisoner, have considered the same sufficient to sustain the charge according to the laws of this province, if the offence alleged had been committed therein; nothing on the face of it, except a recital that the prisoner had been on that day charged, apparently for the first time, on the oath of William C. Baker, of Howard County, in the State of Missouri, and others, for that he did, in that County and State, on the 28th day of September, 1853 (exactly seven years before the date of the commitment), wilfully, maliciously, and feloniously stab and kill one Seneca T. P. Diggs, of the same county. For this alleged offence all or any of the constables of the County of Brant are commanded to take John Anderson, and safely to convey him to the common jail at Brantford, and there to deliver him to the keeper thereof. And the keeper of the common jail is commanded to receive John Anderson into his custody in the said common jail, and there safely keep him until he shall be delivered by due course of law.

The commitment is nothing more or less than an ordinary commitment to the common jail of Brantford, for trial for an offence alleged to have been committed in the State of Missouri, one of the United States of America. Now what is the due course of law by which the accused is to be delivered in such a case? There is no course of law in this province which can take cognizance of such a case, none by which he can be delivered from the jail, except that which has now been adopted. There is nothing before us to show that the Justices of the Peace who have examined the evidence, or rather the Justice of the Peace who certifies the evidence as having been taken before him, has come to any determination that it is sufficient to sustain the charge according to the law of this province if the alleged offence had been committed therein, or that he has certified his decision on the evidence, together with a copy of such evidence, to the Governor. It is not unreasonable to assume the contrary, or, at all events, that he has arrived at no decision, from the fact that the prisoner has not been committed to jail by him, there to remain until a surrender is made, upon the requisition of the proper authorities as required by the statute, or until discharged according to law. By this commitment the prisoner is not in custody awaiting a surrender under the Treaty with the United States, but is in jail awaiting a discharge according to law. If the object and intent of the commitment were plain upon the face of it, so that we could take judicial notice of it, this Court might remedy any mere technical defects, and correct any want of form.

The case of the King *v.* Marks and others (8 East, 157), and the form there given, show that this may be done in ordinary cases; but as the commitment in this case must depend upon the view which the Justice of the Peace may have taken as to the sufficiency of the evidence to sustain the charge according to the laws of this province, and we have no means of knowing what that view is, we cannot, as it appears to me, take it upon ourselves to make an amendment in the commitment which would only be correct in one state of circumstances. The same objection exists to the sending back the commitment to the magistrate, with directions for him to make the necessary amendments to remove the legal objections. We have no right, as it appears to me, to assume that there is anything that requires amendment in the commitment, inasmuch as it depends upon the view the Justice of the Peace may have taken of the evidence, and the certificate or return which he may have made, if he has made any, to the Governor, whether any amendment may or may not be necessary under the statute.

Then as to the designation of the offence with which it is alleged the prisoner was charged. On the 28th of September last, it is stated that he was on that day charged, on the oath of William C. Baker and others, without stating who those others were, for that he did, in Howard County, in the State of Missouri, on the 28th day of September, 1853, wilfully, maliciously, and feloniously stab and kill one Seneca T. P. Diggs. That is the alleged offence to be charged by William C. Baker and others, to have been committed by Anderson, and the charge is stated to have been made on a particular day, long subsequent to the information and complaint said to have been made by J. A. Gunning; so that the latter appears to have been abandoned, and all proceedings under it, if any, were adopted up to the 27th of September last. There is no charge of murder in the offence alleged against Anderson by William C. Baker, and we cannot assume that it was intended to prefer a charge for murder, for in truth the deposition made by Baker before the Justice of the Peace, which is returned with the evidence, contains no charge whatever against the prisoner. He expressly says in his deposition that he did not see the wound made of which Diggs is said to have died, and that he came to this province employed and paid by the County of Howard for the purpose of identifying the prisoner. He does not pretend to give any statement of his own, or to make any charge against the prisoner. All he does say as to the cause of the death of Diggs he says Diggs told him; so that in truth the greater portion of what his deposition contains is a detailed statement of his several conversations with Diggs. He says he saw Diggs twice after he was wounded, the last time four days before his death; that he lived fourteen days after being wounded, and the first time he saw him that he told him certain things, of which a detailed account is given; that Diggs appeared to be suffering very much, and the doctor said he would die from the wound. There is nothing, however, in the whole statement as given by Baker to show that Diggs related the circumstances under the

conviction that his wound would certainly prove fatal. It does not appear at what period of Diggs' illness the statement was made by him. It was at Baker's first interview with him, when, as Baker says in his deposition, Diggs understood what he was talking about. That statement, in the absence of any proof that it was made by Diggs in the full belief that his life was drawing speedily to a close, ought not to have been received, and cannot be received, as legal evidence; so that without the necessary requisites to confer that character on the hearsay statements of Baker, they cannot possibly form the foundation of a criminal charge against the prisoner. In fact, then, there is no charge in the oath of William C. Baker such as is stated in the commitment against the prisoner. Then there is the testimony of Benjamin F. Diggs, a son of Seneca T. P. Diggs, who was with his father at the time he was stabbed, and who at that time was a little better than 8 years of age. He gives an account of a coloured man being pursued by his father and four negro men and boys, his slaves, for the purpose, as he supposes, of capturing him and returning him to a state of slavery with his former master. He states that his father was in pursuit of the coloured man about a mile from his own house when he was stabbed; that he got over a fence, and had proceeded five or six yards, the witness being then on the fence, when he and the coloured man met; that there was no one with them but himself; that his father was first stabbed in the breast, and after that turned to run away; that his foot caught, or hung, in some vines, and he fell, and the man then stabbed him in the back, and ran away; that his father got up after receiving the last wound, and walked fifteen or twenty yards, when he again fell; that he remained where he last fell about an hour, nobody being with him but the witness, the other parties being still running after the nigger; as the coloured man is called. That after this some one was heard halloaing, and being answered by the witness by desire of his father, Dr. Crews and one of Diggs' slaves came to where they were. He then described how his father was taken to the house of Dr. Crews, about half-a-mile from where the wound was inflicted, where he remained till he died. This witness says very candidly that he had never seen the coloured man who stabbed his father before that time; that the prisoner was about the colour and size of the man, but he would not swear he is the man. On his cross-examination, he admitted that the negroes ran in a circle; that his father and he went across; and that his father had just got over the fence when he and the negro met; that his father had a little stick in his hand, and struck at the negro with it, but not, as he alleges, till the negro ran at him with an open knife; that the stick caught in some bushes, and broke, and the negro then stabbed his father; that one of his father's coloured boys was about twenty yards off when his father was stabbed.

The statement of this boy contains in itself no charge against the prisoner, for he is unable to say that the prisoner is the man by whom his father was stabbed; but it was taken, no doubt, to support a charge previously made, as was also the testimony of his brother Thomas D. Diggs as to the dying declarations of his father. So far as the statement is confined to these declarations, relative to the cause of death and the circumstances connected with it, it forms admissive evidence even upon a trial for murder, and could not be excluded on such an investigation as that conducted by the Justices of the Peace in reference to the case of the prisoner. Unfortunately, however, the dying declarations of the father are so mixed up with individual statements of the son, that it is sometimes difficult to distinguish the one from the other. This witness was not at home when his father received his wound, and consequently could personally give no testimony as to what preceded it, except from hearsay. He professes to give his father's declaration to him a few days before his death, when he was aware he would die; and then at the close of it adds some comments of his own as to the lightness of pau-pau wood, and the size to which it grows, though in his father's statement there is nothing to show that the stick with which he struck at the negro in defending himself was of that description of wood. He also makes statements as to the comparative weight and strength of his father and the negro by whom he was stabbed, and the object of his father in pursuing the negro, and his desire to catch him and return him to slavery; but these statements may have been elicited in answer to questions put to the witness, and are only objectionable so far as they are mixed up with the evidence of the dying declarations of his father. As to such declarations made in extremity, when the party is at the point of death, and when every hope of this world is

gone, and though they are admissible from necessity in cases of homicide, they are not free from objections, for there is, first, the danger of perjury in fabricating declarations, the truth or falsehood of which it is impossible to ascertain; secondly, the danger of letting in incomplete statements, which, though true as far as they go, do not constitute the whole truth; and thirdly, the experienced fact that explicit reliance cannot, in all cases, be placed on the declarations of a dying person, for his body may have survived the powers of his mind; or his recollection, if his senses are not impaired by pain or otherwise, may not be perfect; or for the sake of ease, and to be rid of the importunity of those around him, he may say, or seem to say, whatever they may suggest.

In the evidence of the deelarations of Diggs *in extremis*, the conversation alleged to have taken place between him and the negro, previous to the latter attempting to escape, is given; and it is there stated that the negro, in reply to questions put to him, acknowledged that he belonged to a man of the name of McDonald, but did not want to live on the other side of the river; and that Samuel Brown had his wife. The testimony of William C. Baker established that the prisoner was regarded as the property of one McDonald, and that one Samuel Brown, residing in the vicinity of his former residence, had his wife as a slave. These statements would seem to identify the prisoner as the person who was pursued by and ultimately stabbed and caused the death of Diggs; but any other negro endeavouring to make his escape, and determined to effect it, knowing the position of the prisoner, might make the same statement with a view to mislead as to his identity in the event of pursuit, so that too much confidence ought not to be placed in the alleged conversation of Diggs with his son, as establishing conclusively the identity of the prisoner as the person who stabbed Diggs. But that point would be established beyond question if an affidavit, taken in Missouri by a slave of Mrs. Diggs, of the name of Phil, could legally be received in evidence. After stating various circumstances connected with the attempt to capture the prisoner, he states that the negro who killed his master was named Jack; that he once belonged to Moses Burton of Howard County, and had a wife at Sam Brown's, and that he had seen him and known him before the day he killed his master. I do not feel at liberty to reject that deposition, if otherwise legally receivable in evidence, because the individual who made it is a slave, and in the State in which it was taken is regarded as a mere chattel, and incapable of giving evidence generally; but if not legal evidence in this province, apart from any consideration of that kind, I cannot, in this examination of the proceedings of the Justice of the Peace, consent to consider it as legal because it seems to have been received without objection there. The 2nd section of chapter 89 Consolidated Statutes enacts, that in every case of complaint as aforesaid, and of a hearing upon the return of the warrant of arrest, copies of the depositions upon which an original warrant in any of the said United States may have been granted, certified under the hand of the person or persons issuing such warrant, or under the hand of the officer or person having the legal custody thereof, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended. The affidavit or deposition in question does not come within that section. It does not profess to be a copy of any original deposition used for the purpose of obtaining a warrant; indeed, it does not appear that any attempt was ever made in Missouri to procure a warrant; but why should there be such attempt, when every white man is at liberty to arrest any coloured man whom he suspects to be a runaway slave? That deposition, then, taken in Missouri, and unsupported even by any testimony that it was ever sworn to, was improperly admitted before the Justice of the Peace; and though received by consent of Counsel I think must be rejected, as the case of the prisoner, as it now stands before us, can only be decided on the consideration of such evidence as is strictly legal.

Looking, then, at all the testimony taken before the Justice of the Peace, and rejecting such portion as is only hearsay and inadmissible, there is not a witness who connects the prisoner with the stabbing of Digges, unless it be Thos. L. Diggs, in his statement of the death-bed declaration of his father to him; and these only show that the negro by whom Digges was stabbed made certain declarations as to himself and his identity, which would be true if made by the prisoner; but respecting the deposition of the slave Phil there is no testimony which establishes satisfactorily that the prisoner is the person who

caused the death of Diggs. On the grounds, therefore, that the prisoner was arrested in the first instance on an insufficient complaint, and that he is now detained in custody on a warrant of commitment, until discharged by due course of law for an offence committed in a foreign country, and on the further grounds that the offence stated in the warrant of commitment is not one for which the prisoner is liable to be detained under the Provincial Act for carrying out the Treaty with the United States, for the surrender of certain fugitive criminals, and that the evidence as given before the Justice of the Peace is of too vague a character to establish the offence of murder against the prisoner according to the laws of this Province, I am of opinion that the prisoner is now entitled to be discharged from custody.

In coming to this conclusion I have been guided solely by a consideration of what has been returned to us as the evidence taken before the Justice of the Peace, and have not adverted to the important question whether, if the testimony were clear that the prisoner, a slave in the State of Missouri, in making his escape from bondage in that State, killed a person, who, with a number of slaves under his orders, endeavoured to seize him, in order to return him to slavery, can be considered guilty of murder.

In considering that question it is not what would be sufficient, according to the laws of Missouri, to sustain the charge of murder, but whether the evidence adduced before the Justice of the Peace in this case is sufficient to sustain such charge according to the laws of this Province, if the offence alleged of murder had been committed therein, or, in other words, if Diggs had been killed in this Province would the evidence produced before the magistrate be sufficient, according to the laws of this Province, to sustain the charge of murder against the prisoner Anderson.

It is impossible that a similar case can occur in this Province, because, happily, it is our proud boast that we are all free, and that in respect of civil rights all are not merely nominally, but in reality, placed by the law of the land on an equality; it is difficult even to imagine a parallel case, for the law is so tender, and guards so carefully against the infringement of personal liberty, that an action is given for the slightest violation of it, and every person is at liberty to defend himself, at any hazard, against any attempt to reduce him to a state of bondage. The difficulty of imagining a parallel case suggests the idea that it will be better to take the case of the prisoner as it has been attempted to be established by evidence, and apply to such evidence the rules of law by which we must be bound if such a case occurred in this Province.

The facts, then, to which the evidence applies are, that Diggs was a farmer, residing on lands of his own in Howard County, in the State of Missouri; that the prisoner was a slave, bound, himself and his children, to perpetual servitude to any person to whom they might be transferred, and in 1853 a slave of one Mc Donald, living in Saline County, in the State of Missouri; that he had been transferred to Mc Donald by his former master, one Moses Burton, and compelled to remove from the immediate vicinity of his wife and child to a distance of thirty or thirty-two miles, where his new master resided; that he left Mc Donald's, and was seen at Samuel Brown's, where his wife was a slave, in September 1853, and that he was chased there by several persons for the purpose of returning him again to Mc Donald as a slave, but succeeded at that time in making his escape from them; that soon after, while still engaged in trying to make his escape from the man who claimed him as his property, he was passing over Diggs' farm, when he was accosted by Diggs, and asked whether he had a pass, and was told that without a pass he could not be allowed to proceed; that the prisoner attempted to escape by running away, and was pursued by Diggs and four slaves under his orders; that Diggs encouraged his slaves in the pursuit by offering to them the premium of five dollars, to which, under the law of the State, he would be entitled for the arrest of a slave attempting to become free by escaping from his master; and that, after pursuing the prisoner upwards of a mile from his own house, Diggs, with a stick in his hand, in order to intercept the prisoner, crossed a fence and approached him, and that on their meeting Digges struck at the prisoner with his stick, as it is alleged in self-defence, and the prisoner, with a knife which he had in his hand, inflicted a wound or wounds which caused the death of Diggs.

The law of England, or rather of the British Empire, not only does not

recognize slavery within the dominions of the Crown, but imposes upon any British subject who shall have become the owner of slaves in a foreign State the severest penalties, and declares that all persons engaged in carrying on the Slave Trade, when captured at sea shall be liable to be treated as pirates. In all the British possessions the institution of slavery, which at one time prevailed to a certain extent, was abolished, at the enormous expense of 20,000,000*l.* sterling, in remunerating the holders of slaves. An immense amount has since been expended in efforts to suppress the African Slave Trade, and by every possible means the British Government has put down and discountenanced the traffic in human beings. Even when slavery was tolerated in some of the British possessions, no person could be brought into England without becoming free the moment he touched the soil; and though other nations have not chosen to follow the noble example of the British nation, and some are even yet embarking in the nefarious and unchristian attempts to import human beings from the coast of Africa, to be held in perpetual bondage, for the purpose of this world's gain, even at the risk of being regarded as pirates, happily the Traffic has become too uncertain and too hazardous to be carried on to so great an extent as formerly prevailed. In the adjoining Republic, the evils and the curse of slavery are every day becoming more manifest, and even now threaten to lead to a dissolution of the Federal compact of the United States, under which the several States have enjoyed an unexampled degree of prosperity.

The evil is not less revolting in a social point of view, for though the laws of some of the States of the Union may tolerate the dealing in human beings as if they were sheep or oxen, the best feelings of our nature must shudder at the thought of the severance of those endearing relations which usually form the solace and happiness of mankind. A father and mother, husband and wife, are liable, at the caprice of a master, or perhaps from his necessities, to be separated from each other and from their children, and they are bound to submit, or if they attempt to escape from bondage, and to consult their own happiness in preference to the gain of their masters, are liable to be hunted by any white or black man who chooses to engage in the pursuit, and when captured are liable to severe punishment and increased severity from their taskmasters.

The prisoner Anderson, as appears by the statement of Baker, who came to this province to identify him, has felt the horrors of such treatment. He was brought up to manhood by one Moses Burton, and married a slave on a neighbouring property, by whom he had one child. His master, for his own purposes, disregarding the relation which had been formed, sold and transferred him to a person at a distance, to whose will he was forced to submit. The laws of Missouri, enacted by their white oppressors, while they perpetuate slavery, confer no rights on the slaves, unless it be the bare protection of their lives. Can it then be a matter of surprise that the prisoner should endeavour to escape from so degrading a position, or rather would it not be a cause of surprise if the attempt were not made? Diggs, though he could have had no other interest in it but that which binds slave-holders, for their common interest, to prevent the escape of their slaves, interfered to prevent the prisoner getting beyond the bounds of his bondage, and with his slaves pursued and hunted him with a spirit and determination which might well drive him to desperation; and when at length the prisoner appeared within reach of capture, he, with a stick in his hand, crossed over a fence, and advanced to intercept and seize him. The prisoner was anxious to escape, and, in order to do so, made every effort to avoid his pursuers. Diggs, as their leader, on the contrary, was most anxious to overtake and come in contact with the prisoner, for the unholy purpose of riveting his chains more securely. Could it be expected from any man indulging the desire to be free which nature had implanted in his breast, that he should quietly submit to be returned to bondage and to stripes, if by any effort of his strength, or any means within his reach, he could emancipate himself. Such an expectation, it appears to me, would be most unreasonable, and I must say that, in my judgment, the prisoner was justified in using any necessary degree of force to prevent what, to him, must inevitably have proved a most fearful evil. He was committing no crime in endeavouring to escape and to better his own condition, and the fact of his being a slave cannot, in my humble judgment, make that a crime which would not be so if he were a white man. If in this country any number of persons were to pursue a coloured man, with an avowed determination to return him into slavery, it cannot, I think, be doubted that the

man pursued would be justified in using, in the same circumstances as the prisoner, the same means of relieving himself from so dreadful a result.

Can then, or must, the law of slavery in Missouri be recognized by us to such an extent as to make it murder in Missouri while it is justifiable in this province to do precisely the same act? I confess that I feel it too repugnant to every sense of religion, and every feeling of justice, to recognize a rule, designated as a law, passed by the strong for enslaving and tyrannizing over the weak—a law which would not be tolerated for a moment if those who are reduced to the condition of slaves, and deprived of all human rights, were possessed of white instead of black or dark complexions. The Declaration of Independence of the present United States proclaimed to the world that all men are born equal, and possess certain inalienable rights, amongst which are life, liberty, and the pursuit of happiness, but the first of these is the only one accorded to the unfortunate slaves; the others of these inalienable rights are denied because the white population have found themselves strong enough to deprive the blacks of them.

A love of society is inherent in the human breast, whatever may be the complexion of the skin; "its taste is grateful, and ever will be so till Nature herself shall change;" and in administering the laws of a British province, I never can feel bound to recognize as law any enactment which can convert into chattels a very large number of the human race.

I think that on every ground the prisoner is entitled to be discharged.

Inclosure 6 in No. 15.

Judgment of Mr. Justice Burns.

IN considering and disposing of the question raised in this case, we must keep in mind that the subject is brought before us on the application of the prisoner, and not on behalf of or by the Crown in any way; and the simple question at present is whether the prisoner is now in legal custody.

It might be a question upon the construction of the Extradition Act, c. 89 of the Consolidated Acts of Canada, whether a prisoner could intervene between the committing Magistrate and the Governor-General by a writ of *habeas corpus*, to take opinion of a Court of Law upon the sufficiency of the evidence of criminality. That question has not been raised, and if it had been, I should be disposed, in favour of liberty, to consider that a prisoner might obtain the opinion of a Court upon the sufficiency of the evidence to charge a person with any of the offences mentioned in the Treaty—that is, to examine the evidence with a view of determining the sufficiency of it, to call the matter to the attention of the Executive Government under the Treaty. The opinion of the committing Magistrate is not binding upon the Governor-General, for the Magistrate must return with his certificate of his opinion a copy of all the testimony taken before him to the Governor-General, in order that final action may be taken by the Government.

No power is given by the Act to obtain a writ of *habeas corpus*, except in cases under the 4th section, where the prisoner has remained in custody more than two months without a requisition having been made. Though no such power has been expressly given by this Act, yet I suppose the bare right to have the writ will not be denied, and that the cause of detention should be returned with it would seem naturally to flow from that right.

That being so, then we see upon the return of the writ, that the cause of detention is that the prisoner is charged with having committed murder in a foreign country, and that offence being one of the crimes enumerated in the Treaty by which the two Governments stipulated with each other mutually to surrender criminals. The warrant of commitment is not perhaps strictly technical in terms, but that affords no ground for discharge of the prisoner, for we have before us the evidence of criminality upon which the Magistrate acted, and therefore we must look at that with the warrant.

The whole argument in the prisoner's favour must rest upon the proposition that as he was a slave, and killed the person he is said to have done in freeing himself from slavery, and that slavery not being recognized or tolerated in this country, the prisoner therefore is not guilty of murder, whatever other offence it

might amount to. That argument is a fallacy, for the two Governments in making the Treaty were dealing with each other upon the footing that each had then, at that time, recognized laws applicable to the offences enumerated. It is true the moment a slave puts his foot upon Canadian soil he is free, but the British Government never contemplated that he should also be free from the charges of murder, piracy, or arson, though the crime was committed in the endeavour to obtain freedom.

The agreement to surrender to each other criminals of certain classes was of course based upon the fact of the persons being criminals by the laws of the country from which they came, provided the evidence of criminality, according to the laws of the place where the fugitive so charged should be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed. Whether the prisoner was a slave or not is not the question we have to deal with. We find that slavery is recognized by the laws of the State of Missouri. All that we are called upon to say is, whether the prisoner might be legally put upon trial for murder, provided the homicide had occurred in Canada under the same circumstances as alleged in the depositions. I do not wish to be understood as meaning to say anything prejudicial to the prisoner, either upon trial for the offence, or upon the manner in which the case may be dealt with upon a demand for surrender when it comes so to be. I have formed no opinion, either one way or the other, upon the guilt or innocence of the accused. We have, as Judges, only to say whether the evidence of criminality be sufficient, according to our laws, to put the accused upon trial for the offence of murder.

According to the evidence, Diggs had a lawful right in the State of Missouri to arrest the prisoner, and the prisoner knew it, but yet he resisted, and in the course of that resistance Diggs lost his life. We do not discover that Diggs was using violence, or more force than was necessary to accomplish what was in that State a lawful act; and, on the other hand, we find the prisoner not merely resisting the law, but armed with a deadly weapon to aid him in that resistance.

Now take the case of a person authorized by any of our laws to deprive another of his liberty, and homicide committed under the same circumstances as mentioned in the depositions before us, no one can doubt for a moment the evidence would be sufficient for a Grand Jury putting the accused upon trial for murder. Whether in the course of the trial there might not be circumstances made to appear warranting and justifying the belief that there was no intention to take life, and consequently that the homicide was only manslaughter, is another question, and is one that Judges under the circumstances of the present case are not called upon to give any opinion. The law of the foreign country is plain enough with regard to a certain class of its inhabitants; but because our laws are different with regard to the liberty of that class, it cannot in reason and common sense be a sound proposition to advance that such difference in the laws warrants us in ignoring altogether the law of the foreign country, and would justify us in saying that a slave cannot commit murder in attempting to escape.

The framers of the Treaty never could have supposed that such a proposition was the law by which the Treaty itself was to be interpreted; for if it be so, then the Treaty, instead of being mutual, would be all upon one side so far as criminals who have been slaves are concerned.

However much I deplore the necessity for being called on to give any opinion, and however much I may detest and abominate the doctrine that any one portion of the human race has a right to deprive another portion of its liberty, and reduce that class to a state of slavery, yet when called on to explain and interpret an agreement between our own nation and another, and what is the legal effect of it, a duty attaches so sacred, that private feelings ought in no manner to be allowed to warp the mind or pervert the judgment.

We must see what each party to the Treaty supposed and believed they were negotiating about at the time it was done; and it would neither be fair nor honest to interpret the Treaty by the laws of one of the countries without reference to the laws of the other as they stood at the time the Treaty was entered into: and we cannot imagine that either Party, in passing laws to enable the Treaty to be carried out, supposed that the law of one side was to govern, without reference to the law of the other side.

I entertain no manner of doubt that it is proper for the Court to refuse to discharge the prisoner, thus leaving him to be dealt with in such manner as his Excellency the Governor-General may be advised; and in doing so it must be understood that the judgment of the Court was invoked by the prisoner, not by the Government, which may find sufficient reasons, for aught the Court has anything to do with, for not complying with a requisition from the United States.

After the Judges had delivered severally their opinions, the Chief Justice, having in the course of his Judgment observed upon the course pursued in Hickey *v.* Marks (3 E. R. 166), directed a rule in the following form to be drawn up and delivered to the Sheriff:—

In the Court of Queen's Bench. Michaelmas Term, 24 Victoria.

Upper Canada, County of Brant.

John Anderson being brought here into Court in the custody of the Sheriff of the said County, by virtue of a writ of *habeas corpus*, it is ordered that the said writ and the return thereto be filed. And upon reading the several informations upon oath of William C. Baker, Thomas D. Diggs, Benjamin Hazlehurst, J. A. Holliday, a man named Phil, and Benjamin F. Diggs, returned in obedience to a writ of *certiorari* directed to William Mathews, Esq., one of Her Majesty's Justices of the Peace in and for the County of Brant, and upon hearing counsel on both sides, it is ordered that he, the said John Anderson, be recommitted to the custody of the keeper of the jail of the said County of Brant, upon the warrant under which he hath been by him detained, to remain in the common jail of the said County of Brant until a warrant shall issue, upon the requisition of the proper authorities of the United States of America or of the State of Missouri, for the surrender of the said John Anderson, to be tried in that State for the murder of one Seneca T. P. Diggs, according to the Treaty between Her Majesty and the United States of America, recited in the statute of Canada, passed in the 22nd year of Her Majesty's reign, cap. 89, or until he shall be discharged according to law.

By the Court.

No. 16.

Lieutenant-General Sir W. Williams to the Duke of Newcastle.—(Received March 8.)

My Lord Duke, *Government House, Quebec, February* 19, 1861.

I LOSE no time in apprising your Grace that I have been informed that the proceedings taken before the Court of Common Pleas at Toronto, in the Anderson extradition case, has terminated in the liberation of the prisoner on the ground of a technical informality in the earlier stages of the process before the committing magistrate.

The certified copies of the judgment of the Court, and of the documents connected therewith, will be forwarded as soon as they can be prepared.

I have, &c.

(Signed) W. F. WILLIAMS.

No. 17.

The Duke of Newcastle to Sir E. Head.

Sir, *Downing Street, March* 18, 1861.

I HAVE the honour to acknowledge the receipt of Lieutenant-General Williams' despatch of the 15th of February, transmitting certified copies of the papers in the Anderson Extradition case, up to the judgment given by the Queen's Bench at Toronto.

I have, &c.

(Signed) NEWCASTLE.

No. 18.

The Duke of Newcastle to Sir E. Head.

Sir, *Downing Street, March* 19, 1861.

I HAVE to acknowledge the receipt of Sir Fenwick Williams' despatch of the 19th ultimo, informing me that the proceedings taken before the Court of Common Pleas at Toronto in the Anderson Extradition case have terminated in the liberation of the prisoner, on the ground of a technical informality in the earlier stages of the process before the committing Magistrates.

I have, &c.
(Signed) NEWCASTLE.

No. 19.

Sir E. Head to the Duke of Newcastle.—(Received April 15.)

My Lord Duke, *Government House, Quebec, March* 28, 1861.

REFERRING to Sir F. Williams's despatch of the 19th of February, I have the honour to transmit herewith certified copies of the judgment of the Court of Common Pleas, and of the writ of *habeas corpus*, in the case of Anderson, the fugitive slave.

I have, &c.
(Signed) EDMUND HEAD.

Inclosure 1 in No. 19.

Certificate, &c.

In the Court of Common Pleas.

I, LAURENCE HEYDEN, Clerk of the Crown and Pleas of the Court of Common Pleas for Upper Canada, do hereby certify that the annexed paper writing is a true copy of the writ of *habeas corpus* issued out of this Court in the matter of John Anderson, together with the indorsement thereon, now remaining of record upon the files of this honourable Court.

In testimony whereof I have hereto set my hand and affixed the seal of the said Court this 22nd day of March, A.D. 1861.

(Signed) L. HEYDEN.
Clerk of the Crown and Pleas, Common Pleas.

Province of Canada, to wit.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith ;

To the Sheriff and to the Keeper of the Jail of the County of Brant, greeting:

We command you that you have the body of John Anderson, detained in your jail under your custody, as it is said, under safe and secure conduct, together with the day and cause of his being taken and detained, by whatsoever name he may be called in the same, before our Court of Common Pleas at Toronto, on the 8th day of February, in the year of our Lord 1861, to do and receive all things which our said Court shall then and there consider of him in this behalf, and have there and then this writ.

Witness, the Honourable William Henry Draper, C.B., at Toronto, this 1st day of February, in the year of our Lord 1861.

(Signed) WM. H. DRAPER, *C. J. C. P.*

Issued from the office of the Clerk of the Crown and Pleas, in the County of York, by

(Signed) L. HEYDEN.

I have the body of the within-named John Anderson before the Justices of the Court of Common Pleas, as within I am commanded, and have annexed to this writ true copies of the commitment, and an order of the Court o

Queen's Bench, by which will appear the date of his committal and cause of detention.

The answer of John Smith, Esq., Sheriff of the County of Brant.

Inclosure 2 in No. 19.

In the Court of Common Pleas. Hilary Term, 24 Victoria.

In *re* John Anderson.

FREEMAN, Q.C., and M. C. Cameron, were Counsel for the prisoner. Eccles, Q.C., and Harrison, R.A., for the Crown.

The following objections were taken to the warrant of commitment:—

That it was not issued in conformity with the Statutes because,—

1. It did not contain a charge of murder, but merely of felonious homicide; whereas the Treaty and our Statute do not authorize a surrender, and consequently, not a committal for the purpose of surrender for any homicide not expressed to be murder.

2. That it was not expressed to be for the purpose of surrender, but only until the prisoner should be discharged by due course of law; whereas the Statute requires both.

3. That the magistrates had no jurisdiction, unless and until the prisoner had been charged with the crime in the foreign country where it was alleged to have been committed.

It was objected to the rule of the Court of Queen's Bench that none of our tribunals, judges, or magistrates had any inherent or original jurisdiction over crimes committed in a foreign country. That the only authority in such cases is derived from the Statute passed for the carrying the Treaty into effect, and by that Statute, though power is given to Judges and Justices of the Peace, it is given for certain specified purposes, and the Courts of which the Judges may be members are not empowered to do any one of the acts to effectuate the objects of the Treaty.

During the argument it was further suggested, that the Statute makes the decision of the Judge or Justice of the Peace upon the sufficiency of the evidence to require or justify the committal of the prisoner conclusive, so far as that it cannot be reviewed by any other Judge or Court, though not necessarily conclusive on the Government whose duty it will still be to decide, upon a review of all the circumstances, whether they will surrender the prisoner.

Inclosure 3 in No. 19.

Judgment of Chief Justice Draper.

AS to the matters appearing on the Return to the *certiorari*, the objections may be classed under two general heads:—

1. The insufficiency of the evidence to establish a case of murder.

2. That enough appears to show that, according to the laws of the province, the prisoner had not committed murder.

Upon the face of the warrant, and of the rule of the Court of Queen's Bench, it sufficiently appears that there is no jurisdiction in the province to try the prisoner upon the charge stated. But for the Treaty and our Statute, the proceedings, both before and since the commitment by the Magistrate, would be *coram non judice*, and upon the *habeas corpus* the prisoner would be entitled to his discharge.

No power or authority, therefore, arises in such a case, or can be implied from the jurisdiction over crimes committed against our own laws. Whatever right any Court, Judge, or other Magistrate has to deal with the matter is given by the Statute, it does not exist otherwise.

The first Section of our Act (passed in May 1849, Consolidated Statutes of Canada, chap. 89) reads thus:—

"Upon complaint made under oath or affirmation, charging any person found within the limits of this province with having committed within the jurisdiction of the United States of America, or of any such States, any of the crimes enumerated or provided for by the said Treaty, any of the Judges of any of Her Majesty's Superior Courts in this province, or any of Her Majesty's Justices of the Peace in the same, may issue his warrant for the apprehension of the

person so charged that he may be brought before such Judge or such Justice of the Peace, to the end that the evidence of criminality may be heard and considered, and if on such hearing the evidence be deemed sufficient by him to sustain the charge according to the laws of this province, if the offence alleged had been committed herein, he shall certify the same, together with a 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, or of any of such States, for the surrender of such person according to the stipulation of the said Treaty, and the said Judge or the said Justice of the Peace shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender be made, or until such person be discharged according to law."

It is plain from this Section that the proceedings for the arrest of a party with a view to his surrender may be commenced in this province, and the party so charged, *i.e.*, upon complaint made before any Judge or Justice of the Peace, may be committed to remain in prison until such surrender be made. The third objection to the warrant appears to want, therefore, foundation.

The crimes specified in the Treaty are murder, or assault with intent to commit murder, piracy, arson, robbery, forgery, or the utterance of forged paper. There is no jurisdiction to take a complaint, to issue a warrant for apprehension, to hear and consider the evidence of criminality, or to commit, except for one of these offences.

The warrant of commitment states that the prisoner is charged for that he did wilfully, maliciously, and feloniously stab and kill one Seneca T. P. Diggs. Does this charge an offence within the Act?

This would be an insufficient statement in an indictment for murder in any of our Courts, because it is equally indispensable to use the artificial term "murder," as it is to state that the offence was committed "of malice aforethought," so much so that by the omission of either one or the other the accused would be liable to no more than a conviction for manslaughter. But for the word "kill" this warrant would rather charge a malicious stabbing than any other felony, while that same word "kill" excludes the possibility of treating the warrant as founded on a charge of assault with intent to murder. It is true that in a Warrant the same particularity is not requisite as in an indictment, and it is said in effect (1 Hal., 122) it need only contain the especial nature of the felony briefly, as "for felony for the death of J. S., and the reason is because it may appear to the Judges of the King's Bench upon *habeas corpus* whether it be a felony or not." But this rule and the reason for it do not in my humble judgment govern a case like the present, where the jurisdiction does not extend to all felonies, nor even to all felonious homicides, but is, on the contrary, limited to one kind of homicide, expressed by its technical name "murder." In the execution of a statutory power thus limited the words of the Statute should, I think, be adhered to, in order that, to adopt the language above quoted, it may appear to the Judges upon *habeas corpus* whether the offence charged be within the Statute or no. In my opinion, therefore, this warrant is defective in not stating that the prisoner was charged with murder.

The next objection to the warrant of commitment is the omission in the conclusion to direct that the prisoner shall remain in jail until his surrender upon the requisition of the proper authorities, or until he should be discharged according to law.

It is laid down as a general rule, deducible from and confirmed by numerous authorities,* that where a man is committed for any crime, either at common law or created by Act of Parliament, for which he is punishable by indictment, there he is to be committed till discharged by due course of law. But where the committal is in pursuance of a special authority the terms of the commitment must be special, and must exactly pursue that authority.

The case most resembling the present as to this point is that of *ex parte* Besset (A. 6 Q. B., 481), which I had not seen when I granted this writ of *habeas corpus*. My attention was first drawn to it by the learned Chief Justice of the Queen's Bench, as a case which was not under the notice of that Court,

* Mash's case, 2 W. Bl., 805; Yoxley's case, 1 Salk., 351; Bracey's case, 1 L. Ray., 99; Hollingshead's case, 1 Salk., 351; Baldwin *v.* Blackmore, 1 Bur., 602; R. *v.* Brown, 8 T. R., 26; R. *v.* Remnant, 5 T. R., 169, 2 Leach, 583; R. *v.* York, 5 Burr., 2684; Millar's case, 2 W. Bl., 881.

on the application to them for the prisoner's discharge; nor in fact was the point now raised at all under their consideration.

It appears by that case that one Besset was brought up on a *habeas corpus*, and the return showed that he was committed by a warrant from the Lord Mayor of London under the authority of the British Statute, 6 and 7 Vic., c. 75, which was passed to give effect to a Convention between Great Britain and France, closely resembling that between Great Britain and the United States. The objection taken to the commitment was, that it concluded "and him safely keep until he shall be discharged by due course of law." The authority given by the Act was "to commit the person so accused to jail, there to remain until delivered pursuant to such requisition as aforesaid." The Court held the objection fatal, and discharged the prisoner.

Our Statute directs that the Judge or Justice of the Peace "shall issue his warrant for the commitment of the prisoner so charged to the proper jail, there to remain until such surrender be made, or until such person be discharged by due course of law." Unless it can be held that the latter words include, or are equivalent to the former, this case cannot be distinguished from that of *ex parte* Besset. But we are bound to give effect to every word in the Act, and it is too obvious to require argument that the Legislature meant to provide for the surrender of the prisoner, and for his discharge if his surrender was not duly required; with that view they made the double provision, one part of which has been overlooked and omitted in the warrant. I consider the warrant of commitment defective on this ground also.

The rule of the Court of Queen's Bench, however, which is returned to us as one of the causes of the prisoner's detention, is free from every objection of this character, and if the Court had authority to make such a rule, affords a complete answer to this application; for the prisoner is entitled to his discharge unless upon the broader questions raised, which involve the discussion of principles of the highest character.

But this rule is objected to as being beyond the power of the Court, and I enter somewhat unwillingly upon its considerations. We are in effect called upon to review and to supersede the action of a Court of co-ordinate jurisdiction, and not in an appellate but in our ordinary character. But we have no alternative, for the prisoner has a right on this to the benefit of our opinion if it should be in his favour.

There can be no doubt as to the authority of the Court when a prisoner charged with felony is brought before them on *habeas corpus* to look, not merely at the commitment, but also at the depositions, before they either bail or discharge him, in order to see whether there is sufficient evidence to detain him in custody; and it is said in R. *v.* Flower (1 Leach, 270):—"The Court in such a case never form a judgment whether the facts amount to felony or not, but whether enough is charged to justify the detainer of the prisoner, and put him on his trial."

The law is thus stated in R. *v.* Marks (3 East, 157):—"Though the warrant of commitment be informal, yet, if upon the depositions returned, the Court see that a felony has been committed, and that there is a reasonable ground of charge against the prisoners, they will not bail, but remand them. The same rule applies with respect to both the law and the fact; unless we see reason to doubt the truth of the fact charged, the prisoner must be remanded, and the same consequence follows unless we see reason to doubt whether the fact charged constitute any offence within the law."

The same principle is affirmed in *ex parte* Page, and in R. *v.* Gordon; and an analogous course was followed in R. *v.* Richards, in *ex parte* Cross, and *in re* Smith (1 B. & A., 568 and 572; 52 B., 926; 2 H & N., 354; 3 H & N., 227).

These authorities, to which it would be easy to add many others, conclusively show that the course followed by the Court of Queen's Bench is warranted by principle and authority, whenever the case is one within their ordinary jurisdiction.

The effect of the rule in question is either merely to remand the prisoner on the Magistrate's warrant, or to commit him by the authority of the Court alone.

After a long and most anxious consideration, I have formed the opinion that the rule is not sustainable in either view. I have already given my reasons for

thinking the warrant defective; and if the prisoner be remanded exclusively on that, he should be discharged. The rule does not profess to amend the warrant, and therefore the imprisonment rests on the inherent authority of the Court alone.

This point merits full examination. We have the advantage of the decision already mentioned in the case of *ex parte* Besset, which, as I have remarked, was not adverted to by any one concerned in this matter, until after the writ on which the prisoner is now before us was issued.

The British statute 6 & 7 Vict., cap. 75 (to which I have before referred), upon a requisition from the French Sovereign, within the terms of the Convention, authorizes either of the Principal Secretaries of State, and some other high functionaries, by warrant to signify that such requisition had been made, and "thereupon it shall be lawful for any Justice of the Peace, or other person having power to commit for trial persons accused of crimes against the laws of that part of Her Majesty's dominions in which such supposed offender shall be found; to examine upon oath any person or persons touching the truth of such charges; and upon such evidence as, according to the laws of that part of Her Majesty's dominions, would justify the apprehension and committal for trial of the person so accused, if the crime of which he or she shall be so accused had been there committed, it shall be lawful for such Justice of the Peace, or other person having power to commit as aforesaid, to issue his warrant for the apprehension of such person, and also to commit the person so accused to jail, there to remain until delivered pursuant to such requisition as aforesaid."

Upon this statute Besset was committed; and in endeavouring to sustain the commitment, counsel suggested that the Court would look into the depositions on which the warrant was granted, and if they showed a crime had been committed, would remand the prisoner. To which Justice Wightman replied, "That could only be where a crime appeared for which trial might be in this country." Lord Denman said, "The depositions are nothing to us unless under the statute." And Justice Coleridge asked, "Does the statute give any power of this kind to us?" And in giving judgment to discharge the prisoner, Lord Denman, according to the report in the "Jurist," said:—"Neither this Court, nor the jailer in whose custody the prisoner is brought before us, have any power over that individual except what is given by the recent Act of Parliament, and the warrant of commitment has been drawn up in such a manner as to deprive these parties of any power to detain him. The Court has been requested to remand the prisoner, because it is alleged he has been guilty of some crime, but the Court knows nothing of any crime except from what appears on the face of the warrant of commitment, and that is insufficient to justify the detention of the prisoner." And in 6 Q. B., his Lordship is reported to have said:—"We are asked to remand the prisoner on our own authority, as charged with such a crime, but we know nothing of the crime unless as it is brought before us by the warrant, or I should rather say we have no authority of the kind in such a case. If we could have acted in the manner suggested, the statute would have been unnecessary."

Unless there be a difference between the British Act and our own, sufficient to create a solid distinction, this case is, in my opinion, decisive; and I perceive no difference worthy of notice, except that in the British statute Justices of the Peace and other persons having power to commit for trial persons accused for crime are empowered to take the proceedings pointed out against the supposed offender, while in our Act any Judge of any of the Superior Courts in this Province, or any Justice of the Peace within the same, may do so. It cannot, I think, be successfully contended that these words confer any new power on the Superior Courts, though they do so expressly on the individual Judges; and, in my opinion, the general ordinary powers of the Court cannot be extended by implication to cases arising under our statute any more than the corresponding powers of the Court of Queen's Bench in England could be so extended under the British Act.

It is true it does not appear in *ex parte* Besset that the depositions were before the Court. I infer they were not, but nevertheless the language used by the Judges clearly expresses to my mind their opinion that they had no authority to look at them for the purpose of supplying any defect in the warrant.

The result is, that in my opinion the return to the writ of *habeas corpus* shows no sufficient ground for the prisoner's detention. He ought, therefore, to

be discharged, and whatever conclusion I might arrive at on the more general grounds urged on his behalf the result must be the same.

I have, so far as the limited time and the pressure of other business during this week would permit, considered some of the questions involved. I have at last been able to appreciate the difficulty of disposing of them.

One doubt arises on the very threshold, namely, whether the statute gives the Court power to look into the depositions, and to adjudge whether they contain evidence of criminality sufficient to sustain the charge of murder. It is easy to suggest objections to the placing the power of exclusive and final adjudication on this point in the hands of a single Justice, even although his decision is not binding on the Government to whom he must certify the same, and the evidence, and on whom rests the ultimate responsibility of surrendering or refusing to surrender the prisoner. Still, however weighty I might deem such objections, if the Statute does confer that jurisdiction on a single Judge or Justice of the Peace the Statute must be obeyed, and I am free to confess that there is some difficulty in affirming that this Court can review the decision of the Judge or Justice without running counter to the opinion expressed in *ex parte* Besset.

But conceding that we have that power, and, as a necessary incident to it, to bring the depositions before us by *certiorari* (as to which some technical objections may be suggested), I require further time before I can adopt as a principle of our law, that because a man is a slave in a country where slavery is legalized, he is legally incapable of committing a crime—that he is not to be deemed a "person" who may be charged with an offence. Nor am I prepared to decide that on a charge of murder sufficiently sustained by evidence to warrant his being committed for trial according to our law the person accused of that crime would not be within the meaning of the Treaty because if acquitted on a trial in the country where the accusation arose, he would be detained in bondage as a slave, or because it might be feared, and even with reason feared, that because he was a slave he would not be treated in the same spirit of justice and impartiality as a free man before the tribunals of a foreign State where slavery is established by local law.

Or, to take a possible case to arise in a Free State, let it be supposed that a slave flies from a Slave State into a Free State, whose laws, nevertheless, unlike our own more happy institutions, sanction and require his surrender merely as a slave; that the fugitive kills an officer of the Free State who is endeavouring, under legal process, to arrest and detain him, with a view to his surrender, and having killed the officer escapes into this province, I do not yet see my way to the conclusion that we could hold the case not to be within the Treaty, and the act so clearly not to be murder; that there would be nothing for a jury to try, but that the Court could dispose of it as a pure question of law. For if there be a question of fact to be tried, I apprehend he must be surrendered, as such question could only be tried in the country where the fact arose.

These and other similar questions are of too serious a character to be decided upon impulse or in haste, and I do not scruple to say that so long as the prisoner sustains no prejudice by the delay, I desire to defer pronouncing an opinion upon them. I am reluctant, on the one hand, where the occasion does not make it indispensable, to declare that each individual of the assumed number of 4,000,000 slaves in the Southern States may commit assassination in aid of escape on any part of his route to this province, and find impunity and shelter on his arrival here. I am reluctant, on the other hand, to admit that Great Britain has entered into Treaty obligations to surrender a fugitive slave who, as his sole means of obtaining liberty, has shed the blood of the merciless task-master who held him in bondage. An occasion may arise when it will be my duty to adjudge one way or the other. But that necessity does not exist at present, and I am not afraid to avow that I rejoice at it. I am, however, glad that the discussion has taken place, that the doubts and difficulties it suggests have been brought prominently forward. The power of dealing with them is in the hands of others, and the necessity of dealing with them must, I think, be felt by those who possess the power.

Inclosure 4 in No. 19.

Judgment of Mr. Justice Richards.

IT seems to be generally conceded that unless there are Treaty stipulations to that effect, one nation is not bound to deliver to another fugitives from justice seeking refuge in the territories of such Power.

Mr. Justice Story, in his "Conflict of Laws" (p. 522), states that Lord Coke expressly maintains that the Sovereign is not bound to surrender up fugitive criminals from other countries who have sought a shelter in his dominions.

Mr. Phillimore, in his recent very elaborate work on International Law (p. 411), observes, "France, Russia, England, and the North American United States, have constantly, either by diplomatic acts or decisions of their tribunals, expressed their opinion that upon the principles of International Law, irrespective of Treaty, the surrender of a foreign criminal cannot be demanded;" he adds (p. 413), "the result of the whole consideration of this subject is, that the extradition of criminals is a matter of comity, not of right, except in cases of special Convention.

I apprehend there can be no doubt that if it were not for the Treaty, and the Act of Parliament carrying it out, we should be obliged to discharge the prisoner from custody, though it was clearly shown that he had committed murder in the State of Missouri. If it does not appear that he has committed some offence against the Queen's peace, we have no right to detain him in custody, except under the authority of the Act of Parliament.

We must look, then, to the Statute, to see if the prisoner is charged with any offence under it, and if he has been committed according to its terms. It is objected that the Statute requires that the prisoner should be charged with murder, and that he should be committed to the jail, there to remain until he is surrendered, whereas the words used in the *mittimus* only imply a charge of manslaughter, and by the warrant he stands committed until delivered by due course of law.

There is no doubt that if the offence charged is not murder, then the prisoner must be discharged, and it is equally certain that the Statute prescribes that if the magistrate deemed the evidence sufficient to sustain the charge, he ought, amongst other things, to have committed the prisoner to the proper jail, there to remain until he was surrendered, or until he was discharged according to law. The words of the warrant, which states the charge as to the prisoner, are, that he did, in Howard County, in the State of Missouri, on the 28th of September, 1853, "wilfully, maliciously, and feloniously stab and kill one Seneca T. P. Diggs." If these words were the only ones by which a charge of murder was laid in an indictment, it would be clearly bad, as well on account of the omission of the allegation that the act was done by malice aforethought, as of the further omission of the allegation that prisoner had murdered the said Diggs. In "Russell on Crimes," it is stated at p. 470, vol. i, "It is necessary to state that the act by which the death was occasioned was done feloniously, and especially that it was done of malice aforethought, which is the greatest characteristic of the crime of murder, and it must also be stated that the prisoner murdered the deceased."

It is still necessary, under our own Statute (Con. Acts, 22 Vic., cap. 99, s. 23), in any indictment for murder, to state that the prisoner did "feloniously, wilfully, and of his malice aforethought, kill and murder the deceased."

It is not, however, as a general rule, necessary in a warrant of commitment to charge the offence with the same certainty as in an indictment, and where it sufficiently appears from the warrant and depositions that a felony has been committed, the Court, though the warrant be defective, if the offence be one committed against the Queen's peace, will recommit the prisoner under a warrant of their own. But in these cases a felony must be clearly shown to have been committed; if that is not the case, the prisoner will be entitled to be bailed or discharged.

Now here, so far as the right to arrest the prisoner is concerned, it ought clearly to appear that he is charged with murder, for if charged with a less offence, though that be a felony which is not within the Treaty, he cannot be detained. If the charge is not clearly one of murder, and it is doubtful if

manslaughter or murder is charged, then I take it the general rule must prevail, that that interpretation must be given which is most in favour of the liberty of the accused.

If it had been charged against the prisoner that he did willfully and feloniously stab and kill Seneca T. P. Diggs, this would only be a charge of manslaughter, and the prisoner without doubt would be discharged. Does then the introducing the word "maliciously" into the charge show that the prisoner is charged with the crime of murder? Two essential ingredients seem still wanting to make the charge clearly that of murder; viz., that the malice should have been "aforethought," and the killing should have been alleged to be murder. The general definition of manslaughter being "the felonious killing of another, without malice express or implied," it would seem that the allegation that the prisoner did maliciously stab and kill Diggs, would afford a strong argument that the charge was not one of manslaughter; but the omission to charge the malice as "aforethought," may, in the same way, be urged to support the proposition that the charge is not for murder, which it ought to be to justify the prisoner's detention.

As this proceeding is one taken under the Statute, it can only be sustained so far as it is in accordance with the Act. The Treaty which the Statute carries out, refers to persons charged with the crime of murder, not manslaughter, and these are to be surrendered. The offences charged ought to be plainly stated; there would be no difficulty in stating that the prisoner had been charged with murder if the magistrates intended that he should be surrendered for that crime. The charge is not so made, and if the language in which it is stated differs from the Treaty, it ought to be clear and explicit, so as to be beyond all doubt. The words of the Ashburton Treaty, in the King v. Judd, 2 Term Reports, 256, seem to me peculiarly applicable. He says whatever words the Legislature used, we must suppose that they knew the meaning of them; and if a Justice uses the same words, we are bound to suppose that he intended them in the same sense, but if he makes use of other words he must be more precise. Here the Justices have made use of other words, and they are not more precise. On this point, and though not entirely free from doubt, I think the warrant bad.

As to the next objection, the omission in the commitment to direct that the prisoner should remain in jail until the surrender should be made, as required by the Statute. Russell's case (6 Q.B.) is a strong authority in favour of the prisoner, and unless we are prepared to overrule that case, we must consider this objection fatal.

In Mash's case (2 Sir W. Blackstone's Reports, 806) the doctrine applicable to the question as to the necessity of inserting the words "until delivered by due course of law" is thus clearly laid down: "The true distinction is, that where a man is committed for any crime, either at common law or created by Act of Parliament, for which he is punishable by indictment there, he is to be committed till discharged by due course of law; but when it is in pursuance of a special authority, the terms of the commitment must be special, and exactly pursue that authority."

But the omission of the words referred to suggest to my mind a still graver difficulty, and not one of a merely technical character. There is nothing before us to show that the Magistrates, "after hearing and considering the evidence of criminality," deemed the same sufficient to sustain the charge. That fact has not been certified to us, though it may have been to the Governor; and the Statute says distinctly, that if on the hearing the evidence be deemed sufficient by him (the Magistrate) to sustain the charge he shall, in addition to certifying the same, &c., issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender be made, or until such person be discharged according to law.

If, then, the committing Justice or Justices deemed the evidence sufficient to sustain the charge, the prisoner ought to have been committed for the purpose of being surrendered. If they did not declare that they had so committed him, what evidence have we that their adjudication was unfavourable to the prisoner? It may of course be urged that if they had not intended his surrender they would have discharged him from custody. This is only a negative mode of proving that they did what was required by proving that if they had not intended to do so they ought to have done something else. In a matter of this kind, we

must have it clearly shown that the Magistrates did decide against the prisoner as to the evidence sustaining the charge against him.

The only proper way of proving that they had so decided in this case in the way it is now before us is, by showing that they had issued such a warrant as the Statute requires to follow from such a decision. The warrant shown does not do this, and the omission is an important part of it. I cannot say that I have any doubt that the warrant is bad on this ground.

The next point for consideration is, whether the order of the Court of Queen's Bench, recommitting the prisoner to the custody of the jailer of the County of Brant until a warrant shall issue for the surrender of the prisoner, to be tried in the State of Missouri for the murder of Diggs, &c., supplies the deficiencies in the former warrant, and makes his present detention lawful.

No doubt, if any offence against the peace of the Queen, and triable by our laws, appeared sufficiently made out against a prisoner seeking his discharge on a *habeas corpus*, though the warrant of commitment was defective, the Court in its discretion might order his detention for trial; because under those circumstances there would be no doubt of their jurisdiction, as a Court, over the offence. But here there is no jurisdiction given to the Court, as such, to commit the prisoner to be surrendered. That must be done by the Justice or Judge who may have heard and considered the evidence of criminality.

Any one of the Judges of the Superior Courts undoubtedly had power under under the Statute to issue a warrant, and bring the party accused before him, and to consider the evidence of criminality in the same way as a Justice of the Peace. But this power is only bestowed on the Judges individually; it is not given to the Court as such. It is more like the power formerly given under our Municipal Acts to a Judge in Chambers to try the validity of an election, or proceedings by *quo warranto*. There the Court could not in the first instance have decided the question which the single Judge was called upon to dispose of.

It is true, the decision of the Judge might, under the Statute, be reviewed in the full Court; but that did not give the Court power to decide in the first instance, but only to review, as provided by law. In the present state of the Municipal Act, the jurisdiction is given to a single Judge, and I have never heard it urged that, in case of a defective adjudication by a Judge, the Court could interfere to put it right. Having arrived at the conclusion that the prisoner is entitled to his discharge on the objections taken to the form of the warrant, I do not think we ought to detain him in custody until the Court are prepared to decide the other questions raised upon the argument, which we are not in a position to do at present.

If we should finally concur in opinion with the majority of the Court of Queen's Bench as to those questions, we would still be bound to discharge the prisoner on the objections raised on his behalf to the warrant; and if we differed from them, the prisoner would of course be set at liberty. Being, therefore, entitled to his discharge, we ought not to delay it unnecessarily.

Under ordinary circumstances, if we were prepared to decide the main question, we might express our opinions on it, though we had determined to discharge him on the objections to the warrant, in order that those who might be called upon hereafter to act in similar cases might know what views the Court entertained on the subject.

It is probable that a similar question will not come up again very soon, and in the meantime circumstances may occur and such changes take place that, for practical purposes, our judgment would be useless.

Having, as already intimated, come to the conclusion that the prisoner is entitled to his discharge on the grounds mentioned, I have no doubt that it is best, on the whole, that we should do so at once, rather than detain him longer in custody, or unnecessarily discuss questions and express opinions which may be of no practical advantage, and which might possibly tend to create difficulties and embarrassment.

Our judgment proceeds on the ground that the prisoner is detained under the Treaty and Act of Parliament, and in accordance with the views of the Court of Queen's Bench in England expressed in Besset's case. It was not contended before, as if it would have been of any use so to contend (which at present I am far from supposing would have been the case), that at common law and by the [law?] of nations, the prisoner might be detained by the order of the Crown, to

be surrendered as a fugitive from justice. Even if that view could be sustained it does not appear that there is any such order for his detention.

The other formal objections to the proceedings taken on the argument are disposed of by the judgment of his Lordship the Chief Justice.

Inclosure 5 in No. 19.

Judgment by Mr. Justice Hagarty.

I AM of opinion that our provisional Statute allows the proceedings to be commenced by the complaint on oath before the Justice of the Peace, without proof of a charge pending in the foreign State.

Whatever may be our view of the offence apparent in the depositions, I think we are bound to see if the prisoner be detained on a charge which the statutable authority, the examining Justice, has deemed sufficiently sustained as to some one of the crimes mentioned in the Extradition Treaty. And if it do not appear that such (*quasi*) adjudication has been clearly made by such authority, I do not understand that either of the Superior Courts can assume the task of examining the depositions, and judge them sufficient to sustain the charge; that duty, I think, is cast elsewhere, and must be performed by the committing Justice. He is to be satisfied that one of the statutable offences is made out, and he must certify that result at which he has arrived. It is not that the Court may think his materials warranted his arriving thereat, or that he should have done so; he must do so himself, and we cannot, I think, do it for him; he must declare in unequivocal language that a charge (for example) of murder is made out. The Statute directs him to certify his finding, with a copy of the testimony, to the Governor; and I presume it then rests with the Queen's Government, on a view of the case, to assume the responsibility of further action.

In the absence of a positive finding by the Justice as to the sufficiency of the evidence to sustain one of the statutable offences, I am of opinion that the whole case fails, and that no legal authority exists to correct or supply the defect.

In this case the only evidence before us of any such finding, is the warrant. The charge there expressed is, that the prisoner, in a foreign country, "wilfully, maliciously, and feloniously, stabbed and killed" Diggs.

Does this clearly declare a crime under the Extradition Treaty, viz., murder?

I am of opinion that the Magistrate had no right to substitute any words of his own if he intended to commit for a well-known crime mentioned by a well-known name in the Treaty, and require us to assume that he meant the crime of murder by these expressions.

It is abundantly clear that an indictment for murder so worded would be bad; and although the introduction of the word "maliciously" would be unsuitable in an indictment for manslaughter, I do not see how that can help he case.

In commitments for trial for offences in our own country, the depositions can be referred to if the warrant be defective, and if they show substantially what the crime is, the prisoner can be still detained. The case cited of Rex *v.* Marks, and subsequent authorities, amply support this.

It is readily conceded that a commitment need not be so certain as an indictment; but it ought to be sufficiently certain to show that an offence has been committed. In the ordinary case that would mean an offence cognizable by our Courts; here it must distinctly show one of the statutable crimes, and if my view be correct, we cannot seek to gather that result from the evidence, as the statute throws that duty on the committing Justices (Rex *v.* Judd, 2 T. R. 256).

It seems to me that from the nature of this proceeding, all reasonable particularity should be required in the instrument under which the prisoner is detained; that nothing should be left to conjecture, and that the charge should be explicit, and independent of all aid from the depositions. I think we are far from insisting on mere technical exactness in requiring every person intended to be charged with murder to have the crime named as such—its universal and indispensable description in indictments, and not intend against the prisoner that

murder is charged by words, which in an indictment could only warrant a conviction for manslaughter, if good even for that lesser crime.

If this Court cannot look at the depositions to support the warrant, the necessity of a strict construction of the latter is indispensable. The warrant or authority to detain is, as it were, the indictment or legal record of the prisoner's crime, so far, at least, as this country is concerned.

The case of Besset seems to indicate the opinion of the Court that they could not look beyond the warrant. The Chief Justice has already quoted fully from that case.

It may be suggested that as to the crime of arson mentioned in the Treaty, it is not necessary to use that word to describe the offence. That may be so. The word is not used as "a term of art," as murder is in legal documents; but is used to express what indictments describe as "wilfully, maliciously, and feloniously setting fire to," &c.

But murder is emphatically, as the books call it, "a term of art," and I am not willing to dispense with its presence in a document of such overwhelming importance to this prisoner's life and liberty as this warrant necessarily is under the construction given to it, and to the Court's jurisdiction over it by the case just cited. As evidence, and the only evidence before me, of a deliberate conclusion or adjudication by a proper officer, that a man living under the protection of our laws has brought himself within the grasp of a Treaty for the delivery to a foreign State as a murderer, I decline accepting the words here used as legally descriptive of murder. The law describes this crime in words of universal use, and pointed and unequivocal significance. I am not to conjecture that this necessarily means murder, or to listen to arguments that such words are too strong for manslaughter, &c. It is sufficient for me to say that if murder was meant, murder should have been expressed.

I consider this a thoroughly substantial objection; not a mere technicality, but as the want of an essential charge, necessarily fatal to the validity of the detention.

I am also of opinion that the conclusion of the warrant is defective, although our Provincial Act has the alternative which the Statute governing Besset's case had not.

The Statute directs a commitment to jail for a special purpose, viz., extradition. And not, as in the common case of an indictable offence, where the legal deliverance will surely come as a jail delivery. I think that the commitment should have strictly pursued the words of the Act, which alone gave it any authority.

I do not consider that the order of the Court of Queen's Bench affects the right of the prisoner to ask his discharge from a Court of co-ordinate jurisdiction. He now stands remanded on the original warrant, not as in Rex *v.* Marks, discharged from custody on the defective warrant, and committed by the Court of its original authority. If this warrant be bad, everything falls with it.

Considering the prisoner entitled to his discharge on these grounds, I have not desired to prolong his detention to allow further time for deliberations on the other very grave questions raised.

Nothing would be easier than to arrive at a conclusion, if I had the right to dispose of this case simply on my own ideas of right and wrong, or on the dignity and privileges of human liberty; if, in short, I could ignore my peremptory obligation to decide according to what I believe the law is, and not as I may think it ought to be. In Lord Stowell's words, "I must remember that in discussing this question, I have to consider it not according to any private moral apprehensions of my own (if I entertain them ever so sincerely), but as the law considers it."

Our Treaty with the United States is not very unlike those with France and other nations; and but for the unhappy presence on this continent of some millions of our fellow-beings in involuntary servitude, there would be little practical difficulty in its operation. But the existence of this ill-used race presents difficulties which have hardly been duly provided for in the international contract; and a rigid adherence to some of the constructions ably pressed upon us in argument would possibly lead to the gravest results.

To treat this class as wholly excluded from the Treaty, as chattels, and not as responsible persons, is intelligible in statement, but might have this result, that if (apart from any attempt at freedom) a slave murdered his fellow slave,

or deliberately burn up a dwelling-house with its inmates, white or coloured, or on the seaboard commit piracy, &c., and fly to Canada, he would be safe from punishment.

Again, to test a fugitive's criminality in every way, as if the act charged were done on the soil where he is arrested, and to hold the crime incomplete unless every law alleged to be violated equally prevailed in both countries, might insure impunity to the mass of offenders, white and coloured. Resistance to a merely local law, even to the death, in Canada, New York, or Missouri, would thus be no crime, and the logical sequence might be, that the white man or the slave in custody, or under sentence for the breach of a law not in force here, might, by killing his keeper, vindicate his right to escape from what we must thus hold to be an illegal restraint.

Again, the doctrine that we must accept every foreign law, be it right or wrong, natural or unnatural, in our eyes, can readily be pushed to extravagant results; as, for example, if it be declared murder for the slave to slay her ravisher in defence of chastity, or resist to the death a corporal punishment dangerous to life or limb. This is also intelligible in statement, but would be revolting and unbearable in practical result.

Lastly, that the contracting parties are to surrender or refuse to surrender according to their view of the justice or the injustice, the equity or the inequity, of the law said to have been violated. This must lead to endless disputation, and leave the Treaty either to utter disuse, or to a capricious and offensive execution.

But the adoption or repudiation of these interpretations may be altogether for the consideration of the Governments of the respective countries on receiving the reports of the officers appointed by law to take the evidence against fugitive offenders. I could have wished that the arguments before us had been more directed to the question whether it is on a return to a writ of *habeas corpus* that these constructions are to be discussed.

I concur in deciding that the prisoner is entitled to his discharge, not without a strong hope that such modifications may, before long, be made in the Treaty, as may prevent the recurrence of such cases as the present.

No. 20.

Lord Lyons to Lord J. Russell.—(*Received April* 22.)

My Lord, *Washington, April* 8, 1861.

WITH reference to Mr. Irvine's despatch to your Lordship of the 8th October last, to your Lordship's despatch to me of the 29th October last, and to my despatch to your Lordship of the 12th February last, I have the honour to inclose a set of papers relative to the extradition of John Anderson, which have been printed by order of the Senate, and have just come from the press.

In order to complete the documents relative to the case, I do myself the honour to inclose also copies of my correspondence with the Administrator of the Government of Canada.

When I despatched the requisition for the surrender to Canada, I was not aware that John Anderson had been a slave, or that there were any peculiar circumstances in the case. If, however, I had been aware of all the facts, I could not, of course, have done otherwise than forward the requisition to be dealt with by the proper authorities in Canada.

I have, &c.
(Signed) LYONS.

Inclosure 1 in No. 20.

Message from the President of the United States, communicating, in compliance with a Resolution of the Senate, Information relative to the Extradition of one Anderson, a Man of Colour.

To the Senate of the United States:

IN answer to the Resolution of the Senate of the 25th instant, requesting information relative to the extradition of one Anderson, a man of colour, charged with the commission of murder in the State of Missouri, I transmit a report from the Secretary of State, and the documents by which it was accompanied. The despatch of Mr. Dallas being in the original, its return to the Department of State is requested.

(Signed) JAMES BUCHANAN.

Washington, February 26, 1861.

Department of State, Washington, February 26, 1861.

The Secretary of State, to whom was referred the Resolution of the Senate of yesterday, requesting the President, if not incompatible with the public interest, to communicate to that body "a copy of any correspondence which may have taken place between this Government and that of Her Britannic Majesty, and of any despatches which may have been received from the United States' Minister at London, relative to the extradition of one Anderson, a man of colour, charged with the commission of the crime of murder in the State of Missouri," has the honour to lay before the President a copy of all the correspondence between the two Governments on the subject, and in original, the only despatch in regard to it which has been received from the United States' Minister at London.

Respectfully submitted,

The President. (Signed) J. S. BLACK.

Mr. Cass to Mr. Irvine.

Sir, *Department of State, Washington, October* 2, 1860.

From information just received at this Department it appears that John Anderson, otherwise called Jack, a man of colour, has been charged with the commission of murder in the State of Missouri, has fled to Canada, whither he has been followed by officers of the State of Missouri, who have caused him to be arrested and confined in the jail of the town of Brantford, where he now is.

I have therefore the honour to request through you, Sir, that Her Britannic Majesty's Government will be pleased to issue the necessary warrant to deliver up the person of the above-named John Anderson, otherwise called Jack, to any person or persons duly authorized by the authorities of Missouri to receive the said fugitive, and bring him back to the United States for trial.

I avail, &c.

W. Douglas Irvine, Esq., (Signed) LEWIS CASS.
&c. &c. &c.

Mr. Cass to Lord Lyons.

My Lord, *Department of State, Washington, November* 2, 1860.

Referring to my note to Mr. Irvine of the 2nd ultimo, making a requisition upon Her Britannic Majesty's Government for the surrender of one John Anderson, otherwise called Jack, a fugitive from the justice of the United States, imprisoned in Canada, I have the honour to acquaint your Lordship that a letter has this day been received here from Senator Green, of Missouri, stating that he is credibly informed that the requisition in question has never been forwarded to Canada, and that in consequence the prisoner is about to be discharged.

I avail, &c.

Lord Lyons, (Signed) LEWIS CASS.
&c. &c. &c.

Lord Lyons to Mr. Cass.

Sir, *Washington, November* 3, 1

I have just had the honour to receive your note of yesterday's date, stating that information had reached you that the requisition made by your note to Mr. Irvine of the 2nd of October, for the extradition of John Anderson, or Jack, had not been forwarded to Canada.

I regret to find that the requisition in question was forwarded to London instead of to Canada direct. I have, however, lost no time in transmitting a telegraphic despatch to the Government of Canada, informing them of the necessity of taking measures immediately to prevent the man's discharge; and I will send the requisition in writing to them by this morning's post.

I have, &c.

Hon. General Cass, (Signed) LYONS.
Secretary of State, &c.

Lord Lyons to Mr. Cass.

Sir, *Washington, November* 6, 1860.

I have the honour to transmit to you a copy of a despatch which I have this day received by telegraph, in answer to the telegram which, as I informed you in my note of yesterday, I addressed to the Government of Canada, respecting the extradition of John Anderson.

I have, &c.

Hon. Lewis Cass, (Signed) LYONS.
&c. &c. &c.

(Telegram.) *Montreal, November* 6, 1860.

I instantly communicated with Law Officers at Quebec, and here is the Attorney General's reply:

"Anderson is in custody, waiting requisition. *Habeas corpus* will be moved next term at Toronto, where the question whether Anderson's case comes within the Ashburton Treaty will be brought before the Court."

Lord Lyons, (Signed) W. F. WILLIAMS.
&c. &c. &c.

Mr. Dallas to Mr. Black.

(No. 312.) *Legation of the United States,*
Sir, *London, January* 16, 1861.

Since the acknowledgment made in my note of the 20th of December last, of No. 291, I have had the honour to receive from the Department the despatches numbered 292, 293, 294, and 295.

The claim made by the United States upon the Government of Canada for the extradition of one —— Anderson, a fugitive slave, charged with the crime of murder, committed in Missouri, has awakened, as of course, so much interest in this country, and has invoked so much professional astuteness to defeat the operation of the Xth Article of the Treaty of 1842, that I have thought it expedient to place in the possession of the Department the annexed papers relating to that subject.

It is scarcely necessary for me to remark on the pungent and uncompromising hostility to social bondage which prevails throughout this country; that, as it has already led to giving by statute to the American slave who deserts his ship, a discriminating immunity over the freeman, so it cannot be expected to shrink from another manifestation in the interpretation of an internationa: Convention for the mutual surrender of culprits. In truth, it may be said generally, that in British opinion the *status* of slavery incapacitates the individual for contract or crime.

You will notice that Lord Chief Justice Cockburn, of the Queen's Bench, has

with "surprising celerity" allowed a writ of *habeas corpus*, addressed to the jailer in Canada, to issue; and that Anderson will, thereupon, be brought here, notwithstanding the very full and deliberate decision of the Colonial Court of Queen's Bench ordering him to be delivered up. The learned Judge appears to have stated, among the reasons for his decision, that the case "affects the construction of a Treaty which is matter of imperial concern." It may, perhaps, be thought expedient that on the argument of the question, the interpretation given by our Government should, in some form, be distinctly communicated.

I beg to add that, to avoid delay, the ample report of the shorthand writers is forwarded without having been first copied in this Legation.

I have, &c.

Hon. S. J. Black, (Signed) G. M. DALLAS.
Secretary of State.

Papers accompanying this Despatch (*No.* 312).

1. A printed notice of the case of Anderson in the Queen's Bench cut from the "Globe" of January 15, 1861.
2. Also, from same paper, a short report of same case.
3. Also a printed notice of same case, cut from the "Times" of January 16, 1861.
4. Also from the "Times," of same last-mentioned date, a report of same case.
5. Also from the "Times" of same date, a professional view headed "The Extradition Case," and signed "George Denman."
6. Also a full copy, on 113 folio pages, of the shorthand notes of Messrs. Reed, Robeson, and Woodward, 41, Chancery Lane, of the proceedings in the Queen's Bench.
7. Also a postscript, being a slip cut from the "Times" of January 18, 1861, purporting to be a Jesuitical mode of nullifying the Treaty, suggested over the signature of "J. Fowell Buxton."

Inclosure 2 in No. 20.

Lord Lyons to Lieutenant-General Sir W. Williams.

(Telegraphic.) *Washington, November* 3, 1860.

THE United States' Government has officially applied for the extradition of John Anderson, or Jack, a man of colour, accused of murder in Missouri, and now imprisoned at Brantford, in Canada.

I forward the written requisition by post; but I understand that, unless measures be taken immediately, the man may be discharged before it arrives.

Inclosure 3 in No. 20.

Lord Lyons to Lieutenant-General Sir W. Williams.

Sir, *Washington, November* 3, 1860.

I HAVE the honour to transmit to your Excellency herewith a copy of a note addressed on the 2nd of last month to Her Majesty's Chargé d'Affaires at this place by the United States' Secretary of State, and applying in the usual form for the surrender, under Article X of the Ashburton Treaty, of John Anderson, otherwise called Jack, a fugitive in Canada from the justice of the United States.

This note should have been communicated to the Government of Canada as soon as it was received. I trust, however, that the telegram which I have had the honour to address to your Excellency this morning (and of which a copy is inclosed), will have arrived in time to prevent any inconvenience being occasioned by the delay.

I have, &c.
(Signed) LYONS.

Inclosure 4 in No. 20.

Lieutenant-General Sir W. Williams to Lord Lyons.

(Telegraphic.) *Montreal, November* 6, 1860.

ANDERSON is in custody waiting requisition. *Habeas corpus* will be moved next term at Toronto, where the question whether Anderson's case comes within the Ashburton Treaty will be brought before the Court.

Inclosure 5 in No. 20.

Lord Lyons to Sir W. Williams.

Sir, *Washington, December* 14, 1860.

I HAVE the honour to inclose a copy of a letter which I have received to-day, signed "Thomas Hemming, Secretary of the Anti-Slavery Society of Canada," relative to the case of John Anderson, the man of colour whose surrender is demanded under the Treaty of 1842 by the United States' Government.

I inclose also a letter (under flying seal) which I have written to Mr. Hemming in reply; and I have the honour to request your Excellency (should you see no objection to doing so) to cause it to be forwarded to its destination.

It may, perhaps, be worth while for me to say that when I transmitted the demand for the extradition of Anderson to your Excellency, by post and by telegraph on the 3rd ultimo, I was not aware that there were any peculiar circumstances in the case, or that it was likely to give rise to excitement. But, at all events, my part would have been to forward the demand as a matter of course.

I do not now know anything of the facts of the case, except what I have read in the newspapers.

I have, &c.
(Signed) LYONS.

Inclosure 6 in No 20.

Mr. Hemming to Lord Lyons.

My Lord, *Toronto, December* 11, 1860.

A REPORT has gained currency in Canada that your Excellency had transmitted to the British Government a statement of facts in the case of Anderson, a coloured refugee from the United States, and now in Canada, and that the Imperial Government had replied, expressing an opinion that the said fugitive should be delivered up to the authorities at Missouri.

I am requested by the Committee of the Anti-Slavery Society of Canada to ask that your Lordship (if not inconsistent with your duty) will be good enough to say whether there is any foundation for such a rumour.

The case being now before our Courts has created much public interest, and as important consequences are likely to follow from its decision, the Committee take the liberty of thus troubling your Excellency on the subject.

I have, &c.
(Signed) THOS. HEMMING,
Secretary to the Anti-Slavery Society of Canada.

Inclosure 7 in No. 20.

Lord Lyons to Mr. Hemming.

Sir, *Washington, December* 14, 1860.

I HAVE this morning received a letter from you dated the 11th instant. In answer to it I have to say that I have neither transmitted a statement of the

facts in the case of John Anderson to Her Majesty's Government, nor written anything whatever to them on the subject.

A demand from the United States' Government for the surrender of Anderson was forwarded to Her Majesty's Government in my absence by Her Majesty's Chargé d'Affaires in the month of October last. A similar demand was forwarded last month to the Provincial Government of Canada by me. These demands were in the usual form, and simply stated that Anderson was charged with murder.

I knew nothing of the facts of the case then. I know nothing of them now, except what I have since read in the newspapers. A demand for the surrender of a fugitive made by the United States' Government, in virtue of Article X of the Treaty of 1842, must be forwarded by this Legation as a matter of course. The Legation has no authority to investigate the case, nor to give an opinion whether the fugitive ought or ought not to be surrendered. The investigation must, according to the terms of the Treaty, be conducted judicially by the Judges or other Magistrates of the place where the fugitive is found, and it belongs to them to decide whether or no the evidence brought before them is sufficient to warrant the surrender.

I am, &c.
(Signed) LYONS.

Inclosure 8 in No. 20.

Lieutenant-General Sir W. Williams to Lord Lyons.

My Lord, *Montreal, December* 21, 1860.

I HAVE the honour to acknowledge with thanks the receipt of your Excellency's despatch of the 14th instant, with its inclosures, relative to the case of John Anderson.

I have caused your letter to Mr. Hemming to be forwarded to its destination.

I have, &c.
(Signed) W. F. WILLIAMS.
