

BILL

An Act for better giving effect, within this Province, to a Treaty between Her Majesty and the United States of America, for the apprehension and surrender of certain Offenders.

Received and read first time,

Second reading,

[250 Copies.]

Honble. Mr.

B I L L .

An Act for better giving effect, within this Province, to a Treaty between Her Majesty and the United States of America, for the apprehension and surrender of certain Offenders.

1 **W**HEREAS by the tenth article of a Preamble
 2 Treaty between Her Majesty and
 3 the United States of America, signed at Treaty with
 4 Washington on the ninth day of August, in U S 9th
 5 the year one thousand eight hundred and August, 1842,
 6 forty-two, the ratifications whereof were cited.
 7 exchanged at London, on the thirteenth day
 8 of October in the same year, it was agreed
 9 that Her Majesty and the said United
 10 States, should, upon mutual requisitions by
 11 them or their Ministers, Officers or autho-
 12 rities respectively made, deliver up to justice
 13 all persons who, being charged with the
 14 crime of Murder, or Assault with intent to
 15 commit Murder, or Piracy, or Arson, or
 16 Robbery, or Forgery, or the utterance of
 17 Forged Paper, committed within the juris-
 18 diction of either of the High Contracting
 19 Parties, should seek an Asylum or should be
 20 found within the Territories of the other ;
 21 provided that this should only be done
 22 upon such evidence of criminality as ac-
 23 cording to the Laws of the place where the
 24 fugitive or person so charged should be
 25 found, would justify his apprehension and
 26 commitment for trial if the crime or offence
 27 had been there committed ; and that the
 28 respective Judges and other Magistrates of
 29 the two Governments should have power,
 30 jurisdiction and authority upon complaint
 31 made under oath, to issue a warrant for the
 32 apprehension of the fugitive or person so
 33 charged, so that he might be brought before
 34 such Judges or other Magistrates respective-
 35 ly, to the end that the evidence of criminality
 36 might be heard and considered, and if on
 37 such hearing the evidence should be deemed

Imperial Act
6 & 7 Vict
cited

sufficient to sustain the charge, it should be 1
the duty of the examining Judge or Magis- 2
trate to certify the same to the proper 3
Executive Authority, that a warrant might 4
issue for the surrender of such fugitive, and 5
that the expense of such apprehension and 6
delivery should be borne and defrayed by 7
the party making the requisition and receiv- 8
ing the fugitive ; and it is by the eleventh 9
article of the said Treaty further agreed, 10
that the tenth article hereinbefore recited 11
should continue in force until one or other 12
of the High Contracting Parties should 13
signify its wish to terminate it, and no 14
longer : And whereas certain provisions of 15
the Act passed by the Parliament of the 16
United Kingdom of Great Britain and Ire- 17
land, in the Session held in the sixth and 18
seventh years of Her Majesty's Reign for 19
giving effect to the Treaty aforesaid, and 20
intituled, *An Act for giving effect to a* 21
Treaty between Her Majesty and the United 22
States of America, for the apprehension of 23
certain Offenders, have been found incon- 24
venient in practice in this Province, and 25
more especially that provision which re- 26
quires that before any such offender as 27
aforesaid shall be arrested, a warrant shall 28
issue under the hand and seal of the person 29
administering the Government, to signify 30
that such requisition as aforesaid hath been 31
made by the authority of the United States 32
for the delivery of such offender as afore- 33
said, and to require all Justices of the 34
Peace, and other Magistrates and Officers 35
of Justice, within their several jurisdictions, 36
to govern themselves accordingly, and to 37
aid in apprehending the person so accused, 38
and committing such person to Gaol for 39
the purpose of being delivered up to justice 40
according to the provisions of the said 41
Treaty, in as much as by the delay occa- 42
sioned by compliance with the said provi- 43
sion, an offender may have time afforded 44
him for eluding pursuit : And whereas by 45
the fifth section of the said Act it is enacted, 46
that if by any law or ordinance to be there 47
after made by the local Legislature of any 48

1 British Colony or Possession abroad, pro-
 2 vision shall be made for carrying into com-
 3 plete effect within such Colony or Posses-
 4 sion, the objects of the said Act, by the
 5 substitution of some other enactment in
 6 lieu thereof, then it shall be competent to
 7 Her Majesty, with the advice of Her Privy
 8 Council (if to Her Majesty in Council it
 9 shall seem meet, but not otherwise) to sus-
 10 pend the operation within any such Colony
 11 or Possession of the said Act of the said
 12 Imperial Parliament, so long as such sub-
 13 stituted enactment shall continue in force
 14 there, and no longer : And whereas it is
 15 expedient to make provision for carrying
 16 the objects of the said Act and Treaty into
 17 complete effect within this Province, by
 18 the substitution of other enactments in lieu
 19 of the said Imperial Act : Be it therefore
 20 enacted, &c.,

21 And it is hereby enacted by the authority of
 22 the same, That it shall be lawful for any of
 23 the Judges of any of Her Majesty's Superior
 24 Courts in this Province, or for any of Her
 25 Majesty's Justices of the Peace in the same,
 26 and they are hereby severally vested with
 27 power, jurisdiction and authority, upon
 28 complaint made under oath or affirmation,
 29 charging any person found within the limits
 30 of this Province with having committed,
 31 within the jurisdiction of the United States
 32 of America, or of any of such States, any of
 33 the crimes enumerated or provided for by
 34 the said Treaty, to issue his Warrant for the
 35 apprehension of the person so charged, that
 36 he may be brought before such Judge or such
 37 Justice of the Peace, to the end that the evi-
 38 dence of criminality may be heard and
 39 considered ; and if, on such hearing the evi-
 40 dence be deemed sufficient by him to sustain
 41 the charge according to the laws of this Pro-
 42 vince, if the offence alleged had been com-
 43 mitted therein, it shall be his duty to certify
 44 the same, together with a copy of all the
 45 testimony taken before him, to the Gover-
 46 nor or Lieutenant-Governor of this Province,
 47 or to the Person administering the Govern-
 48 ment of the same for the time being, that a

By whose
 order and on
 what evidence
 persons
 charged with
 crimes com-
 mitted in the
 U S may be
 arrested and
 detained

Proceedings to
 be certified to
 the Governor.

And the offender to be committed until duly discharged

Warrant may issue, upon the requisition of 1
the proper authorities of the said United 2
States or of any of such States, for the sur- 3
render of such person, according to the 4
stipulations of the said Treaty; and it shall 5
be the duty of the said Judge or of the said 6
Justice of the Peace to issue his Warrant 7
for the commitment of the person so charged 8
to the proper Gaol, there to remain until such 9
surrender shall be made, or until such per- 10
son shall be discharged according to law. 11

Properly attested copies of depositions taken in U S to be received as evidence of criminality

II. Provided always, and be it enacted, 12
That in every case of complaint as afore- 13
said, and of a hearing upon the return of 14
the Warrant of arrest, copies of the deposi- 15
tions upon which an original Warrant is 16
any of the said United States may have 17
been granted, certified under the hand of 18
the person or persons issuing such Warrant, 19
or under the hand of the Officer or person 20
having the legal custody thereof, and attested 21
upon the oath of the party producing them 22
to be true copies of the original depositions, 23
may be received in evidence of the crimina- 24
lity of the person so apprehended. 25

Governor may order the delivery of the offender to the U S or to any one of the States

III. And be it enacted, That it shall be 26
lawful for the Governor or Lieutenant-Gov- 27
ernor of this Province, or the person 28
administering the Government of the same 29
for the time being, upon a requisition made 30
as aforesaid by the authority of the said 31
United States or of any of such States, by 32
warrant under his hand and seal, to order 33
the person so committed to be delivered to 34
such person or persons as shall be autho- 35
rized in the name and on the behalf of 36
the said United States or of any of such 37
States, to be tried for the crime of which 38
such person shall be so accused, and such 39
person shall be delivered up accordingly; 40
and it shall be lawful for the person or per- 41
sons authorized as aforesaid, to hold such 42
person in custody, and to take him or her 43
to the territories of the said United States, 44
pursuant to the said Treaty; and if the 45
person so accused shall escape out of any 46
custody to which he or she shall be com- 47

mitted, or to which he or she shall be delivered as aforesaid, it shall be lawful to retake such person, in the same manner as any person accused of any crime against the laws of this Province, may be retaken upon an escape.

Offenders escaping may be retaken

IV. And be it enacted, That when any person who shall have been committed under this Act and the Treaty aforesaid, to remain until delivered up in pursuance of a requisition as aforesaid, shall not be delivered up pursuant thereto, and conveyed out of this Province within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the gaol to which he or she may have been committed, by the readiest way out of this Province, it shall in every such case, be lawful for any of the Judges of Her Majesty's Superior Courts in this Province, having power to grant a Writ of *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, to order the person so committed to be discharged out of custody, unless sufficient cause shall be shewn to such Judge or Judges why such discharge shall not be ordered.

Any person so arrested and not delivered up within two months, may obtain his discharge, unless good cause for his further detention be shewn

V. And be it enacted, That this Act shall come into force upon the day to be appointed for that purpose in any proclamation to be issued by the Governor, Lieutenant-Governor, or Person Administering the Government of this Province, for the purpose of promulgating any Order of Her Majesty with the advice of Her Privy Council suspending the operation of the Imperial Act hereinbefore cited within this Province, and not before, and shall thereafter continue in force during the continuance of the tenth article of the said Treaty, and no longer.

Commencement and duration of this Act